



November 18, 2015

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We understand you are prepared to take executive action to move detainees from Guantanamo Bay to locations in Kansas, Colorado and South Carolina. We implore you to reject this dangerous and illegal action that would violate federal law and harm our States.

As you are aware, Congress by law has forbidden the use of “funds appropriated or otherwise made available” in any act for such purpose. *See*, 2014 National Defense Authorization Act, Pub. L. 113-66, § 1034, 128 Stat. 672, 851, *as amended by* 2015 National Defense Authorization Act, Pub. L. 113-291, § 1034, 128 Stat. 3292, 3492; 2015 Consolidated and Further Continuing Appropriations Act, Pub. L. 113-235, Div. C (“Department of Defense Appropriations Act”), §§ 8112–13, 128 Stat. 2130, 2280, *extended by* 2016 Continuing Appropriations Act, P.L. 114-53, §§ 101(a)(3), 106, 129 Stat. 502, 505–06 (extending until Dec. 11, 2015 DOD appropriations). This is plainly within Congress’ authority because the Constitution expressly commands that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . .” U.S. Const. art. I, § 9. Being a former constitutional law professor, you well understand that agencies and officials of the federal government “may not spend monies from any source, private or public, without legislative permission to do so.” Stith, *Congress’ Power of the Purse*, 97 Yale L.J. 1343, 1344 (1998). As one court of appeals has correctly explained, “[w]ithout an appropriation from Congress to fund an undertaking, the President cannot conduct any such undertaking.” *Schneider v. Kissinger*, 412 F.3d 190, 200 (D.C. Cir. 2005). The Framers bestowed upon Congress alone the power of the purse – to appropriate or not as it sees fit – knowing this “empowerment of the legislature is at the foundation of our constitutional order.” Stith, *supra*. The President, therefore, cannot ignore Congress’ command.

We have spoken with congressional leadership, including Speaker Ryan’s office and Senator McCain, to find ways to prevent illegal executive action related to the detainees that would defy Congress and present a risk to our States and our citizens. Moving detainees to the mainland will create imminent danger and make the communities where they are placed targets, which is precisely what the restrictive language enacted by Congress is designed to prevent. Recent attacks in France, Egypt, Lebanon and elsewhere underscore the risk your illegal action would bring to our States. Several previously released detainees sought refuge with ISIS, and as Senator Graham has warned, “we don’t have until the next election to deal with ISIS. There is a 9/11 coming and it’s coming from Syria. . . .”

On Tuesday, United States Attorney General Loretta Lynch testified before the Judiciary Committee of the United States House of Representatives that “[w]ith respect to individuals being transferred to the United States, the law currently does not allow that.” She further stated, “Certainly it is the position of the Department of Justice that we would follow the law of the land in regard on that issue.” This of course is in direct tension with your Press Secretary’s statement on November 10, 2015 that “while [the NDAA restriction on transfers] would make certain parts of [the transfer process] a little more cumbersome than they otherwise would need to be, it shouldn’t affect our ability to continue to transfer those individuals that have been approved for transfer.” We view current law clearly restricting the proposed transfer to be more than merely “cumbersome.”

Attorney General Lynch’s statements before Congress are precisely why we respectfully ask that you abide by the restrictions enacted into law by Congress and decline to transfer detainees to our States. If Congress refuses to appropriate funds or denies the Executive the power to spend, that is its constitutional prerogative and the Executive must obey. Your proposed action denigrates the Constitution and defies the rule of law. It disrupts domestic tranquility and therefore the general welfare of the states.

Moreover, these contrasting statements by senior officials in your administration have done nothing to quell the fear and uncertainty among the citizens of our States who strongly oppose the idea that terrorists will soon be on American soil. We urge you to be transparent with the American public about how you intend to conduct a transfer legally before any action is taken. We further ask that you disclose how the administration proposes to guarantee the safety and security of the American people, and notwithstanding the Attorney General’s clear statement that a transfer is illegal, the legal authority upon which you plan to act. We respectfully ask that you respond to our request by December 4, 2015.

We will continue to work with our colleagues and federal partners to explore all legal options available to ensure the safety and security of our citizens and to enforce the rule of law. Your plan to move Guantanamo detainees to our States not only will do great harm to the Constitution, but threatens the safety of our citizens as well.

Sincerely,



Cynthia Coffman
Attorney General
State of Colorado



Derek Schmidt
Attorney General
State of Kansas



Alan Wilson
Attorney General
State of South Carolina

cc:

Secretary of State John F. Kerry

Secretary of Defense Ashton B. Carter

Senator Kelly Ayotte

Senator Tom Cotton

Senator Lindsey Graham

Senator James M. Inhofe

Senator John McCain

Senator Mitch McConnell, Senate Majority Leader

Senator Tim Scott

Senator Mike Rounds

Senator Thom Tillis

Representative Bob Goodlatte

Representative Paul Ryan, Speaker of the United States House of Representatives

Governor Sam Brownback

Governor Nikki R. Haley

Governor John W. Hickenlooper