



OCT 30 2009

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Dear Senators Reid and McConnell:

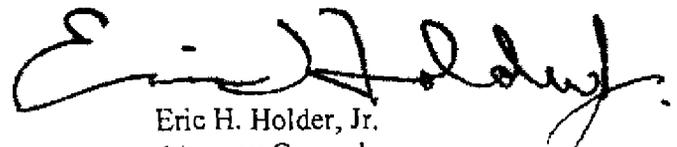
We write to oppose the amendment proposed by Senator Graham (on behalf of himself and Senators McCain and Lieberman) to H.R. 2847, the Commerce, Justice, Science, and Related Agencies Appropriations Act of 2010. This amendment would prohibit the use of Department of Justice funds "to commence or continue the prosecution in an Article III court of the United States of an individual suspected of planning, authorizing, organizing, committing, or aiding the attacks on the United States and its citizens that occurred on September 11, 2001."

As you know, both the Department of Justice (in Article III courts) and the Department of Defense (in military commissions, reformed under the 2010 National Defense Authorization Act) have responsibility for prosecuting alleged terrorists. Pursuant to a joint prosecution protocol, our departments are currently engaged in a careful case-by-case evaluation of the cases of Guantánamo detainees who have been referred for possible prosecution, to determine whether they should be prosecuted in an Article III court or by military commission. We are confident that the forum selection decisions that are made pursuant to this process will best serve our national security interests.

We believe that it would be unwise, and would set a dangerous precedent, for Congress to restrict the discretion of either department to fund particular prosecutions. The exercise of prosecutorial discretion has always been and should remain an Executive Branch function. 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.

For these reasons, we respectfully request that you oppose this amendment.


Robert M. Gates
Secretary of Defense


Eric H. Holder, Jr.
Attorney General