

# House Panel Deals Gitmo Closure a Major Setback

## **Move Prohibits Use of Defense Department Money to Buy a New Detention Facility**

By [Spencer Ackerman](#) 5/20/10 1:01 PM



The sun rises over Camp Delta at Guantanamo Bay. (MICHELLE SHEPHARD/TORONTO STAR)

The Obama administration's longstanding pledge to close the detention facility at Guantanamo Bay just hit a major obstacle in the House, creating doubts over whether the detention facility can be closed this year — if at all.

Last night the House Armed Services Committee finished this year's bill authorizing \$567 billion worth of defense spending and another \$159 billion for the Afghanistan and Iraq wars for the fiscal year beginning in October. Following an administration budget plan announced in February by Pentagon comptroller Robert Hale, the Afghanistan war request contained a vague provision — indeed, [not even carrying the words "Guantanamo Bay"](#) — called a "transfer fund" to authorize the purchase of the Thomson Correction Center in Illinois. The administration wants to buy Thomson in order to have a secure facility on U.S. soil to house [those Guantanamo detainees it designates for military commissions or indefinite detention without charge](#). Once the federal government buys Thomson, it can shut down Camp Delta at Guantanamo Bay.

Or that was the plan. The actual bill hasn't been released yet. But buried at the bottom of an extensive summary the committee released last night is an express prohibition on the

use of any Defense Department money to buy a new detention facility. According to the bill summary, the bill now requires Defense Secretary Robert Gates to give Congress a report that “adequately justifies any proposal to build or modify such a facility” if it wants to move forward with any post-Guantanamo detention plan.

“The Committee firmly believes that the construction or modification of any facility in the U.S. to detain or imprison individuals currently being held at Guantanamo must be accompanied by a thorough and comprehensive plan that outlines the merits, costs, and risks associated with utilizing such a facility,” the summary text read. “No such plan has been presented to date. The bill prohibits the use of any funds for this purpose.”

That might place insurmountable obstacles to the the so-called “Gitmo North” plan to transfer Guantanamo detainees to Thomson. “They can’t just create Guantanamo North and move everyone up there. That’s clearly barred,” said Chris Anders, a senior lobbyist for the American Civil Liberties Union who monitored yesterday’s mark-up. “It doesn’t mean that the proposal is dead, but it’s hard to see how it makes a comeback after the House Armed Services Committee says there can’t be money spent on Thomson.”

That’s not all. While the bill doesn’t renew the current Congressional ban on transferring detainees from Guantanamo into the U.S. — set to expire in October — it requires President Obama to submit a “a comprehensive disposition plan and risk assessment” for any future detainee transfer. Congress would then get “120 days to review the disposition plan before it could be carried out.” Additionally, Congress would get a 30-day review period for the proposed transfer of any detainee from Guantanamo to a foreign country in order to check against a detainee inflicting violence against the U.S. or its interests. The summary instructs Gates to tell Congress that any such foreign transfer meets “strict security criteria to thoroughly vet any foreign country to which a detainee may be transferred.”

The bill, which passed the committee on a vote of 59 to 0, will go to the House floor and receive a vote most likely next week. A Senate Armed Services Committee mark-up of the companion bill in the Senate is scheduled for the end of May.

This is a major setback for Obama’s campaign pledge to close the Guantanamo Bay detention facility. While it’s theoretically possible for an amendment authorizing the Thomson purchase to come back into the bill during floor debate, “this makes it much, much harder for the administration to move forward with the closure of Guantanamo, there’s no doubt about that,” said Vincent Warren, the executive director of the Center for Constitutional Rights. “It’s hard to see what reasonable options the president has without jumping through congressional hoops that are unreasonable and unnecessary, and it’s harder to move forward both with prosecuting those who are terrorist suspects and releasing to freedom those who are not.”

But beyond the closure of the detention facility itself, the prohibitions now contained in the bill have policy implications for the dispensation of justice for detainees remaining at Guantanamo, a burning political issue all through this year. Those “abhorrent”

prohibitions, Warren said, “essentially prohibit the executive from moving forward with its constitutional and human-rights obligations to try people [and] creates a paradigm where the operative default mechanism will be to detain people without trial.” In April, Attorney General Eric Holder [pledged to work with Sen. Lindsey Graham \(R-SC\) on a new legal architecture for indefinite detention without charge](#).

Anders took a more optimistic view. If the bill passes, as is likely, the administration “will have to work harder and work faster at what they’ve been doing effectively for the past 16 or 17 months, which is repatriating and resettling detainees one by one who have been cleared and then bring people here for prosecution,” Anders said, even with the new congressional repatriation restrictions. This week, one of those detainees the administration designated for civilian prosecution, Ahmed Khalfan Ghailani, who has been transferred to a Manhattan prison, [unsuccessfully urged a federal judge to dismiss his case](#).

But such an incremental approach would not allow Obama to close the facility until the last detainee either leaves or faces criminal charges, a process likely to take years even without all of the political obstacles that have emerged around terrorism trials and holding terrorism defendants in federal corrections facilities. Additionally, it would require Holder and the Obama administration to abandon a decision that has been much reviled in the civil libertarian community: [designating 48 detainees currently held at Guantanamo for continued indefinite detention without charge](#).

Closing the detention facility at Guantanamo Bay was a bipartisan goal before President Obama took office, with both President Bush and Sen. John McCain (R-Ariz.), the 2008 Republican presidential nominee, rhetorically committed to shutting down an international symbol of American lawlessness. But an effective campaign waged by conservatives to portray the closure as negligent with national security — and Obama and the Democrats as weak for seeking it — has raised the political stakes for Democratic members of Congress. Last year, [the Senate voted with 90 votes to prohibit the transfer of detainees from Guantanamo to the U.S.](#), and this year, the still-unresolved question of whether Khalid Shaikh Mohammed and the 9/11 conspirators ought to be tried in civilian courts or military commissions has become Holder’s defining challenge. With Republicans hostile to the Guantanamo closure plan likely to gain seats in Congress after the November midterm elections, future attempts at closing the facility are likely to face even greater political opposition.

Requests for comment to the White House and the Office of the Secretary of Defense were not immediately returned.