

## Guantanamo Provisions in the FY2017 NDAA

The National Defense Authorization Act for Fiscal Year 2017<sup>1</sup> (FY17 NDAA) contains several provisions that make it very difficult to transfer detainees from Guantanamo Bay. These provisions even prohibit bringing detainees to the United States for trial in federal court, where over 550 individuals have been successfully prosecuted for terrorism-related offenses since 9/11.<sup>2</sup> National security experts from across the aisle, including five Secretaries of Defense, eight Secretaries of State, five Chairs of the Joint Chiefs of Staff<sup>3</sup> and other high-ranking military and intelligence officials,<sup>4</sup> have spoken out in support of closing the prison at Guantanamo. This fact sheet sets out the FY17 NDAA provisions that impact the transfer of detainees from Guantanamo and details why they are problematic.

### Summary

#### The FY17 NDAA:

- ☑ Bans transferring detainees to the United States until December 31, 2017.<sup>5</sup>
- ☑ Bans constructing facilities in the United States to house Guantanamo detainees until December 31, 2017.<sup>6</sup>
- ☑ Bans transferring detainees to Libya, Somalia, Syria, and Yemen until December 31, 2017.<sup>7</sup>
- ☑ Retains onerous restrictions on transferring detainees to other countries—including for those cleared for transfer.<sup>8</sup> These restrictions were passed in the FY16 NDAA and do not have an expiration date.

#### Detail

- ☑ **Sections 1032 and 1033 FY17 NDAA:**  
Bans on transferring Guantanamo detainees to the United States and constructing or modifying facilities to house detainees in the United States until December 31, 2017.
  - Keeping Guantanamo open and preventing the transfer of detainees to the United States does not make America safer. Terrorist organizations like al Qaeda and ISIS use Guantanamo to recruit new members.<sup>9</sup> Furthermore, as James Gondles, Executive Director of the American

<sup>1</sup> <https://www.gpo.gov/fdsys/pkg/CRPT-114hrpt840/pdf/CRPT-114hrpt840.pdf>.

<sup>2</sup> <http://www.humanrightsfirst.org/sites/default/files/Federal-Courts-Continue-to-Take-Lead-in-CT-Prosecutions.pdf>.

<sup>3</sup> <http://www.humanrightsfirst.org/sites/default/files/US-Officials-Support-Closing-Guantanamo.pdf>.

<sup>4</sup> National Security Leaders Support Closing Guantanamo, <http://www.humanrightsfirst.org/sites/default/files/Quotes-National-Security-Leaders-Support-Closing-Guantanamo.pdf>.

<sup>5</sup> Section 1032.

<sup>6</sup> Section 1033.

<sup>7</sup> Section 1034.

<sup>8</sup> Section 1034 FY16 NDAA, <https://www.congress.gov/bill/114th-congress/senate-bill/1356/text>.

<sup>9</sup> <http://www.humanrightsfirst.org/guantanamo-bay-terrorist-propaganda-tool>.

Correctional Association, said, “Hundreds of convicted terrorists have gone to prison in the United States since 9/11. None has escaped. None has created security threats for the communities near the prisons...There should be no debate about the U.S. corrections systems’ ability to hold Guantanamo detainees should they be transferred stateside.”<sup>10</sup>

- The ban on bringing detainees to the United States prohibits the U.S. government from trying detainees for crimes in federal court. The Guantanamo military commissions can only try war crimes and three of their eight convictions have been overturned because the crimes detainees were convicted of were not war crimes.<sup>11</sup> Prohibiting transfers to the United States robs the U.S. government of this important tool in the fight against terrorism.
- The costs of keeping the Guantanamo open are astronomical—over \$10 million per detainee per year.<sup>12</sup> By comparison, the cost for an inmate at the federal Supermax facility in Florence, Colorado is \$78,000.<sup>13</sup> The Department of Defense estimates that closing Guantanamo would save between \$65 million and \$85 million per year.<sup>14</sup> And this does not include the additional \$225 million needed for repairs and construction<sup>15</sup> or costs that remain classified, like those for Camp 7, where high-value detainees are

kept. These funds could be better spent in other areas of national security.

☑ **Section 1034 FY17 NDAA and Section 1034 FY16 NDAA:** Bans transfers to Libya, Somalia, Syria or Yemen until December 31, 2017. Imposes onerous restrictions on transferring detainees to other countries. These restrictions were passed in the FY16 NDAA and do not have an expiration date.

- Arbitrary blanket bans on entire countries are unnecessary. The detainee transfer process is already extremely comprehensive and thorough.<sup>16</sup>
- Detainee transfers are examined and negotiated with receiving countries on a case-by-case basis. Every national security and intelligence agency—the Departments of Defense, State, and Homeland Security, Office of the Director of National Intelligence, and Joint Chiefs of Staff—signs off on any decision to transfer a detainee.<sup>17</sup>
- The Secretary of Defense must also certify that any transfer is in U.S. national security interests and that the destination country 1) maintains control over any facility where the detainee would be held; 2) will mitigate any risk that the detainee would engage in terrorism; and 3) will share with the United States any information that is related to the transferred individual.

<sup>10</sup> <http://www.humanrightsfirst.org/sites/default/files/Gondles-statement-for-the-record-April-2016.pdf>.

<sup>11</sup> <http://www.humanrightsfirst.org/sites/default/files/Federal-Court-Myth-vs-Fact.pdf>.

<sup>12</sup> <http://www.humanrightsfirst.org/sites/default/files/Fact-Sheet-Cost-of-Guantanamo.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> [https://www.defense.gov/Portals/1/Documents/pubs/GTMO\\_Closure\\_Plan\\_0216.pdf](https://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf). See also

<http://www.humanrightsfirst.org/sites/default/files/Close-GTMO-Plan-Fact-Sheet.pdf>

<sup>15</sup> *Id.*

<sup>16</sup> <http://www.humanrightsfirst.org/sites/default/files/Guantanamo-Detainee-Transfers-Fact-Sheet.pdf>.

<sup>17</sup> These are the departments of Defense, State, Justice, and Homeland Security, the Office of the Joint Chiefs and the Office of the Director of National Intelligence. For more on detainee transfers see

<http://www.humanrightsfirst.org/sites/default/files/GTMO-Transfers-Issue-Brief.pdf>.