

ACLU Press Release

WASHINGTON – The Senate today passed the National Defense Authorization Act, which includes significant changes to the Guantánamo military commissions. The House approved the legislation earlier this month and the bill now moves to President Obama's desk for signature.

While the bill revises the Military Commissions Act of 2006 to remove some of its worst violations of due process, the legislation still falls far short of the requirements imposed by U.S. and international law. It continues to apply the military commissions to a much broader group of individuals than should be tried before them under the Constitution and the Geneva Conventions and does not even prohibit military commission trials of children. At the same time, the bill includes some significant improvements to the military commissions, including the requirement of experienced capital defense attorneys in death penalty cases, more resources for defense counsel, significant new limitations on the use of hearsay and coerced testimony and greater access to witnesses and evidence for defendants.

Despite any improvements, the American Civil Liberties Union still firmly believes that the military commissions are inherently illegitimate, are inconsistent with the U.S. government's legal obligations under the U.S. Constitution and the Geneva Conventions, and should be shut down for good.

The following can be attributed to Christopher Anders, ACLU Senior Legislative Counsel:

"Though these changes include some additional due process protections and ensure greater resources for defense counsel, there's simply no way to make these inherently illegitimate military commissions acceptable. The military commissions are a separate and unequal justice system that was created to circumvent the Constitution and the Geneva Conventions and achieve quick convictions. Despite the improvements in this bill, the military commissions remain a second class system of justice and their continuation will only serve to keep alive the terrible policies set by the Bush administration.

"Due to the military commissions' tainted history, they will continue to be stigmatized as illegitimate in whatever form they take. The commissions will continue to be plagued by delay and controversy and will carry the disgraced reputation of Guantánamo. In fact, one clear sign to the rest of the world that these are unfair tribunals is that no U.S. citizen can ever be tried before them – Congress made clear that this faulty trial system is reserved only for non-Americans. The substantial goodwill that America gained with President Obama's determination to shut down the Guantánamo prison may be lost as the world discovers that some of its worst aspects may continue."

The following can be attributed to Jameel Jaffer, Director of the ACLU National

Security Project:

"We are disappointed that Congress has voted to continue the fatally flawed military commissions system. Now it is up to President Obama to change course and leave the awful legacy of Guantánamo behind. The legislation gives the president the option of using the commissions, but does not require him to exercise that option. President Obama should abandon the military commissions system in favor of the federal courts, which have shown themselves capable of trying terrorism suspects in a manner that is consistent with domestic and international law."