

# OBAMA SIGNS NON-SIGNING STATEMENT

Obama has signed the Defense Authorization Act that barred funding for closing Gitmo. And his signing statement—really more of a complaint than an actual signing statement—reads in part:

Section 1032 bars the use of funds authorized to be appropriated by this Act for fiscal year 2011 to transfer Guantanamo detainees into the United States, and section 1033 bars the use of certain funds to transfer detainees to the custody or effective control of foreign countries unless specified conditions are met. Section 1032 represents a dangerous and unprecedented challenge to critical executive branch authority to determine when and where to prosecute Guantanamo detainees, based on the facts and the circumstances of each case and our national security interests. The prosecution of terrorists in Federal court is a powerful tool in our efforts to protect the Nation and must be among the options available to us. Any attempt to deprive the executive branch of that tool undermines our Nation's counterterrorism efforts and has the potential to harm our national security.

With respect to section 1033, the restrictions on the transfer of detainees to the custody or effective control of foreign countries interfere with the authority of the executive branch to make important and consequential foreign policy and national security determinations regarding whether and under what circumstances such transfers should occur in the context of an ongoing armed conflict. We must have the ability to act swiftly and to have broad

flexibility in conducting our negotiations with foreign countries. The executive branch has sought and obtained from countries that are prospective recipients of Guantanamo detainees assurances that they will take or have taken measures reasonably designed to be effective in preventing, or ensuring against, returned detainees taking action to threaten the United States or engage in terrorist activities. Consistent with existing statutes, the executive branch has kept the Congress informed about these assurances and notified the Congress prior to transfers. Requiring the executive branch to certify to additional conditions would hinder the conduct of delicate negotiations with foreign countries and therefore the effort to conclude detainee transfers in accord with our national security.

Despite my strong objection to these provisions, which my Administration has consistently opposed, I have signed this Act because of the importance of authorizing appropriations for, among other things, our military activities in 2011.

Nevertheless, my Administration will work with the Congress to seek repeal of these restrictions, will seek to mitigate their effects, and will oppose any attempt to extend or expand them in the future.

Now, don't get me wrong, I'm happy Obama hasn't issued a real signing statement (a la "Dear Congress: Fuck you. ~~Cheney~~ George"). But this is basically a big punt. It doesn't talk about constitutional limits on the President (again, of that I'm glad). It doesn't note that the defense authorization only limits what he can do with defense funds, not DOJ or DHS funds (as ACLU noted). Neither does he use ACLU's other

suggestion: to point out to Congress that these provisions amount to a Bill of Attainder.

At the same time, he does argue for the importance of these issues: "The prosecution of terrorists in Federal court ... must be among the options available to us" ... "Requiring the executive branch to certify to additional conditions would hinder the conduct of delicate negotiations with foreign countries." He should practice these statements in front of a mirror, along with his point about how they affect national security, because making these statements forcefully in some kind of public venue might actually pressure Congress on this point.

But ultimately, the statement accepts the statements as is—so long as they don't get bigger!

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From my perspective, I guess, this punt is as good as can be expected. I prefer this to an expansive signing statement of the Dick Cheney variety. I recognize that the time for Obama to act on this was two years ago and two weeks ago, not now.

But hey! At least he said nice things about civilian courts!