



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Talking Points in Opposition to Legislation That Would Preclude Prosecution of Alleged Terrorists in Criminal Court

The Administration strongly opposes any legislation that would preclude prosecutors from trying alleged terrorists in the most appropriate forum, whether that forum is a criminal court or a military commission. There is no precedent in the history of our Nation in which Congress has intervened in such a manner to prohibit the prosecution of particular persons or crimes.

- **Such legislation would make us less safe by removing one critical tool from the Nation's arsenal—the use of the federal justice system to incapacitate terrorists.** The Nation is at war and we face an aggressive and determined enemy. We must be able to use every lawful instrument of national power—including both civilian courts and military commissions—to protect the country and ensure that terrorists can no longer threaten American lives.
- **Such legislation would hinder the exercise of prosecutorial discretion by the Executive Branch.** The decision as to when and where to prosecute particular cases has always been an Executive Branch function. Such legislation would be an unprecedented intrusion into that function, raising serious separation of powers concerns. It would preclude prosecutors from pursuing otherwise available criminal prosecutions even if they conclude that a prosecution in a military commission is not appropriate or feasible.
- **Such legislation could impede an ongoing criminal prosecution.** Legislation, which applies to all detainees who were at Guantanamo at the beginning of 2009, would apply to Ahmed Ghailani, who is currently being prosecuted criminally for his alleged role in the bombings of the U.S. embassies in East Africa. His co-conspirators have already been convicted in federal court and sentenced to life imprisonment.
- **Such legislation would strip the government of one of its most effective antiterrorism tools.** Just this week, swift justice was brought to Najibullah Zazi, who pleaded guilty to multiple terrorism-related charges in federal court. Since the 1990s, numerous individuals charged with terrorism violations have been successfully prosecuted and sentenced in federal court, including over 300 since September 11 and more than 30 in 2009 alone. Among those convicted and serving lengthy sentences are Ramzi Yousef and others for the 1993 World Trade Center bombing and the

Manila Air plot; Sheikh Omar Abdel-Rahman (the “Blind Sheikh”) and others for the plot to bomb New York City landmarks; and Zacarias Moussaoui for his role in the September 11 attacks.

- **Such legislation would do nothing to make terrorism trials more secure or to control the behavior of defendants.** Our federal courts have effective and well-established procedures for protecting classified information. Indeed, those procedures were the model for the procedures recently adopted for the reformed military commissions. And as was seen most recently in the trial of Aafia Siddiqui, federal judges have all the authority they need to rein in defendants who seek to turn their trials into a showcase for terrorist propaganda.