

Congress of the United States
Washington, DC 20515

November 23, 2015

Joint Chiefs of Staff
The Pentagon, Room 2D920
Washington, DC 20318-9999

Dear Members of the Joint Chiefs of Staff:

We write to you as Members of Congress who previously had – and in some cases, still have – the honor and privilege of serving this nation in uniform.

It is of great concern to us that President Obama may be considering ordering a transfer of detainees currently held at Guantanamo Bay to the United States via executive order. It is our view that such an order, if given, would violate legislation that the President signed into law prohibiting the use of Department of Defense funds for such a purpose. This week, Attorney General Loretta Lynch acknowledged that the administration is legally prohibited from bringing detainees from Guantanamo Bay, telling the House Judiciary Committee: “With respect to individuals being transferred to the United States, the law does not currently allow that.” Despite these comments, Lynch maintained that closing the detention facility at Guantanamo “is something that is a part of the administration’s policy.”

During the course of his presidency, and during his campaign prior to assuming office, Mr. Obama has repeatedly announced his intent to shut down operations at GTMO. In his first term, President Obama sought to transfer several high profile GTMO detainees, including the masterminds of the 9-11 attacks on the United States, to New York City for incarceration and trial. He also attempted to transfer other GTMO detainees to a prison facility in Standish, Michigan, and previously contemplated transferring detainees to a prison facility in Thomson, Illinois.

All of these efforts were met with strong bipartisan opposition by the American people and Congress, resulting in the passage of several successive pieces of legislation, which President Obama signed into law, prohibiting the use of Department of Defense funds to transfer GTMO detainees to the United States or to modify/construct facilities within the United States for that purpose. These restrictions are still in effect until the end of calendar year 2015, per Sections 1032 and 1033 of the FY 2015 National Defense Authorization Act (P.L. 113-291). The FY 2016 National Defense Authorization Act, which President Obama has indicated he will sign into law, puts similar restrictions into effect until December 31, 2016.

The Uniform Code of Military Justice (UCMJ) contemplates that with respect to enlisted personnel and officers in the United States armed forces, when an order given by one’s superiors comes into conflict with the laws of this nation, the latter prevail. We believe that in our democracy -- in which governance is undertaken, in the words of Founding Father John Adams,

by "...a government of laws, and not of men..." – that understanding necessarily applies equally to orders given by the Commander-in-Chief.

We therefore respectfully encourage you in the strongest terms to seek appropriate legal advice, prior to executing any order from President Obama to transfer Guantanamo Bay detainees to the United States against the express will of Congress and the law of the land.

Sincerely,

Mike Pompeo

David Perle

Arthur Hays Sulzberger

Jim Bidenstein

Bill Johnson

Pete Olson

Don Young

John R. Sununu

Joseph R. Pitts

Andrew

Dorian Baber

John R. ...

Thomas ...

Walter ...

K. Quintana

Michael ...

Members on Letter:

Rep. Mike Pompeo (R-KS04)

Rep. Brian Babin (R- TX36)

Rep. Jim Bridenstine (R- OK01)

Rep. Mike Conaway(R- TX11)

Rep. Rick Crawford (R- AR01)

Rep. Andy Harris (R- MD01)

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Rep. Bill Johnson (R- OH06)

Rep. Peter King (R- NY02)

Rep. Pete Olson (R- TX22)

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Rep. Joseph R. Pitts (R- PA16)

Rep. David P. Roe (R-TN01)

Rep. Thomas J. Rooney (R- FL17)

Rep. Don Young (R-AK)

Rep. Ryan Zinke (R- MT)