

No. 17-6853

In the United States Supreme Court

SAIFULLAH PARACHA,

Petitioner,

v.

DONALD J. TRUMP,

Respondent.

**Supplemental Brief in Support of the
Petition for the Writ of Certiorari**

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**SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR THE WRIT OF CERTIORARI**

On November 21, 2017, Saifullah Paracha's petition for certiorari was docketed as No. 17-6853. It has been distributed for consideration at the conference of January 5, 2018.

Mr. Paracha, a prisoner held at Guantanamo Bay, Cuba, asks for review of the lower courts' rejections of his challenges to various bills of attainder. The bills of attainder he challenges, statutes passed by Congress that violate the separation of powers and penalize the prisoners held at Guantanamo by labeling them as terrorists, are recurring provisions in authorization and appropriation acts.

As explained in the petition (page 4), at the filing of the petition the most recent provisions challenged were in the Consolidated Appropriations Act, 2017, Pub. L. 115-31, 131 Stat. 135, May 5, 2017, and the National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328, 130 Stat. 2000, December 23, 2016. Those provisions were set out in petitioner's Appendix, App. 15-26.

Since the filing of the petition Congress has passed the National Defense Authorization Act for Fiscal Year 2018, Pub. L. 115-91, December 12, 2017.¹ The relevant bills of attainder sections, sections 1033, 1034, and 1035, are attached.

When signing that Act into law, the President declared:

Sections 1033 and 1035 restrict transfers of detainees held at the United States Naval Station, Guantanamo Bay. I fully intend to keep open that detention facility and to use it for detention operations. Consistent with the statement I issued in signing H.R. 244 [Pub. L. 115-31], I reiterate the longstanding position of the executive branch that, under certain circumstances, restrictions on the President's authority to transfer detainees would violate constitutional separation-of-powers principles, including the President's constitutional authority as Commander in Chief. Additionally, section 1035 could, in some circumstances, interfere with the ability of the United States to transfer a detainee who has been granted a writ of habeas corpus.

Statement by President Donald J. Trump on H.R.2810, Pub. L. 115-91, December 12, 2017, available at <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-h-r-2810/>.

This presidential statement is new matter which essentially supports Paracha's position and confirms the importance of granting his petition.

¹ The pendency of that Act, then designated H.R. 2810, was noted in footnote 1, page 4, of Paracha's petition. The other provisions noted as then pending, H.R. 1301, Department of Defense Appropriations Act, 2017, Sections 8101, 8102, and 8103, and H.R. 3219, Make America Secure Appropriations Act, 2018, Sections 512, 8094, 8095, and 8096, are still pending.

WHEREFORE the Court should accept this Supplemental Brief in Support of the Petition for the Writ of Certiorari offered under Rule 15.8. and the petition for the writ of certiorari, No. 17-6853, should be granted.

Respectfully submitted,



December 19, 2017

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conduct the assessment for purposes of the report, and may limit the assessment to surveying ships.

(b) DEFINITIONS.—In this section:

(1) The term “surveying ship” has the meaning given the term in Secretary of the Navy Instruction 5030.8C.

(2) The term “force structure assessment” has the meaning given the term in Chief of Naval Operations Instruction 3050.27.

Subtitle D—Counterterrorism

SEC. 1031. MODIFICATION OF AUTHORITY ON SUPPORT OF SPECIAL OPERATIONS TO COMBAT TERRORISM.

(a) OVERSIGHT OF SUPPORT.—Section 127e of title 10, United States Code, is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

“(g) OVERSIGHT BY ASD FOR SOLIC.—The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict shall have primary responsibility within the Office of the Secretary of Defense for oversight of policies and programs for support authorized by this section.”

(b) REPORT SUBMITTAL MATTERS.—Subsection (h) of such section, as redesignated by subsection (a)(1) of this section, is amended—

(1) in paragraph (1), by striking “March 1 each year” and inserting “120 days after the last day of each fiscal year”; and

(2) in paragraph (2)—

(A) by striking “September 1 each year” and inserting “six months after the date of the submittal of the report most recently submitted under paragraph (1)”; and

(B) by inserting “under this paragraph” after “in which the report”.

SEC. 1032. TERMINATION OF REQUIREMENT TO SUBMIT ANNUAL BUDGET JUSTIFICATION DISPLAY FOR DEPARTMENT OF DEFENSE COMBATING TERRORISM PROGRAM.

Section 229 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) TERMINATION.—The requirement to submit a budget justification display under this section shall terminate on December 31, 2020.”

SEC. 1033. PROHIBITION ON USE OF FUNDS FOR TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA TO THE UNITED STATES.

No amounts authorized to be appropriated or otherwise made available for the Department of Defense may be used during the period beginning on the date of the enactment of this Act and ending on December 31, 2018, to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who—

(1) is not a United States citizen or a member of the Armed Forces of the United States; and

(2) is or was held on or after January 20, 2009, at United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.

SEC. 1034. PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) **IN GENERAL.**—No amounts authorized to be appropriated or otherwise made available for the Department of Defense may be used during the period beginning on the date of the enactment of this Act and ending on December 31, 2018, to construct or modify any facility in the United States, its territories, or possessions to house any individual detained at Guantanamo for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense.

(b) **EXCEPTION.**—The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) **INDIVIDUAL DETAINED AT GUANTANAMO DEFINED.**—In this section, the term “individual detained at Guantanamo” has the meaning given that term in section 1034(f)(2) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 971; 10 U.S.C. 801 note).

SEC. 1035. PROHIBITION ON USE OF FUNDS FOR TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO CERTAIN COUNTRIES.

No amounts authorized to be appropriated or otherwise made available for the Department of Defense may be used during the period beginning on the date of the enactment of this Act and ending on December 31, 2018, to transfer, release, or assist in the transfer or release of any individual detained in the custody or under the control of the Department of Defense at United States Naval Station, Guantanamo Bay, Cuba, to the custody or control of any country, or any entity within such country, as follows:

- (1) Libya.
- (2) Somalia.
- (3) Syria.
- (4) Yemen.

SEC. 1036. PROHIBITION ON USE OF FUNDS TO CLOSE OR RELINQUISH CONTROL OF UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

None of the funds authorized to be appropriated or otherwise made available for the Department of Defense for fiscal year 2018 may be used—

- (1) to close or abandon United States Naval Station, Guantanamo Bay, Cuba;
- (2) to relinquish control of Guantanamo Bay to the Republic of Cuba; or
- (3) to implement a material modification to the Treaty Between the United States of America and Cuba signed at Washington, D.C. on May 29, 1934, that constructively closes United States Naval Station, Guantanamo Bay.