

MEMORANDUM

TO: Members of the U.S. Senate
Members of the U.S. House of Representatives

FROM: Alliance for Justice
American Civil Liberties Union
Amnesty International USA
Center for Constitutional Rights
Government Accountability Project
Japanese American Citizens League
National Association of Criminal Defense Lawyers
Physicians for Human Rights
United Methodist Church, General Board of Church and Society

DATE: April 8, 2010

RE: Opposition to the Purchase of the Thomson Correctional Center in Thomson, Illinois—*Unless* Congress Also Enacts a Permanent, Statutory Ban on Using the Thomson Prison for Indefinitely Detaining Persons Without Charge or Trial, or for Holding Persons During Military Commission Trials or for Serving Sentences Imposed by Military Commissions

We urge you to oppose legislation authorizing, or appropriating federal funds for, the purchase of the Thomson Correctional Center in Thomson, Illinois, *unless* Congress, at the same time, also enacts a permanent, statutory ban on using the Thomson prison for indefinitely detaining persons without charge or trial, or for holding persons during military commission trials or for serving sentences imposed by military commissions. All of our organizations strongly support the responsible closing of the Guantanamo Bay detention facility, and we would support using the Thomson facility for holding any detainees now at Guantanamo who may be charged, tried, or sentenced in federal criminal court. However, we strongly oppose transporting the worst of Guantanamo policies—indefinite detention without charge or trial and military commissions—to a prison within the United States itself. If used for one or both of these purposes, the purchase of the Thomson prison could result in institutionalizing and perpetuating policies that should instead end.

On December 15, 2009, President Obama signed a memorandum directing the Attorney General and Secretary of Defense to acquire and activate the Thomson prison for use by the

Department of Defense in holding detainees currently at the Guantanamo Bay Naval Base and by the Department of Justice's Bureau of Prisons as a federal penitentiary for holding prisoners in high security, maximum security conditions. According to a study by the Council of Economic Advisers last year, the Defense Department would control 400 of the 1600 cells at the Thomson prison. The Bureau of Prisons would control the remaining cells.

On December 15, a number of government officials provided further details on who would be, and who would not be, held in the portion of the Thomson prison designated for use by the Defense Department. In a letter and accompanying questions and answers from the Deputy Secretary of Defense to Congressman Mark Kirk, the Defense Department stated that the Thomson prison would be used to imprison Guantanamo detainees whom the government is indefinitely detaining without charge or trial under a claim of detention authority based on the 2001 Authorization for Use of Military Force, and also Guantanamo detainees tried before military commissions or serving sentences imposed by military commissions. However, the Deputy Secretary's answer to Congressman Kirk's questions stated that Guantanamo detainees charged and tried before federal criminal courts would not be housed at the Thomson prison. Further, in a briefing by a "senior administration official" on December 15, the official stated that Guantanamo detainees cleared for release would remain at Guantanamo until transferred to other countries, and would not go to Thomson.

There is a right way and a wrong way to close Guantanamo. To date, many of the steps the Obama Administration has taken—with the support of many members of Congress, including prominent congressional supporters of the Thomson purchase—have been in the direction of closing Guantanamo the right way. The Obama Administration has worked hard to make charging decisions for detainees whom the government believes should be prosecuted in federal criminal courts in the United States, has closely collaborated with important allies of the United States in repatriating and resettling detainees cleared for release, and has continued the process of clearing detainees for release or transfer. The Obama Administration should continue all of these steps until the population at Guantanamo reaches zero.

However, there are two developments over the past year that constitute closing Guantanamo the wrong way. First, the government has reinstated the discredited military commissions. The military commissions have now gone through eight years, two statutes, four sets of rules, but have only resulted in three convictions, with two of those convicted detainees now released. By contrast, more than 400 defendants have been convicted of terrorism-related offense in federal criminal courts. The military commissions still do not have any rules based on the new statute, continue to have fundamental problems that could result in their proceedings being held illegal under the Constitution and international law, and deservedly lack credibility both at home and abroad. Second, the government continues to claim authority to indefinitely detain without charge or trial some of the Guantanamo detainees. Even if there is legal authority to continue to indefinitely detain these men, which many of our groups dispute, the government should make the policy decision that the interests of the United States are better served by either charging a detainee in federal criminal court or repatriating or resettling the detainee.

Based on the government's own statements, it appears that the Defense Department-run portion of the Thomson prison would house only those Guantanamo detainees being held pursuant to Guantanamo policies that should end—namely, military commissions and indefinite detention without charge or trial. Congress should not authorize, or appropriate money for the acquisition of the Thomson prison unless it also enacts a permanent statutory provision that would ensure that the Thomson prison will not become a U.S.-based prison dedicated to perpetuating Guantanamo policies that should end.

Bringing the practice of indefinite detention without charge or trial to any location within the United States will further harm the rule of law and adherence to the Constitution. Shortly after President Obama took office, the government prosecuted and convicted, in federal criminal court, the only person then-held on U.S. soil indefinitely without charge or trial. At present, the number of people held within the U.S. itself indefinitely without charge or trial is zero. However, if the Thomson prison is acquired and the current statutory prohibition on transferring Guantanamo detainees for purposes other than prosecution is allowed to expire, the number of persons held on U.S. soil without charge or trial could reportedly rise to 50 or more.

Moreover, Thomson could eventually become the place to send other persons held indefinitely without charge or trial—with the prospect of detainees being transferred there from Bagram, Afghanistan or new captures brought from other locations around the globe. The unfortunate reality that we would face if Thomson opens is that it is easier to go from 50 to 100 indefinite detention prisoners than it is to go from 0 to 1. Once the indefinite detention policy is institutionalized at Thomson, it will be difficult to hold the line at former Guantanamo detainees.

We urge that you oppose the purchase of the Thomson prison unless Congress, at the same time that it authorizes or funds the purchase, also enacts a permanent, statutory ban on using the Thomson facility for indefinite detention without charge or trial or for military commission-related detention. The current statutory ban on transferring detainees to the United States for purposes of indefinite detention without charge or trial expires at the end of the current fiscal year. Congress should not move forward with the Thomson purchase until and unless it permanently prohibits indefinite detention and military commission-related detention at the Thomson facility.

We would be very interested in meeting with you or your staff to discuss this issue further.