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President Obama's last best chance to end America's Guantánamo shame

Four years after the order to close Guantánamo, Congress still thwarts the president's promise. Now comes a final opportunity

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During my recent trips to watch the legal proceedings at the Guantánamo Bay prison, I kept wondering why I was there.

I couldn't help but remember how President Obama had promised to shutter Guantánamo during his first run for the White House in 2008. I also recalled my excitement at hearing Obama – in his second day in office, no less – issue an executive order to close Guantánamo within a year. Alas, I am part of the contingent of lawyers and advocates who still regularly observe the military commissions at Guantánamo mete out to terrorism suspects what the world rightly sees as a second-class system of justice.

We're there. We shouldn't be.

That one-year window Obama set in the executive order shut tight with no action. Then he was stymied in 2010 by "nimby" lawmakers in Congress who had watched one too many episodes of "24", and blocked the transfer of Guantánamo detainees to facilities in the US.

Sadly, it seemed as if the White House had moved on. Yet, the president appeared in October on the Daily Show with Jon Stewart, and proclaimed his eagerness to shutter the prison. Now comes what may be Obama's last, best chance to finally fulfil that promise.

While others on Capitol Hill are dangling over the fiscal cliff, a sizable contingent is in the scrum over what to put in this year's National Defense Authorization Act. Even by Washington standards, assembling the NDAA is a par exemplar of bare-knuckle politics, as all the military branches, proponents of new weapons systems and lawmakers who covet the jobs big defense contracts can bring compete for Pentagon cash.

And it is where the president can exercise some leverage on Guantánamo. With so many wanting so much out of NDAA, he can make clear that he will veto the NDAA if it includes a provision extending restrictions on transferring Guantánamo detainees beyond the 27 March expiration date.

The fate of Guantánamo is about more than staying to true to one's word. What Obama has long realized, and what lawmakers on both sides of the aisle irresponsibly ignore, is how much Guantánamo's continued existence has stained our nation's reputation as a paragon of freedom and a true nation of laws that both respects and vigorously defends human rights. Going back to his second day in office, Obama talked about reclaiming the "moral high ground" in fighting terrorism and tried to undo some of the damage wrought by the Bush administration. That same day, he issued another executive order formally banning torture of detainees.

But Guantánamo – and the indefinite detention policy it represents – still remains, even after more than half of the 166 remaining detainees (pdf) have been cleared for release by unanimous agreement of military and intelligence agencies. A few of those detainees, including five defendants linked to the 9/11 attacks, have now gone before the dubious military commissions at Guantánamo. But the remainder are still imprisoned without charge or trial.

The patina of justice the commissions try to pass off is fooling no one. The lack of due process is on sad display for anyone who sits in on these dreary proceedings. As a result, our nation's reputation as a defender of human rights has been profoundly diminished, and Guantánamo has damaged our moral authority to effect change elsewhere in the world. There is no justification for Congress to restrict the president from trying Guantánamo prisoners in federal court, just like hundreds of other terrorism suspects before them.

Come 11 January, the Guantánamo Bay prison will have been open for 11 years. The president can ensure it is the last anniversary. The executive order he issued nearly four years ago stated that closing Guantánamo would "further the national security and foreign policy interests of the United States and the interests of justice". That has never been more true than it is today.

But if the president wants to meet his commitment to close Guantánamo, he will have to act – and act soon. He will have to get his veto pen ready for any version of the NDAA that blocks closing Guantánamo by taking away his authority to transfer detainees out of the prison. It's month before Obama takes the oath of office. He will have to make a decision on the NDAA that will tell us more about his second term than any inaugural address.

