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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

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July 27, 2011

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The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Attorney General Holder:

I write to unequivocally reject your July 26, 2012, proposal to fund an earmark not included in the text of any bill voted upon by the Congress; specifically an earmark totaling \$165,000,000 to acquire the Thomson Correctional Center in Thomson, Illinois.

You propose to reprogram \$151,000,000 from the Assets Forfeiture Fund (AFF) Super Surplus and to reprogram a total of \$14,000,000 from Bureau of Prisons appropriation balances to acquire the Thomson facility. The Committee does not approve the proposed reprogrammings of funds.

The Committee notes that 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only was this earmark never included in any bill voted upon by the Congress, but Congress has specifically denied and rescinded funding for this acquisition.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 That reprogramming request was rejected by the Committee and Congress subsequently rescinded the offsets identified in the reprogramming proposal. The Committee further notes that the President's budget for fiscal year 2013 proposed the rescission of all additional remaining Bureau of Prisons balances allocated for the acquisition of an existing prison. Both the House-passed and Senate-reported fiscal year 2013 appropriations bills adopted this rescission. The position of the Congress on this matter is clear.

The Committee is also dismayed at the proposal to divert scarce current year Bureau of Prisons resources to this unrequested earmark project. The Committee notes that the Bureau is in the process of activating four new Federal prisons that will alleviate overcrowding in the system. If there is truly a surplus of \$9,000,000 in the Salaries and Expenses account, the Committee supports the allocation of this funding to expedite those ongoing requested activations. The diversion of \$5,000,000 from prison modernization and repair is also ill-advised. The Committee notes that the Bureau's modernization and repair budget has historically lagged far

behind the industry standard of 2 to 4 percent of replacement value. Your own budget request indicates a current backlog of 154 major modernization and repair projects costing an estimated \$348,600,000. The Committee does not support reducing the appropriated amount for modernization and repair.

The Committee notes that, pursuant to Executive Order 13457, "Protecting American Taxpayers from Government Spending on Wasteful Earmarks," agencies "should not commit, obligate, or expend funds on the basis of earmarks included in any non-statutory source, including... communications from or on behalf of Members of Congress." This Executive Order also requires the Department to post on its website Congressional communications recommending that funds be committed, obligated or expended for an earmark. The Department accordingly posted such communications related to the acquisition of Thomson prison at: www.justice.gov/jmd/ccre/. I am concerned that this latest reprogramming request comes in response to an earmark request from Senator Dick Durbin.

The Committee further notes that the original proposal to acquire the Thomson prison was to use the facility to house terrorist detainees who would be transferred to the United States from the United States Naval Station, Guantanamo Bay, Cuba. While the reprogramming proposal cites a "commitment" not to transfer detainees from Guantanamo to Thomson, the Committee notes that the 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. Furthermore, the Administration 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".

Frankly, I do not trust the Department or the Administration to enforce the law forbidding the transfer of Guantanamo Bay detainees to the United States. During a May 7, 2009, Senate hearing, you said, "With regard to those you would describe as terrorists, we would not bring them into this country and release them, anyone we would consider to be a terrorist." We now know that just weeks prior to this testimony, you secretly voted to release at least two terrorist detainees into the United States.

It is now well known from numerous press accounts, including *Newsweek*, *The Washington Post*, and *National Journal*, as well as Daniel Klaidman's recent book *Kill or Capture*, that you advocated that the President transfer and release at least two Uyghur detainees, who were members of a recognized terrorist group, to the United States in April 2009. The secret transfer was approved and scheduled to take place on or around May 1, 2009 – but the operation was abruptly canceled by the White House when my office alerted the press to this illegal transfer.

According to Klaidman's book, although FBI director Robert Mueller, then-CIA director Leon Panetta and Homeland Security Secretary Janet Napolitano all expressed opposition, "Holder, on the other hand, was strongly in favor of the plan." The book further details how the

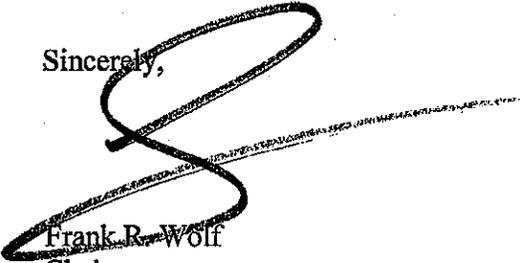
timing of the release of the Uyghurs was set to occur after your appearance before the Commerce-Justice-Science Appropriations subcommittee hearing, to avoid any tough questions about this illegal operation.

As Attorney General, you 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 your strong support for the release of terrorist detainees. Equally important, your advocacy with respect to transferring these detainees without notifying Congress or the American people is troubling.

I have enclosed a letter from many of the 9/11 family members strongly objecting to the purchase of Thomson by this Administration, for this and many other reasons. I have also enclosed a recent article by columnist Andrew McCarthy, who prosecuted the blind sheik, which further details reasons to oppose this reprogramming.

Unfortunately, Guantanamo policy is not the only example of this Administration's willingness to ignore the law if it is politically expedient. Last month the U.S. House of Representatives overwhelmingly voted to hold you in civil and criminal contempt of Congress for your failure to cooperate with Congressional investigations on the Fast and Furious operation. You also decided not to defend the Defense of Marriage Act, after you unilaterally decided it was unconstitutional. I was troubled by your gift to the gambling industry in the Department's decision to unilaterally reverse its longstanding interpretation of the Wire Act on Christmas Eve, when you knew most Americans would not notice. Finally, last month, the Administration reversed course and abruptly announced that it would unilaterally grant certain immigrants who are in the country illegally a two-year reprieve. This is not a record that reassures me that laws will be followed and commitments will be honored with regard to Guantanamo detainees.

Sincerely,



Frank R. Wolf

Chairman

House Subcommittee on Commerce, Justice,
Science and Related Agencies