



FEB 25 2010

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
Washington, DC 20510

The Honorable John Boehner  
Minority Leader  
United States House of Representatives  
Washington, DC 20510

Dear Speaker Pelosi and Minority Leader Boehner:

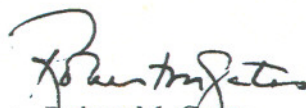
We write to express our opposition to any legislation or amendments that would restrict the ability of the Executive branch to effectively prosecute alleged terrorists in Federal courts or reformed military commissions in the United States.

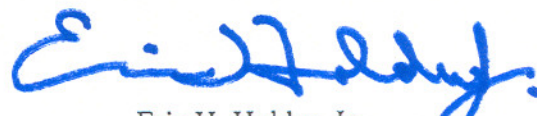
As you know, both the Department of Justice (in Article III courts) and the Department of Defense (in military commissions, reformed under the Military Commissions Act of 2009) have responsibility for prosecuting alleged terrorists, and we ensure that all relevant factors are carefully considered when determining the appropriate forum in which to try a particular case. Furthermore, Congress has voted on multiple occasions to permit detainees currently held at the detention facility in Guantanamo Bay, Cuba, to be transferred to the United States for prosecution in either Federal courts or reformed military commissions.

The exercise of prosecutorial discretion has always been and should remain an Executive branch function. We believe it would be unwise and would set a dangerous precedent for Congress to restrict the discretion of our Departments to carry out specific terrorism prosecutions.

Indeed, we have been unable to identify any precedent in the history of our nation in which Congress has intervened in such a manner to prohibit the prosecution of particular persons or crimes.

In order to protect the American people as effectively as possible, we must be in a position to use every lawful instrument of national power — including both courts and military commissions — to ensure that terrorists are brought to justice and can no longer threaten American lives.

  
Robert M. Gates  
Secretary of Defense

  
Eric H. Holder, Jr.  
Attorney General