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Statement on Signing the National Defense Authorization Act for Fiscal Year 2013

January 2, 2013

Today I have signed into law H.R. 4310, the "National Defense Authorization Act for Fiscal Year 2013." I have approved this annual defense authorization legislation, as I have in previous years, because it authorizes essential support for service members and their families, renews vital national security programs, and helps ensure that the United States will continue to have the strongest military in the world.

Even though I support the vast majority of the provisions contained in this Act, which is comprised of hundreds of sections spanning more than 680 pages of text, I do not agree with them all. Our Constitution does not afford the President the opportunity to approve or reject statutory sections one by one. I am empowered either to sign the bill, or reject it, as a whole. In this case, though I continue to oppose certain sections of the Act, the need to renew critical defense authorities and funding was too great to ignore.

In a time when all public servants recognize the need to eliminate wasteful or duplicative spending, various sections in the Act limit the Defense Department's ability to direct scarce resources towards the highest priorities for our national security. For example, restrictions on the Defense Department's ability to retire unneeded ships and aircraft will divert scarce resources needed for readiness and result in future unfunded liabilities. Additionally, the Department has endeavored to constrain manpower costs by recommending prudent cost sharing reforms in its health care programs. By failing to allow some of these cost savings measures, the Congress may force reductions in the overall size of our military forces.

Section 533 is an unnecessary and ill-advised provision, as the military already appropriately protects the freedom of conscience of chaplains and service members. The Secretary of Defense will ensure that the implementing regulations do not permit or condone discriminatory actions that compromise good order and discipline or otherwise violate military codes of conduct. My Administration remains fully committed to continuing the successful implementation of the repeal of Don't Ask, Don't Tell, and to protecting the rights of gay and lesbian service members; Section 533 will not alter that.

Several provisions in the bill also raise constitutional concerns. Section 1025 places limits on the military's authority to transfer third country nationals currently held at the detention facility in Parwan, Afghanistan. That facility is located within the territory of a foreign sovereign in the midst of an armed conflict. Decisions regarding the disposition of detainees captured on foreign battlefields have traditionally been based upon the judgment of experienced military commanders and national security professionals without unwarranted interference by Members of Congress. Section 1025 threatens to upend that tradition, and could interfere with my ability as Commander in Chief to make time-sensitive determinations about the appropriate disposition of detainees in an active area of hostilities. Under certain circumstances, the section could violate constitutional separation of powers principles. If section 1025 operates in a manner that violates constitutional separation of powers principles, my Administration will implement it to avoid the constitutional conflict.

Sections 1022, 1027 and 1028 continue unwise funding restrictions that curtail options available to the executive branch. Section 1027 renews the bar against using appropriated funds for fiscal year 2012 to transfer Guantanamo detainees into the United States for any purpose. I continue to oppose this provision, which substitutes the Congress's blanket political determination for careful and fact-based determinations, made by counterterrorism and law enforcement professionals, of when and where to prosecute Guantanamo detainees. For decades, Republican and Democratic administrations have successfully prosecuted hundreds of terrorists in Federal court. Those prosecutions are a legitimate, effective, and powerful tool in our efforts to protect the Nation, and in certain cases may be the only legally available process for trying detainees. Removing that tool from the executive branch undermines our national security. Moreover, this provision would, under certain circumstances, violate constitutional separation of powers principles.

Section 1028 fundamentally maintains the unwarranted restrictions on the executive branch's authority to transfer detainees to a foreign country. This provision hinders the Executive's ability to carry out its military, national security, and foreign relations activities and would, under certain circumstances, violate constitutional separation of powers principles. The executive branch must have the flexibility to act swiftly in conducting negotiations with foreign countries regarding the circumstances of detainee transfers. The Congress designed these sections, and has here renewed them once more, in order to foreclose my ability to shut down the Guantanamo Bay detention facility. I continue to believe that operating the facility weakens our national security by wasting resources, damaging our relationships with key allies, and strengthening our enemies. My Administration will interpret these provisions as consistent with existing and future determinations by the agencies of the Executive responsible for detainee transfers. And, in the event that these statutory restrictions operate in a manner that violates constitutional separation of powers principles, my Administration will implement them in a manner that avoids the constitutional conflict.

As my Administration previously informed the Congress, certain provisions in this bill, including sections 1225, 913, 1531, and 3122, could interfere with my constitutional authority to conduct the foreign relations of the United States. In these instances, my Administration will interpret and implement these provisions in a manner that does not interfere with my constitutional authority to conduct diplomacy. Section 1035, which adds a new section 495(c) to title 10, is deeply problematic, as it would impede the fulfillment of future U.S. obligations agreed to in the New START Treaty, which the Senate provided its advice and consent to in 2010, and hinder the Executive's ability to determine an appropriate nuclear force structure. I am therefore pleased that the Congress has included a provision to adequately amend this provision in H.R. 8, the American Taxpayer Relief Act of 2012, which I will be signing into law today.

Certain provisions in the Act threaten to interfere with my constitutional duty to supervise the executive branch. Specifically, sections 827, 828, and 3164 could be interpreted in a manner that would interfere with my authority to manage and direct executive branch officials. As my Administration previously informed the Congress, I will interpret those sections consistent with my authority to direct the heads of executive departments to supervise, control, and correct employees' communications with the Congress in cases where such communications would be unlawful or would reveal information that is properly privileged or otherwise confidential. Additionally, section 1034 would require a subordinate to submit materials directly to the Congress without change, and thereby obstructs the traditional chain

of command. I will implement this provision in a manner consistent with my authority as the Commander in Chief of the Armed Forces and the head of the executive branch.

A number of provisions in the bill—including sections 534(b)(6), 674, 675, 735, 737, 1033(b), 1068, and 1803—could intrude upon my constitutional authority to recommend such measures to the Congress as I "judge necessary and expedient." My Administration will interpret and implement these provisions in a manner that does not interfere with my constitutional authority.

BARACK OBAMA

The White House,
January 2, 2013.

NOTE: H.R. 4310, approved January 2, was assigned Public Law No. 112–239. An original was not available for verification of the content of this statement.

Categories: Bill Signings and Vetoes : National Defense Authorization Act for Fiscal Year 2013, signing statement.

Locations: Washington, DC.

Subjects: Afghanistan : U.S. military forces :: Deployment; Armed Forces, U.S. : "Don't ask, don't tell" policy, repeal; Arms and munitions : Nuclear weapons and material :: Strategic Arms Reduction Treaty (START) with Russia; Cuba : Guantanamo Bay, U.S. Naval Base :: Closure of detention facilities; Defense, Department of : Funding; Legislation, enacted : National Defense Authorization Act for Fiscal Year 2013; Legislation, proposed : "American Taxpayer Relief Act of 2012"; Russia : Strategic Arms Reduction Treaty (START) with U.S., expansion; Terrorism : Transfer of detainees at Guantanamo Bay.

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