



Office of the Attorney General  
Washington, D. C. 20530

December 9, 2010

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

Dear Senators Reid and McConnell:

I write in opposition to Section 1116 of the proposed 2011 Full-Year Continuing Appropriations Act, which would prohibit the use of any funds to transfer detainees from the detention facility in Guantanamo Bay, Cuba, to the United States for any purpose. This provision goes well beyond existing law and would unwisely restrict the ability of the Executive branch to prosecute alleged terrorists in Federal courts or military commissions in the United States as well as its ability to incarcerate those convicted in such tribunals.

In order to protect the American people as effectively as possible, we must be in a position to use every lawful instrument of national power to ensure that terrorists are brought to justice and can no longer threaten American lives. As reflected in the President's National Archives speech in May 2009, he, as Commander-in-Chief, has determined that prosecutions of alleged terrorists in Article III courts for the criminal terrorism offenses Congress has enacted—a powerful and well-established tool that has been used successfully in hundreds of cases—should be available in this effort to protect the nation.

Section 1116 is an extreme and risky encroachment on the authority of the Executive branch to determine when and where to prosecute terrorist suspects. Such decisions should be based on the facts and circumstances of each case and the overall national security interests of the United States. Section 1116 would undermine my ability as Attorney General to prosecute cases in Article III courts, thereby taking away one of our most potent weapons in the fight against terrorism.

It would therefore be unwise, and would set a dangerous precedent with serious implications for the impartial administration of justice, for Congress to restrict the discretion of the Executive branch to prosecute terrorists in these venues. The exercise of prosecutorial discretion has always been and must remain an Executive branch function.

We have been unable to identify any parallel to Section 1116 in the history of our nation in which Congress has intervened to prohibit the prosecution of particular persons or crimes. It would be a mistake to tie the hands of the President and his national security advisers now.

For these reasons, I urge you to remove Section 1116 from the bill or from any other appropriations bill that the Senate may consider.

Sincerely,

A handwritten signature in blue ink, reading "Eric H. Holder, Jr.", written in a cursive style.

Eric H. Holder, Jr.  
Attorney General