Congress of the United States
Washington, DC 20515

May 10, 2011

The Honorable Buck McKeon
Chairman
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman McKeon:

We are writing concerning certain troubling provisions in H.R. 968, the Detainee Security Act of 2011, which we understand are likely to be considered as part of the National Defense Authorization Act (NDAA) of the Fiscal Year of 2012. Whatever one thinks about the merits of the Detainee Security Act, it is a serious enough departure from current counterterrorism policy and practice to merit consideration apart from the NDAA. Accordingly, we request that you use your chairmanship in the House Armed Services Committee to immediately hold hearings so that the public can further consider the various provisions within the Detainee Security Act.

Among the many troubling aspects of the Detainee Security Act are provisions that expand the war against terrorist organizations on a global basis. The Authorization for the Use of Military Force (AUMF) of 2001 was widely thought to provide authorization for the war in Afghanistan to root out al Qaeda, the Taliban, and others responsible for the 9/11 attacks. That war has dragged on for almost ten years, and after the demise of Osama Bin Laden, as the United States prepares for withdrawal from Afghanistan, the Detainee Security Act purports to expand the "armed conflict" against the Taliban, al Qaeda, and "associated forces" without limit. By declaring a global war against nameless individuals, organizations, and nations "associated" with the Taliban and al Qaeda, as well as those playing a supporting role in their efforts, the Detainee Security Act would appear to grant the President near unfettered authority to initiate military action around the world without further congressional approval. Such authority must not be ceded to the President without careful deliberation from Congress.

The Detainee Security Act also unwisely requires that all terrorism suspects eligible for detention under the AUMF be held exclusively in military custody pending further disposition. The practical effect of this provision will be to undermine the ability of the FBI and local law enforcement to participate in counterterrorism operations, which could have serious negative impacts on national security. Moreover, in a recent hearing in the House Armed Services Committee, Department of Defense General Counsel Jeh Johnson noted that, rather than help clarify detention authority, the military custody provision in the Detainee Security Act would create serious litigation risk for the government.

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The Detainee Security Act contains several additional troublesome provisions that relate to Guantanamo. The Detainee Security Act in effect requires that terrorism suspects be tried in military commissions, thereby cutting out Article III federal courts from conducting terrorism trials. This is unwise, as Article III federal courts have convicted over 400 individuals of terrorism-related offenses since 9/11. Military commissions, mired by legal problems and controversy, have convicted only six. The Detainee Security Act would also make permanent current transfer restrictions on Guantanamo detainees, further undermining the ability of the President to close the offshore detention facility. In our view, restricting the President in this way is unnecessary to promote a robust national security that keeps the American people safe.

Whatever one thinks of these various proposals in the Detainee Security Act, it is clear that they will have serious consequences and should be examined extensively. We therefore request that you use your chairmanship to immediately call hearings on Detainee Security Act so that the American people have an opportunity to consider the serious impacts that this legislation could have on our national security.

Sincerely,

JOHN CONYERS, JR.
Member of Congress

GEORGE MILLER
Member of Congress

JERROLD NADLER
Member of Congress

HENRY WAXMAN
Member of Congress

BOB FILNER
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FORTNEY "PETE" STARK
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