

**Statement by U.S. Representative Cynthia M. Lummis
National Defense Authorization Act for Fiscal Year 2015
For the House Committee on Armed Services**

Chairman McKeon and Ranking Member Smith, thank you for providing members with the opportunity to submit testimony to the House Armed Services Committee about the Fiscal Year 2015 National Defense Authorization Act. I have tremendous respect for the task in front of you, especially considering the challenges our country faces during a period of ongoing fiscal constraints. Today I am here to offer my comments on issues I consider extremely important to the security and integrity of our great nation.

I believe America is a great nation, the greatest, in fact. Throughout our history, from its founding to the present, the strength of our nation has been continuously tested. And, as a nation, we have always risen to meet whatever challenges come our way.

These are difficult times. China's nuclear arsenal is expanding. Russia and other nuclear states like Pakistan are modernizing. Russia's ongoing aggression in Ukraine and North Korea's continued provocations against its neighbor and our ally South Korea are reminders that we continue to face geopolitical challenges and threats. We must be vigilant in our determination to protect the U.S. and our capabilities.

I realize that this discussion is framed by an unfortunate reality: that one of the greatest threats to our national security comes from within—our growing seventeen trillion dollars of national debt. In 2011, concern about our nation's massive debt led to enactment of the Budget Control Act and implementation of sequestration. Sequestration has created some very tough choices, especially for our nation's military. What is especially frustrating about the current situation is that no amount of discretionary cuts alone will solve our debt problem. Unless we get entitlement spending under control, those programs will continue to grow and constrict the rest of our budget until nothing remains.

Your committee faces no small task in determining how to provide for our nation's national security amidst this environment. Against the backdrop of these external and internal realities, it becomes even more important to use limited resources strategically, which leads me to the first area I would like to discuss. It is one I believe to be of particular concern to our long-term security and military capabilities.

1. Fiscal Year 2015 Air Force Budget Proposal

As you know, the Fiscal Year (FY) 2013 National Defense Authorization Act (NDAA) established a National Commission on the Structure of the Air Force (Commission) to assess future Air Force structure requirements and determine the right force and capability balance. The Commission's recommendations, which were released in January of this year, are intended to inform decisions regarding the future force structure of the Air Force. The Commission itself states that its "findings, conclusions, and recommendations for legislative and administrative

actions...will enable the Air Force to best fulfill current and anticipated mission requirements...” That is why I am so concerned that the FY15 Air Force budget does not take into account the Commission’s recommendations.

The Commission specifically recommends a greater reliance on the Air National Guard and Air Force Reserves, increasing integration of our Guard, Reserve, and Active Component Airmen, and increasing active associations, because doing so “will lead directly to improved processes and more effective and efficient employment of the Total Air Force.” Additionally, the Commission also recommends ensuring the concurrent modernization and recapitalization of equipment across the Guard, Reserves, and Active Components.

However, the FY15 Air Force budget request proposes doing the exact opposite of what this congressionally-established Commission determined would be the best strategy moving forward. Specifically, the FY15 Air Force budget proposes closing all C-130 Active Associate Units and divesting a number of C-130H Aircraft, which reside exclusively in the Guard, including Wyoming’s 30th Airlift Squadron, which is one of the oldest and most successful active association wings.

The Air National Guard provides 40 percent of the C-130 fleet and airlift capability. Forty percent: that represents a significant contribution to the Air Force total force capability. Yet, the Air Force budget includes no plan to support the modernization and recapitalization of the Air National Guard C-130 legacy fleet. This proposal contravenes the Commission’s recommendations and would have long-term negative consequences for our nation’s total airlift capability.

I would like to highlight one of the Commission’s many recommendations. To directly quote from the Commission’s report, “As the Air Force acquires new equipment, force integration plans should adhere to the principle of proportional and concurrent fielding across the components. This means that, in advance of full integration, new equipment will arrive at Air Reserve Component units simultaneously with its arrival at Active Component units in the proportional share of each component. As the Air Force Reserve and Active Component become fully integrated, the Air Force should ensure that the Air National Guard receives new technology concurrent with the integrated units.”

Congress established this Commission to guide us in making informed decisions regarding the best force structure for the future. We should follow the Commission’s recommendations to strengthen our Total Force rather than proceed with premature proposals that will do nothing but harm our air force capability. Therefore, I respectfully request that the House Armed Services Committee include the following language requests in the Fiscal Year 2015 National Defense Authorization Act (NDAA):

REQUEST 1:

TITLE: Air National Guard C-130 J-Model Recapitalization

BILL LANGUAGE: Authorization for Funding and Proportional and Concurrent Fielding of C-130Js to the Air National Guard

C-130J FIELDING REQUIREMENTS –

- a) *The Department of the Air Force is required to plan for, fund and field the Air National Guard with C-130J aircraft proportionally and concurrently as the Air Force fields them.*
- b) *Within 180 days of enactment, the Secretary and Chief of Staff of the Air Force are required to provide to the House Committee on Armed Services a modernization plan for the C-130H fleet and a full analysis and fielding plan for the C-130J to the Reserve Components in accordance with the National Commission on the Structure of the Air Force report.*
- c) *Until such time as the Secretary and Chief of Staff of the Air Force articulate a plan to concurrently modernize the Air National Guard, any delivery of C-130J aircraft after enactment of this Act will be to the Air National Guard.*

REPORT LANGUAGE:

The Secretary has not articulated to the committee a coherent plan for fleet-wide recapitalization of the C-130H fleet or how the Air Force plans to maintain medium-sized intra-theater airlift capacity and capability within both the Active and Reserve Components. The Committee is concerned that the Fiscal Year 2015 Air Force budget request fails to incorporate recommendations made by the National Commission on the Structure on the Air Force (Commission) regarding force structure and capability requirements. The Commission specifically recommends the concurrent fielding of equipment among the Guard, Reserve and Active Components. The Committee believes the FY15 Air Force budget does not provide for the continued support of the C-130 Fleet across all components. Therefore, as required by this Act, until such time as the Department of the Air Force articulates a plan to concurrently modernize the Air National Guard, any delivery of C-130J aircraft after enactment of this Act will be to the Air National Guard.

REQUEST 2:

TITLE: C-130 Active Associate Units

BILL LANGUAGE: Directing the Air Force to maintain the Active Associate Units

C-130 ACTIVE ASSOCIATE REQUIREMENTS –

- a) *The Department of the Air Force is required to continue to plan for, fund and support the Active Associate Units.*
- b) *Within 180 days of enactment of this Act, the Secretary and Chief of Staff of the Air Force are required to provide to the House Armed Services Committee a full analysis of the recommendations made by the National Commission on the Structure of the Air Force regarding integration of*

Active Associates as important to strength of the Total Force as they pertain to C-130 Active Associate Units.

- c) *Until such time as the Secretary and Chief of Staff of the Air Force provide to the House Armed Services Committee an analysis that indicates divestiture of C-130 Active Associate Units is appropriate, the Air Force shall take no action to reduce planning for, funding, or support of any C-130 Active Associate Unit currently functioning.*

REPORT LANGUAGE:

The Secretary has not articulated to the Committee a coherent plan for continued support of Total Force Integration within the Air Force. The proposal to draw down all C-130 Associate Units is contrary to the recommendations of the National Commission on the Structure of the Air Force. The Committee agrees with the Commission that Associations within the Air Force serve to strengthen the Total Force. Therefore, as required by this Act, the Committee requires the Secretary and Chief of Staff of the Air Force to provide to this Committee a full analysis of those recommendations as they pertain to C-130 Active Associate Units within 180 days of the enactment of this Act. As also required by this Act, until such time as the Secretary and Chief of Staff of the Air Force articulate to the satisfaction of the Committee an analysis that would indicate divestiture of C-130 Active Associate Units is appropriate, the Air Force shall take no action to reduce planning for, funding, or support of any C-130 Active Associate Unit currently functioning.

2. Detainee Provisions

Our Founding Fathers fully understood the importance of individual rights and liberty, considering them so fundamental to the core foundation of our country that those values are enshrined in our nation's guiding document, the U.S. Constitution. Indeed, our commitment to our constitutional rights is what makes this country so exceptional. That is why I continue to have serious concerns regarding the detainee provisions included in the FY12 NDAA (H.R. 1540), which authorizes the indefinite, military detention of American citizens.

Section 1022 of H.R. 1540 mandates military detention for foreign terror suspects. This provision specifically exempts American citizens. *Section 1021*, however, reaffirms and expands Congress' post-9/11 authorization of force. This provision authorizes the use of military force, including indefinite military detention, against anyone who was part of or "substantially supported" Al-Qaeda, the Taliban, or "associated forces" who target the U.S. or our coalition partners. This provision does not exempt American citizens, nor does it address the due process rights of American citizens who are suspected of terrorism and arrested on U.S. soil.

The fight against terrorism is both foreign and domestic, raising difficult questions about the President's war powers and the due process rights of American citizens suspected of terrorism. The existing language muddies the water in respect to citizens' due process rights, while at the same time authorizing sweeping detention authority for the President. To put it simply, an American citizen apprehended on U.S. soil should not be indefinitely detained without knowing

the charges. Our Founding Fathers separated power among the three branches of government precisely for times like these, when the temptation to consolidate executive power is most appealing.

I believe the process of preparing the FY15 NDAA provides Congress with the opportunity to clearly protect the rights of our citizens by expressly prohibiting indefinite detention without charge as far as U.S. citizens and lawful residents are concerned. The Senate passed an amendment to do exactly that during consideration of its FY13 NDAA (S.3254). That language clarified that, even if U.S. citizens and lawful residents are suspected of terrorism, they can only be detained if they are charged with an actual crime. This in turn triggers certain constitutional rights such as the right to a speedy trial and the right to a jury trial. Confirming the constitutional rights of U.S. citizens and lawful permanent residents would not jeopardize our ability to detain and interrogate foreign terrorists. Therefore, I respectfully request that the Committee include the following language in the FY15 NDAA:

REQUEST 1:

Prohibition on the Indefinite Detention of Citizens and Lawful Permanent Residents

Section 4001 of title 18, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

“(b)(1) An authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States apprehended in the United States, unless an Act of Congress expressly authorizes such detention.

“(2) Paragraph (1) applies to an authorization to use military force, a declaration of war, or any similar authority enacted before, on, or after the date of enactment of the National Defense Authorization Act for Fiscal Year 2015.

(3) Paragraph (1) shall not be construed to authorize the detention of a citizen of the United States, a lawful permanent resident of the United States, or any other person who is apprehended in the United States.”

Thank you Chairman McKeon and Ranking Member Smith for allowing me the opportunity to share my thoughts, concerns, and ideas. I would like to express my willingness to work with any Member to address these issues.