



May 7, 2014

RE: Upcoming Vote on the Smith Amendment to H.R. 4435, the National Defense Authorization Act, on Transfers from the Guantanamo Prison

Dear Representative:

The American Civil Liberties Union strongly urges you to vote “YES” on the Smith Amendment to H.R. 4435, but as a critical corollary, we also ask you to urge the sponsors of the amendment and the White House to modify the amendment to statutorily prohibit the use of indefinite detention without charge or trial and military commissions in the United States, if the amendment passes and goes to conference. We urge you to both close the Guantanamo prison, and make clear that indefinite detention and military commissions cannot be made permanent and transported to the United States itself. The Guantanamo prison must close, and harmful Guantanamo policies must end.

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

LAURA W. MURPHY
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

The Smith Amendment removes the statutory hurdles to closing Guantanamo that Congress has repeatedly renewed. In particular, it ends the ban on transferring detainees to the United States for prosecution in federal criminal courts and, in conjunction with the language in the chairman’s mark, facilitates the transfer of detainees to foreign countries for resettlement or repatriation. Closing the Guantanamo prison is a goal that is fully consistent with President Obama’s stated determination that the United States must not be in a “forever war.”

Important national security voices ranging from Secretary of Defense Hagel to former Secretaries of State Clinton, Rice, and Powell to scores of retired generals and admirals to, most recently, Senators McCain and Feinstein, have all agreed that the Guantanamo prison should close, and that America’s national security will be stronger if the prison is closed. For more than a decade, Guantanamo has also jeopardized security cooperation from allies, as other countries refuse to transfer terrorism suspects to the United States unless they receive assurances that the suspects will not be sent to Guantanamo or tried before military commissions. Similarly, key foreign leaders, such as President Karzai, have become increasingly public in demanding the return of their citizens. The Guantanamo prison has long caused more national security problems than it solves.

The long-hidden financial costs of Guantanamo are now well known. House Armed Services Committee Ranking Member Adam Smith last summer published cost figures provided to him by the Department of Defense. According to those projections, the Department of Defense alone expects to spend almost half a billion dollars this year to run the facility and its broken military commissions system. Based on 154 detainees at Guantanamo, taxpayers will pay roughly \$3 million per detainee over this year. THIS COST IS NEARLY 100 TIMES what it costs to house a person

in a high security federal Bureau of Prisons facility. Measured differently, the estimated cost of Guantanamo this year alone constitutes more than 75% of the entirety of the Department of Veterans' Affairs requested budget outlay for Medical and Prosthetic Research for FY 2015. The financial – and ethical – costs of indefinite detention are simply indefensible.

Of the 154 detainees at Guantanamo, exactly half have already been cleared by national security officials for transfer for repatriation or resettlement in foreign countries. The government must step up its review process for deciding on clearing additional detainees for transfer. In the year since the Periodic Review process was initiated for indefinite detainees, reviews for only three of the nearly seventy individuals eligible for review have successfully been completed. For those marked for trial in Guantanamo's military commissions, top government officials have been clear that only a small number of detainees will be charged with a crime. The rest must be repatriated or resettled, particularly as the United States ends combat operations in Afghanistan.

While we urge you to vote "YES" on the Smith amendment, we have grave concerns about the possibility that closing Guantanamo—if done the wrong way—could result in transporting the harmful Guantanamo policies of indefinite detention and military commissions to the United States and making them permanent. While nothing in the Smith Amendment authorizes indefinite detention or military commissions in the United States itself, there also is no ban on these practices, and the Obama administration had a plan as recently as 2010 to institute indefinite detention and military commissions for the Guantanamo detainees in the United States itself.

The ACLU urges you, even as you vote "YES" on the Smith Amendment, to make clear to the sponsors and to the White House that bringing the practice of indefinite detention without charge or trial to any location within the United States would harm the rule of law and adherence to the Constitution. Shortly after President Obama took office, the government prosecuted and convicted, in federal criminal court, the only person then-held on U.S. soil indefinitely without charge or trial. At present, the number of people held within the U.S. itself indefinitely without charge or trial is zero.

But unless Congress includes a statutory bar on indefinite detention in the United States itself as this legislation moves forward, the number of persons held on U.S. soil without charge or trial could rise to 40 or more from Guantanamo. The unfortunate reality that we would face if Congress opens the door is that it is easier to go from 40 to 100 indefinite detention prisoners than it is to go from 0 to 1. Once an indefinite detention policy is institutionalized in the United States itself, it will be difficult to hold the line at former Guantanamo detainees.

The Smith Amendment is an important amendment, and we urge you to vote "YES," but we urge you to also make clear that the legislation must be modified if it goes to conference, to include a statutory bar on indefinite detention and military commissions in the United States. Please do not hesitate to call us at 202-675-2308 if you have any questions regarding this issue.

Sincerely,



Laura W. Murphy
Director



Christopher E. Anders
Senior Legislative Counsel