

## Guantanamo Closure Recedes Into Distance

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*Washington – President Barack Obama’s hopes of closing the Guantanamo Bay detention facility appear as far from being realised as ever in the wake of new legislation approved by Congress this week.*

Wednesday’s approval by the Senate of an amendment banning the use of Pentagon funds for 2011 to transfer detainees at Guantanamo, the U.S. naval base on Cuba, to the United States or its territories appears to guarantee that the facility will remain open for business at least through next September.

The House of Representatives, which passed a similar provision last week, is expected to quickly approve the Senate version.

Despite the administration’s objections, the amendment is unlikely to be vetoed by Obama. It was strongly denounced by human rights groups that have campaigned for Guantanamo’s closure since it first began receiving detainees allegedly captured in what became the George W. Bush administration’s “global war on terror” in 2002.

At its height, it held more than 700 terrorist suspects. The facility currently holds 174 prisoners of whom 90 – most of them Yemenis – have reportedly been cleared for repatriation, and 36 are due to be prosecuted in federal courts, although, with the Senate action, that plan may now be in jeopardy.

The remaining 48 are being held indefinitely without trial because evidence of their past ties to terrorist groups is unlikely to be admissible in a court – in some cases, due to its acquisition by torture – and because the government believes that they would return to such activities if they were released.

“Today’s vote will only serve to further erode the U.S. government’s human rights record and hamper the administration’s ability to bring terrorism suspects to justice,” said Vienna Colucci, a senior policy advisor at the U.S. section of Amnesty International (AIUSA) shortly after the Senate attached the amendment to the 2011 defence authorisation bill.

“This law will also effectively prevent the closure of the Guantanamo Bay detention facility, prolonging a human rights scandal whose closure national security and foreign policy experts agree is essential to improve U.S. counter-terrorism efforts and mend the international standing of the United States,” she added.

Human Rights Watch (HRW) also assailed the bill, noting that it will effectively prevent detainees, such as alleged 9/11 mastermind, Khalid Sheikh Mohammed, from being tried in civilian courts as he intends to do.

Calling the Senate's action a "reckless and irresponsible affront to the rule of law", Tom Malinowski, the head of HRW's Washington office charged that "Congress has denied the president the only legally sustainable and globally legitimate means to incarcerate terrorists."

The amendment's attachment to the defence bill – which authorises the expenditure of hundreds of billions of dollars by the Pentagon next year – comes on the heels of a report by the investigative group Pro Publica and the Washington Post that the administration is drafting an executive order that would set up a system to periodically review the cases of Guantanamo prisoners under indefinite detention without trial.

Unlike the Bush administration's military-run "annual review boards" – the now-defunct mechanism used to assess whether such detainees could be safely repatriated – the draft plan reportedly would establish review panels whose members would be drawn from a number of different government agencies.

In addition, detainees would be represented by attorneys and gain greater access to the evidence compiled by the government against them than was the case under Bush's review boards, which were denounced by human rights and civil liberties groups as flagrant violations of elemental due process.

While praising some of the proposed changes, some of those same groups have expressed serious reservations about the reported plan.

Noting that an executive order, which can easily be modified or lifted, was preferable to a law enacted by Congress, Elisa Massimino, the director of Human Rights First said any preventive detention regime – whether administrative or legislative – "pose(s) a serious threat to fundamental rights and are no substitute for criminal justice".

"Reliance on indefinite detention as a path of least resistance is part of how we ended up in the Guantanamo mess in the first place," she said.

"Where credible evidence exists against Guantanamo detainees, they should be charged and prosecuted under our criminal justice system," added Laura Murphy, director of the Washington office of the American Civil Liberties Union (ACLU). She noted that federal courts have successfully completed hundreds of trials of suspected terrorists over the past decade.

During his press conference Wednesday, Obama himself stressed that he still hoped to close Guantanamo, calling it "probably the number one recruitment tool" used by al Qaeda and other "jihadist organisations".

"One of the toughest problems is what to do with people that we know are dangerous, that ...have engaged in terrorist activity, are proclaimed enemies of the United States, but because of the manner in which they were originally captured, the circumstances right after 9/11 in which they (were) interrogated, it becomes difficult to try them whether in an Article III court or in a military commission," he went on, adding, "Releasing them at this stage could potentially create greater danger for the American people."

"The bottom line is that striking this balance between our security and making sure that we are consistent with our values and our Constitution is not an easy task, but ultimately that's what's required for practical reasons," he said.

The result, according to Adam Serwer, writing on a Washington Post blog, “is basically what we’ve come to expect from the Obama administration on security and civil liberties. Having promised to reverse the trajectory of Bush-era national security policies, Obama has settled on making them marginally more lawful and humane.”

“It’s not nothing, but it’s not what Obama promised,” he added.

Meanwhile, however, the Senate action prompted much greater concern among rights groups because it appears to rule out both Guantanamo’s closure over the next year and the possibility that detainees held there will be tried in the federal courts.

That leaves the much-criticised, error-plagued military commissions, which have successfully prosecuted only five cases in the last eight years, as the only tribunal where detainees can be tried.

Attorney General Eric Holder had strongly opposed the amendment, arguing in a statement released earlier this month that it would “tak(e) away one of our most potent weapons in the fight against terrorism”.

In addition to banning the transfer onto U.S. territory of any Guantanamo detainees, the amendment forbids the government from transferring them to another country unless the defence secretary certifies that such a transfer will not jeopardise U.S. security.

*Jim Lobe’s blog on U.S. foreign policy can be read at <http://www.lobelog.com>.*

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