February 14, 2011

RE: Oppose Sections 1112 and 1113 in H.R. 1, the House Continuing Resolution, Which Would Impose a Blanket Ban on Transfers of Guantánamo Detainees, Even for Prosecution or Resettlement or Repatriation

Dear Representative:

The undersigned organizations strongly urge you to oppose the inclusion of sections 1112 and 1113 in H.R. 1, the continuing resolution for the remainder of Fiscal Year 2011. Sections 1112 and 1113 of H.R. 1 would impose a complete prohibition on the transfer of Guantanamo detainees to the U.S., even for purposes of prosecution in federal criminal court, and effectively end the resettlement or repatriation of detainees cleared by the United States for transfer to foreign countries. When similar language came before the House of Representatives last December, the White House strongly opposed it by stating, "We strongly oppose this provision. Congress should not limit the tools available to the executive branch in bringing terrorists to justice and advancing our national security interests."

Such a ban would block transfers for *any* purpose, including for purposes of prosecution. Such highly-restrictive measures would needlessly tie the President's hands in resolving the problem of Guantánamo and trying terrorism suspects in a manner that comports with human rights principles and the rule of law. A blanket ban on transfers would restrict the Obama administration's ability to employ what has been one of the most valuable and effective counterterrorism tools available – criminal prosecutions in regular federal courts. It also would make nearly impossible the ability of the United States to transfer to foreign countries those detainees who have been cleared for transfer. The government does not make its transfer decisions lightly. A decision that a detainee can be transferred to another country reflects the unanimous judgment of the Departments of Defense, State, Justice, and Homeland Security, as well as the Joint Chiefs of Staff and the Director of National Intelligence.

A blanket ban on transfers would be a sharp break from the Guantánamo transfer restrictions that were signed into law in 2009 and 2010. The four statutes enacted by Congress in 2009 prohibited transfers of detainees held at Guantánamo to the United States, except for purposes of prosecution. By contrast, a blanket ban on all transfers for any purpose would block the Department of Justice from criminally prosecuting terrorism cases in regular federal court. The provision also goes further than the provision in the National Defense Authorization Act, which affected solely certain funds authorized to be spent by the Department of Defense.

If a blanket ban on transfers were to become law, it would obstruct the Obama administration from bringing terrorism suspects to justice in the most experienced and proven forum. These are the very same federal courts that have been used by the Justice Department during the Bush and Obama administration to convict more than 400 individuals of terrorism-related crimes since

9/11. 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 African embassy bombings, without harm to the surrounding communities – and, of course, without escape. Moreover, former Guantánamo detainee Ahmed Ghailani was recently convicted and given a life sentence for terrorism crimes following a trial that took place without incident in the United States District Court for the Southern District of New York. Prosecution of terrorism suspects in time-tested federal courts has been and remains a vital part of the effort to combat terrorism.

Moreover, by making the transfer of cleared detainees to foreign countries nearly impossible, the legislation would undermine the rule of law. Forcing the continued imprisonment of detainees who the United States has cleared for transfer means that the Congress would be requiring the government to keep in prison persons who the government has determined have no reason to be in prison. It would be hard to find a greater wrong—or a greater deviation from the rule of law—than for the Congress to decide on its own that all of these 172 men should stay in prison, even when the government decides that it has no reason to imprison some of them.

If Congress imposes a blanket transfer ban, it would greatly hinder efforts to put to rest a legacy of failed detention policy. There is widespread agreement among our country's leading national security and foreign policy experts – including General David Petraeus, General Colin Powell, 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.

Adhering to the rule of law both protects human rights and enhances our national security. For these reasons, we strongly urge you to oppose any blanket ban on transfer of Guantánamo detainees to the United States.

Sincerely,

Alliance for Justice
American Civil Liberties Union (ACLU)
Amnesty International USA
Appeal for Justice
Center for Victims of Torture
Constitution Project
Human Rights First
Human Rights Watch
Japanese American Citizens League
National Association of Criminal Defense Lawyers
New Security Action
Open Society Policy Center
Physicians for Human Rights
United Methodist Church, General Board of Church and Society