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COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

CHAIRMAN—COMMERCE-JUSTICE-SCIENCE

TRANSPORTATION-HUD

STATE AND FOREIGN OPERATIONS

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Congress of the United States
House of Representatives

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The Honorable Richard J. Durbin
711 Hart Senate Office Building
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Dear Dick,

You may recall Simon and Garfunkle's famous 1981 concert in New York's Central Park where they performed the song, "The Boxer." One of the iconic lyrics of that song is "Man hears what he wants to hear... and disregards the rest." I am often reminded of this verse, because it's a problem that all of us can have at times.

That is why I wanted to share my thinking with regard to the nature of the bipartisan concern about the acquisition of Thomson Correctional Center. Perhaps some of your misunderstanding about my concerns can be attributed to my not articulating this in detail with you earlier, but I didn't want this situation to develop into a "Durbin vs. Wolf" battle. In fact, I have done everything possible to demonstrate that this is not a personal battle, but a reflection of broad objections from many members of Congress – both House and Senate.

I want to assure you that my objections are not political. You know I always have worked in a bipartisan manner – and my best friend in Congress is former Democrat Rep. Tony Hall, who I know you know well. I also have had a good working relationship with you for many years. You may also recall that I crossed party lines – over the objections of Republican leadership – to cast the deciding vote for your amendment to ban smoking on airplanes. This was not an easy vote for a member from Virginia, a longstanding tobacco state. But it was a good amendment and the right thing to do.

I also want you to know that I deeply respect your support of the Simpson-Bowles Commission and appreciate your bipartisan work with the Gang of Six to advance a comprehensive deficit solution. As you may know, I was one of just 38 members in the House to cross party lines and vote for the Cooper-LaTourette budget substitute, which was based on the Simpson-Bowles recommendations.

That being said, there are many reasons to oppose the Justice Department's request to reprogram \$151 million to acquire Thomson prison. First among them, the Thomson reprogramming represents in dollar terms the largest, by far, of any such requests recently received by the Commerce-Justice-Science subcommittee. Reprogramming requests are, by definition, reallocations of funding away from the purposes for which they were appropriated. A request to reallocate \$165 million is highly unusual.

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Moreover, requests made to the Justice Department by Members of Congress urging funding for this project constitute earmark requests, and were treated as such by the administration under Executive Order 13457. Had this expenditure been directed in an appropriations bill, it would clearly be an earmark as defined in the Rules of the House of Representatives for the 112th Congress.

The American people have clearly expressed their opposition to earmarks, and the House has reflected these concerns in its rules. I cannot approve an earmark, no matter its merits, under the current House rules.

As I wrote the attorney general, not only was this earmark never included in any bill voted upon by the Congress, but Congress has specifically denied and rescinded funding for this acquisition. Last year, a similar reprogramming was proposed by the department. That reprogramming request was rejected by the committee, and Congress subsequently rescinded the offsets identified in the reprogramming proposal.

To be clear: The funds that you and the department have proposed be reprogrammed to purchase Thomson are the exact same funds the president proposed eliminating in his last budget request. This request is inconsistent with the president's request of Congress.

I have been repeatedly singled me out as the sole objector to this request. That is not accurate. In fact, a number of members in the House and Senate have written the attorney general to object to this reprogramming request. Enclosed are letters from my Republican counterpart on the Senate Commerce-Justice-Science Appropriations subcommittee, Sen. Kay Bailey Hutchison, the bipartisan Alabama House delegation, and Rep. Charlie Bass, representing New Hampshire's concerns about this request. The request to purchase Thomson unfairly "jumps the line" of the prisons in Alabama, New Hampshire and West Virginia that are ready to be opened, pending funding. Each of these facilities would create hundreds of new jobs in these states. How do you explain to these people that their jobs should be delayed to move Thomson to the front of the line?

Further, I also want you and the people of Illinois to be aware of the letter sent by more than 100 of the 9/11 family members to Speaker John Boehner urging the House to reject the department's request to acquire Thomson. This letter was notably signed by the sister and brothers of Capt. Charles Burlingame, the pilot on Flight 77, and the father of Todd Beamer (who was an alumnus of Wheaton College in Illinois), among many other families. We are obligated to take their concerns seriously. I understand this well, as number of constituents from my district died on 9/11 in the attack on the Pentagon.

In 1998, I was the author of the National Commission on Terrorism, also known as the Bremmer Commission. Unfortunately, the commission's recommendations were ignored by the Clinton Administration as well as the Bush Administration, until after 9/11. I know all too well that an administration does not always make the right decisions when it comes to terrorism policy, and tragedies like 9/11 and the Fort Hood terrorist attacks demonstrate this.

While the reprogramming proposal cites a “commitment” not to transfer detainees from Guantanamo to Thomson, this administration has opposed, and continues to oppose, provisions of law that have been enacted to prohibit such transfers. Most recently, the Statement of Administration Policy on the recent House National Defense Authorization Act (H.R. 4310) registered strong objections to restrictions on transferring detainees, and suggested that these provisions intrude upon executive branch authorities.

Despite the attorney general’s assurances that he would not transfer terrorist detainees to Thomson, the president has not rescinded or renounced the Executive Orders related to the closure of Guantanamo. Section 3 of Executive Order 13492 mandates the closure of the facility and the release or transfer of remaining detainees, including transfers to “another United States detention facility”.

I also am wary that Attorney General Holder only assured the committee that he would not transfer detainees to Thomson, but did not make similar assurances for other high security BOP facilities like the supermax in Florence, Colorado. I do not trust this administration not to acquire Thomson to make room in other high security prisons to transfer detainees to the U.S.

I also want to clarify that the concern about bringing detainees to the U.S. is less grounded in “fear” of these detainees, despicable as they may be, but rather a fundamental objection to providing the same constitutional rights as American citizens. Many of the detainees were captured on the battlefield in Afghanistan fighting U.S. troops. They do not deserve, and are not entitled to, access to Article III courts.

Frankly, I do not have any confidence that the department or the administration will enforce the law forbidding the transfer of Guantanamo Bay detainees to the United States. As you may know, in May 2009, the administration attempted to secretly transfer and release two Guantanamo detainees in northern Virginia, without seeking legal authority to do so.

The attorney general should have been well aware of the strict statutory restrictions that would bar the admission of any alien who is affiliated with a recognized terrorist organization into the U.S. However, this did not prevent the attorney general’s strong support for the release of terrorist detainees, as detailed in Daniel Klaidman’s recent book “Kill or Capture.” Equally important, Holder’s advocacy with respect to transferring these detainees without notifying Congress or the American people is troubling.

Unfortunately, Guantanamo policy is not the only example of this administration’s willingness to ignore the law if it is politically expedient. In June, the administration reversed course and abruptly announced that it would unilaterally grant certain immigrants who are in the country illegally a two-year reprieve.

Also in June the House overwhelmingly voted to hold attorney general in civil and criminal contempt of Congress for his failure to cooperate with congressional investigations on

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the Fast and Furious operation. The attorney general also decided not to defend the Defense of Marriage Act, after he unilaterally decided it was unconstitutional.

I was troubled by the attorney general's "Christmas gift" to the gambling industry in the department's decision to unilaterally reverse its longstanding interpretation of the Wire Act on Christmas Eve, when he knew most Americans would not notice.

Earlier this week, a federal district judge ruled that the attorney general's staff interfered in the decision regarding whether to proceed with a voting rights case against armed thugs from the New Black Panther Party. The case was substantially withdrawn over the objection of the career attorneys in the Civil Rights Division.

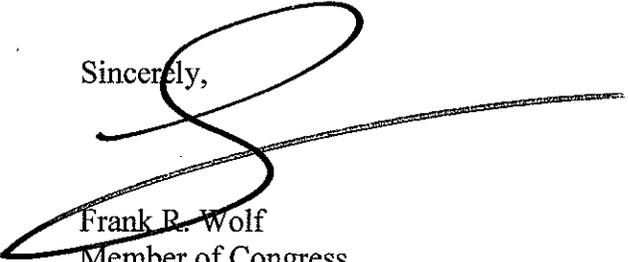
Whether one agrees or disagrees with the policy behind these decisions, it is clear that these actions represent an unprecedented executive branch dismissal of federal laws. This is not a record that reassures me that laws will be followed and commitments will be honored with regard to Guantanamo detainees.

For these reasons, I have rejected the department's reprogramming request.

Dick, I never wanted this to become a personal battle. And perhaps I should have been more outspoken about the detailed reasons for my opposition earlier on. I have always liked and respected you, but I hope you can understand why I have taken the actions that I have.

Best wishes.

Sincerely,



Frank R. Wolf
Member of Congress