



Office of the Attorney General
Washington, D. C. 20530

November 14, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

As the Senate prepares to consider the National Defense Authorization Act for FY2014, I write to reiterate the longstanding objections of the Department of Justice to any provisions that would continue to restrict the transfer of detainees from Guantanamo, limit the ability of the Executive Branch to determine when and where to prosecute terrorist suspects, and otherwise prevent the President from taking steps to bring about the orderly closure of the facility. Such restrictions encroach on the ability of the Executive Branch to make foreign policy and national security decisions and would, in certain circumstances, violate separation of powers principles.

The unwarranted restrictions on the Executive branch's authority to transfer detainees to a foreign country should be eliminated. Detainees were designated for transfer based on an interagency consensus after a thorough review of all available information. Restricting the ability of the Executive Branch to implement appropriate transfers weakens our national security by wasting resources, damaging our relationships with key allies, and strengthening our enemies.

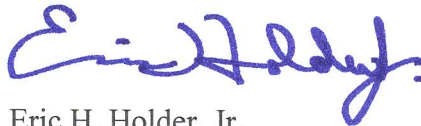
I also continue to object strongly to the restrictions on transferring Guantanamo detainees to the United States for any purpose. The prosecution of terrorists in Federal court has long been an essential element of our counterterrorism efforts and has been a powerful tool of proven effectiveness. Since 9/11, hundreds of convictions have been obtained on terrorism or terrorism-related charges in our Federal courts, including the convictions of over 165 defendants since 2009. The effectiveness of this system was underscored again on October 24, 2013 when the U.S. Court of Appeals for the Second Circuit affirmed the conviction and life sentence of Ahmed Ghailani, who was transferred from Guantanamo and then convicted in federal district court of conspiracy in connection with his role in the 1998 East Africa embassy bombings. There is no justification for prohibiting the Federal prosecution of Guantanamo detainees in appropriate

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cases. As you are aware, the viability of conspiracy and material support prosecutions in military commissions is unresolved in light of adverse D.C. Circuit decisions that currently are under review by the full court. Particularly in view of these rulings, Congress should restore the option to prosecute detainees in Federal court in circumstances where the Executive Branch determines that a Federal prosecution is the surest way to protect our national security. Our federal prisons are fully capable of housing Guantanamo detainees safely, securely, and humanely, just as they have done for the hundreds of defendants serving sentences for terrorism-related offenses since September 11, 2001.

If we are to safeguard the American people, we must be in a position to employ every lawful instrument of national power—including both courts and military commissions—to ensure that terrorists are brought to justice and can no longer threaten American lives. Moreover, if we are to protect our national security and advance our foreign policy objectives, the President must have the ability to transfer detainees when doing so serves our national interests. I urge you to reject any legislative proposals that would compromise our ability to carry out that solemn responsibility.

Sincerely yours,

A handwritten signature in blue ink, reading "Eric H. Holder, Jr.", with a stylized flourish at the end.

Eric H. Holder, Jr.
Attorney General