

MEMORANDUM

TO: Members of the U.S. Senate

FROM: Alliance for Justice
American Civil Liberties Union
Amnesty International USA
Appeal for Justice
Center for Constitutional Rights
Friends Committee on National Legislation
Human Rights First
Human Rights Watch
International Justice Network
National Association of Criminal Defense Lawyers
New Security Action
Open Society Policy Center
People For the American Way
The Constitution Project
United Methodist Church, General Board of Church and Society

DATE: Friday, February 19, 2010

RE: Oppose S. 2977, Which Would Bar Prosecution of Some Terrorism Defendants in Federal Criminal Courts

We urge you to oppose S. 2977, which was recently introduced by Senator Graham (R-SC) and would prohibit the Department of Justice from using funds to prosecute the alleged planners or conspirators in the September 11, 2001 attacks in regular Article III federal courts. These are the same federal courts where the Department of Justice regularly tries and convicts defendants charged with international terrorism crimes. This legislation would needlessly tie the President's hands in resolving the problem of Guantánamo and disposing of cases in ways that comport with human rights principles and the rule of law. The legislation would restrict the Obama administration's ability to employ one of the most valuable counterterrorism tools available—criminal prosecutions in regular federal courts.

There is no substantive difference between S. 2977 and Senator Graham's amendment to the Commerce, Justice Science appropriation bill that was rejected by the full Senate by a vote of 54-45 only three months ago.

The Graham legislation would be a sharp break from current law, and is very different from the Guantánamo transfer restrictions that passed the Senate and were signed into law in 2009. Each of those restrictions prohibits most transfers to the United States of detainees held at Guantanamo, but exempts transfer of detainees for prosecution. By contrast, S. 2977 would block the Department of Justice from access to the most effective courts for criminal prosecution. Even if you voted for the transfer restrictions that were eventually enacted, you can and should oppose S. 2977.

S. 2977 would hinder efforts to put to rest a legacy of a failed detention policy. The detentions at Guantánamo Bay are a blot on the reputation of the United States that harms U.S. national security and foreign policy interests. There is widespread agreement among national security and foreign policy experts—including General David Petraeus, Secretary of Defense Robert Gates, and five former Secretaries of State from both parties that closing the Guantánamo Bay detention facility is essential to U.S. counterterrorism efforts and to repairing the standing of the United States as a country committed to human rights and the rule of law.

The legislation would deny the Obama administration a highly effective prosecution tool—trial before regular federal courts. In fact, Attorney General Eric Holder wrote last week that “the Bush Administration used the criminal justice system to convict more than 300 individuals of terrorism-related crimes.” The Federal Bureau of Prisons has also proven fully capable of securely detaining individuals convicted of the most serious crimes of terrorism, such as co conspiracy in the 9/11 attacks, the 1993 World Trade Center bombing, and the 1998 East Africa embassy bombings, without harm to the surrounding communities—and, of course, without escape. Passage of this legislation, by preventing prosecution of accused terrorists in regular federal criminal courts, would amount to an abdication of Congress’ obligation to protect America.

As Attorney General Holder recently wrote:

The criminal justice system has proven to be one of the most effective weapons available to our government for both incapacitating terrorists and collecting intelligence from them. Removing this highly effective weapon from our arsenal would be as foolish as taking our military and intelligence options off the table against al-Qaeda, and as dangerous.

Adhering to the rule of law both protects human rights and enhances national security. We urge you to oppose S. 2977.