

Fact Sheet: Detainee Security Act of 2011

Background: *In the wake of yesterday's announcement by the White House of a new Executive Order governing Guantanamo detainees, House Armed Services Committee Chairman Howard P. "Buck" McKeon (R-Calif.) and members of the committee will introduce new legislation to address the Administration's Executive Order and America's terrorist prosecution and detention policies.*

The comprehensive legislation, among other things, would affirm the use of military force against al-Qaeda, the Taliban and affiliated terrorist networks; create certain restrictions which would make it tougher for detainees to return to the battlefield or share information with other terrorists or malign actors; and would permanently block funding for the creation or renovation of any facility in the continental United States to house detainees currently held at Guantanamo Bay.

Key Provisions:

Section 3. Administrative Reviews of Guantanamo Detainees (This Section Directly Responds to the President's March 7th Executive Order): This provision places certain restrictions on any administrative process designed to review a detainee's eligibility for continuing detention. It prohibits detainees from having a lawyer for any administrative review and requires that any recommendations resulting from such a review must be made by military officers with relevant expertise.

- Policy Rationale: Guantanamo detainees already have the right to legal representation for their habeas cases in federal court. A second fully adversarial process is not necessary. Further, a military-led review process ensures that detention will stay within the law of war framework.

This provision also describes various factors that must be evaluated when determining whether to continue to hold a particular detainee. These factors include criteria related to the detainee's individual threat level as well as the particular foreign country to which the detainee may be transferred or released.

- Policy Rationale: This provision is meant to address the dangers posed by detainees who return to the fight. It requires a thorough analysis of factors that may affect the likelihood that a detainee will reengage.

Section 4. Requirement for Military Custody: This section provides that individuals eligible for detention under the 2001 Authorization for Use of Military Force (AUMF) must be held in military custody unless the Secretary of Defense certifies that a waiver is necessary in the interests of national security.

- Policy Rationale. This section is meant to ensure that terrorists are held by the military and exploited for intelligence purposes. It also gives the Secretary of Defense, instead of the Attorney General or other official, the ability to waive the requirement so that all possible disposition options are preserved while ensuring national security concerns are prioritized over law enforcement.

Section 5. Transfer Restrictions: This provision includes a permanent prohibition on the transfer of all individuals eligible for detention under the AUMF into the United States. This provision also limits the transfer or release of detainees held at Guantanamo and Bagram Air Base, Afghanistan to other foreign countries unless the Secretary of Defense certifies that the host country meets certain criteria. It also prohibits transfer or release to countries where there has been a confirmed case of detainee recidivism unless the Secretary of

Defense waives the prohibition by certifying that such a transfer is in the national security interests of the United States.

- Policy Rationale. This section is meant to make section 1033 of the FY11 NDAA a permanent requirement and expand the prohibition on transfers to the United States to include all individuals subject to detention under the AUMF. Further, this section is meant to ensure that dangerous detainees held at Bagram, in addition to Guantanamo, are not released to third countries without adequate security mechanisms in place.

Section 6. National Security Protocol Governing Guantanamo Detainees: This section prevents the implementation of the President's March 7, 2011 Executive Order until the Secretary of Defense creates a national security protocol governing Guantanamo detainees for submission to Congress.

- Policy Rationale. This section is meant to address serious concerns regarding the provision of sensitive information to detainees at Guantanamo and to ensure that the Department of Defense has a comprehensive national security protocol in place to review detainee communications.

Section 7. Affirmation of the Authorization for the Use of Military Force (AUMF): This section affirms that the United States remains engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces. It provides a detailed definition of the individuals covered and explicitly states that the President has the authority to detain such individuals.

- Policy Rationale. Nearly ten years after the attacks of September 11, 2001, it is critical to reaffirm that the United States remains in an armed conflict. Further, this section is meant to provide clarity regarding the Department of Defense's targeting and detention authorities pursuant to the AUMF.

Section 8. Prohibition on Family Visits to Guantanamo: This section prevents the Secretary of Defense from allowing family members to visit detainees at Guantanamo.

Section 9. No Funding for Facilities to House Guantanamo Detainees in the United States: This section prevents the use of funding for construction or modification of any facilities in the United States to house Guantanamo detainees.

Section 10. Guilty Pleas in Capital Cases: This section clarifies an accused's ability to plead guilty to a capital offense in a military commission.

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Courtesy of House Armed Services Committee
Rep. Howard P. "Buck" McKeon (R-CA), Chairman