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Can Obama ever close Guantanamo?

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By Daphne Eviatar



Twelve years ago this month, President George W. Bush issued an order authorizing the U.S. military to detain non-U.S. citizen “international terrorists” indefinitely, and try some of them in military commissions. Within two months, those seized in the “war on terror” following the U.S.-led invasion of Afghanistan were being sent to Guantanamo Bay.

A dozen years later, the United States is preparing to withdraw combat troops from Afghanistan, ending “the longest war in American history,” as President Barack Obama observed on Veterans Day. Yet the Guantanamo prison — now notorious as the site of torture and other abuses — remains open.

Obama pledged to close Guantanamo as one of his first official acts in office. Yet nearly six years into his presidency, the prison continues to hold 164 foreign captives. Only three have been convicted of a crime.

The plan to end major combat operations in Afghanistan in 2014 means the government cannot put off closing down the Guantanamo prison any longer. Government officials and independent legal experts — including General Mark Martins’ chief prosecutor of the military commissions at Guantanamo — have acknowledged that ending the war in Afghanistan raises serious questions about whether the United States retains the legal authority to continue to hold captives indefinitely.



Obama surely knows this, and to his credit, recently re-committed himself to following through on his 2009 pledge. He reiterated in May that Guantanamo should be closed, and subsequently appointed two new high-level envoys at the State and Defense Departments to help get the job done. He met with them earlier this month to pledge his support.

Now, it’s Congress’s turn. Congress is currently in the process of hashing out its annual defense authorization bill, which authorizes military spending on everything from weapons systems to health benefits. Those authorizations also determine key policies — including those governing the transfer of prisoners out of Guantanamo Bay.

The Senate’s current version of the National Defense Authorization Act (NDAA) would dial back some of the most onerous restrictions Congress imposed ^[7] to hamper the president’s ability to shutter the prison. These regulations have created significant obstacles to transferring prisoners back to their home countries — including those repeatedly cleared for transfer by government officials under both Bush and Obama.

Indeed, more than half the men remaining at GTMO have been cleared to leave. Though Obama could transfer many of them, he’d have to meet the stringent requirements Congress has imposed

and that his administration has claimed hinder most transfers. As a result, the Defense Department now spends about \$2.7 million per year ^[8] to keep each of the 164 detainees at Guantanamo. By contrast, the government spends about \$35,000 per year to keep an inmate in a high-security federal prison facility on U.S. soil.

The proposed Guantanamo provisions in the Senate NDAA would clarify the government's authority to transfer detainees to foreign countries and replace a cumbersome certification and waiver regime with a more sensible standard designed to mitigate any risks of transfer. They would also finally allow some detainees to be transferred to the United States — temporarily, for emergency medical treatment, or for criminal prosecution in experienced federal courts.

But the House version of the NDAA carries forward the onerous transfer restrictions, and even expands them in some cases, including proposing a complete ban on transferring any detainees to Yemen. Now that the Senate has approved the Guantanamo provisions in its version of the bill, the competing versions will have to be reconciled in conference.

More than 500 people since September 11 have been convicted in U.S. federal courts on terrorism-related charges and imprisoned on U.S. soil. Not one has escaped.

There's little question among national security experts that the Guantanamo prison is not only unnecessary but has become a liability. Former President George W. Bush; former Secretaries of State Hillary Clinton, Condoleezza Rice, and Colin Powell; former Defense Secretaries Robert Gates and Leon Panetta; former National Security Adviser James Jones; General Charles C. Krulak (ret.), former Marine Corps commandant; General Joseph P. Hoar (ret.), former CENTCOM commander; former Joint Chiefs of Staff chairman, Admiral Mike Mullen, and Brigadier General Michael Lehnert (ret.), who set up the Guantanamo prison, have all supported closing it.

As Obama put it when he spoke at the National Defense University last spring, "GTMO has become a symbol around the world for an America that flouts the rule of law. Our allies won't cooperate with us if they think a terrorist will end up at GTMO."

He added: "There is no justification beyond politics for Congress to prevent us from closing a facility that should have never have been opened."

It's time for Congress to stop playing politics with U.S. national security and support closing Guantanamo. Passing the Senate version of the NDAA — and rejecting the House version — is an important first step.