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Statement on Signing the National Defense Authorization Act for Fiscal Year 2017

December 23, 2016

Today, I have signed into law S. 2943, the "National Defense Authorization Act for Fiscal Year 2017." This Act authorizes fiscal year 2017 appropriations principally for the Department of Defense and for Department of Energy national security programs, provides vital benefits for military personnel and their families, and includes authorities to facilitate ongoing operations around the globe. It continues many critical authorizations necessary to ensure that we are able to sustain our momentum in countering the threat posed by the Islamic State of Iraq and the Levant and to reassure our European allies, as well as many new authorizations that, among other things, provide the Departments of Defense and Energy more flexibility in countering cyber-attacks and our adversaries' use of unmanned aerial vehicles.

I note that section 923 of the Act requires that the President establish a unified combatant command for cyber operations forces, while section 1642 prohibits the Secretary of Defense from terminating the "dual-hat" arrangement under which the Commander of U.S. Cyber Command (CYBERCOM) also serves as the Director of the National Security Agency (NSA), unless the Secretary and Chairman of the Joint Chiefs of Staff jointly certify that ending this arrangement will not pose risks to the military effectiveness of CYBERCOM that are unacceptable to the national security interests of the United States. Although I appreciate the Congress's interest in strengthening our Nation's cyber capabilities and ensuring that the NSA and CYBERCOM are best positioned to confront the array of cyber threats we face, I do not support these provisions as drafted: the Congress should leave decisions about the establishment of combatant commands to the executive branch and should not place unnecessary and bureaucratic administrative burdens and conditions on ending the dual-hat arrangement at a time when the speed and nature of cyber threats requires agility in making decisions about how best to organize and manage the Nation's cyber capabilities. That said, after directing a comprehensive review of this issue earlier this year, and consistent with the views of the Secretary of Defense and the Director of National Intelligence, I strongly support elevating CYBERCOM to a unified combatant command and ending the dual-hat arrangement for NSA and CYBERCOM—a position my Administration has communicated to the incoming Administration. While the dual-hat arrangement was once appropriate in order to enable a fledgling CYBERCOM to leverage NSA's advanced capabilities and expertise, CYBERCOM has since matured and the current construct should be replaced through a deliberate, conditions-based approach to separating the organizations. The two organizations should have separate leaders who are able to devote themselves to each organization's respective mission and responsibilities, but should continue to leverage the shared capabilities and synergies developed under the dual-hat arrangement. To these ends, the Department of Defense and the Office of the Director of National Intelligence have taken steps to ensure that separation would occur in a phased manner that enables NSA to continue to provide vital operational support to CYBERCOM during a transition period.

Beyond these provisions, I remain deeply concerned about the Congress's use of the National Defense Authorization Act to impose extensive organizational changes on the Department of Defense, disregarding the advice of the Department's senior civilian and uniformed leaders. The extensive changes in the bill are rushed, the consequences poorly

understood, and they come at a particularly inappropriate time as we undertake a transition between administrations. These changes not only impose additional administrative burdens on the Department of Defense and make it less agile, but they also create additional bureaucracies and operational restrictions that generate inefficiencies at a time when we need to be more efficient.

My Administration has similar concerns with the Administrative Leave Act, which would limit the period of time for which an employee of the Federal Government may be put on administrative leave. The provision substantially limits Federal agencies' discretion and is administratively burdensome, raising the risk of harm to the safety of Government employees and the risk of loss or damage to Government properties. Further, for the Intelligence Community, the Act creates unacceptable counterintelligence and security risks.

I am also disappointed that the Congress again failed to enact meaningful reforms to divest unneeded force structure, reduce wasteful overhead, and modernize military healthcare. Instead, the Congress redirects funding needed to support the warfighter to fund additional end-strength that our military leaders have not requested at a time when our troops are engaged overseas supporting the fight against the Islamic State of Iraq and the Levant and against al-Qa'ida. This approach hides the long-term costs of the Congress's authorizations, imposes significant costs in FY 2017 and substantially more over the next 5 years, and exacerbates the budgetary pressures already facing our military. Increasing force structure without adequate funding support in the base budget is dangerous; it will degrade, not enhance, readiness and modernization, contrary to our senior civilian and military leaders' priorities.

Once again, the Congress has also failed to take action toward closing the detention facility at Guantanamo Bay, Cuba. As I have said before, spending hundreds of millions of dollars, year after year, to keep fewer than sixty men in an isolated detention facility in Cuba is not consistent with our interests as a Nation and undermines our standing in the world. It weakens our national security by draining resources, damaging our relationships with key allies and partners, and emboldening violent extremists.

In February, my Administration submitted a comprehensive plan to safely and responsibly close the detention facility. Rather than answer that call and work with my Administration to finally bring this chapter of our history to a close, this bill aims to make the facility a permanent feature of our struggle against terrorism. During my Administration, we have responsibly transferred over 175 detainees from Guantanamo, and the population once held at the facility has now been reduced from 242 to 59. In the last 2 years, we have transferred 73 detainees, and our efforts to transfer additional detainees will continue until the last day I am in office. It is long past time for the Congress to lift the restrictions it has imposed, work to responsibly and safely close the facility, and remove this blot on our national honor. Unless the Congress changes course, it will be judged harshly by history.

As I have said in the past, the restrictions contained in this bill concerning the detention facility at Guantanamo are unwarranted and counterproductive. In particular, section 1033 renews the bar against using appropriated funds to construct or modify any facility in the United States, its territories, or possessions to house any Guantanamo detainee in the custody or under the control of the Department of Defense unless authorized by the Congress. Section 1032 also renews the bar against using appropriated funds to transfer Guantanamo detainees into the United States for any purpose. The bill leaves in place onerous restrictions on the

transfer of detainees to foreign countries, and section 1034 imposes additional restrictions on foreign transfers of detainees—in some cases purporting to bar such transfers entirely.

As I have said repeatedly, the provisions in this bill concerning detainee transfers would, in certain circumstances, violate constitutional separation of powers principles. Additionally, section 1034 could in some circumstances interfere with the ability to transfer a detainee who has been granted a writ of habeas corpus. In the event that the restrictions on the transfer of detainees in sections 1032 and 1034 operate in a manner that violates these constitutional principles, my Administration will implement them in a manner that avoids the constitutional conflict.

My Administration strongly supports the bill's structural reform of the Broadcasting Board of Governors (BBG), which streamlines BBG operations and reduces inefficiencies, while retaining the longstanding statutory firewall, protecting against interference with and maintaining the professional independence of the agency's journalists and broadcasters and thus their credibility as sources of independent news and information. Section 1288 would elevate the current Chief Executive Officer of the Broadcasting Board of Governors to the head of the agency and reduce the current members of the Board, unless on expired terms, from serving as the collective head of the agency to serving as advisors to the Chief Executive Officer. While my Administration supports the empowerment of a Chief Executive Officer with the authority to carry out the BBG's important functions, the manner of transition prescribed by section 1288 raises constitutional concerns related to my appointments and removal authority. My Administration will devise a plan to treat this provision in a manner that mitigates the constitutional concerns while adhering closely to the Congress's intent.

Several other provisions in the bill also raise constitutional concerns.

First, section 507 of the bill would authorize certain cabinet officials to "drop from the rolls" military officers without my approval. The Constitution does not allow Congress to authorize other members of the executive branch to remove presidentially appointed officers, so I will direct my cabinet members to construe the statute as permitting them to remove the commission of a military officer only if the officer accepts their decision or I approve the removal.

Second, section 553 of the bill would establish a commission, composed primarily of members appointed by the Congress, in the executive branch. Because the commission contains legislative branch appointees, it cannot be located in the executive branch consistent with the separation of powers. My Administration will therefore treat the commission as an independent entity, separate from the executive branch.

Finally, section 1263(d) purports to require me to determine whether a foreign person has committed a sanctionable human rights violation when I receive a request to do so from certain members of Congress. Consistent with the constitutional separation of powers, which limit the Congress's ability to dictate how the executive branch executes the law, I will maintain my discretion to decline to act on such requests when appropriate.

BARACK OBAMA

The White House,
December 23, 2016.

NOTE: S. 2943, approved December 23, was assigned Public Law No. 114–328.

Categories: Bill Signings and Vetoes : National Defense Authorization Act for Fiscal Year 2017, signing statement.

Subjects: Broadcasting Board of Governors; Cuba : Guantanamo Bay, U.S. Naval Base :: Closure of detention facilities; Defense and national security : Cybersecurity :: Strengthening efforts; Defense, Department of : Budgetary discipline; Defense, Department of : U.S. Cyber Command; Legislation, enacted : National Defense Authorization Act for Fiscal Year 2017; Presidency, U.S. : Separation of powers; Presidency, U.S. : Transition process; Security Agency, National; Terrorism : Al Qaida terrorist organization; Terrorism : Counterterrorism efforts; Terrorism : Islamic State of Iraq and the Levant (ISIL) terrorist organization; Terrorism : Transfer of detainees at Guantanamo Bay.

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