

114TH CONGRESS
1ST SESSION

S. 165

To extend and enhance prohibitions and limitations with respect to the transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 13, 2015

Ms. AYOTTE (for herself, Mr. GRAHAM, Mr. BURR, and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To extend and enhance prohibitions and limitations with respect to the transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Detaining Terrorists
5 to Protect America Act of 2015”.

1 **SEC. 2. PROHIBITION ON USE OF FUNDS TO CONSTRUCT**
2 **OR MODIFY FACILITIES IN THE UNITED**
3 **STATES TO HOUSE DETAINEES TRANS-**
4 **FERRED FROM UNITED STATES NAVAL STA-**
5 **TION, GUANTANAMO BAY, CUBA.**

6 (a) PROHIBITION.—No amounts appropriated or oth-
7 erwise available for any department or agency of the
8 United States Government may be used, during the period
9 beginning on the date of the enactment of this Act and
10 ending on the date that is two years after the date of the
11 enactment of this Act, to construct or modify any facility
12 in the United States, its territories, or possessions to
13 house an individual detained at Guantanamo for the pur-
14 pose of detention or imprisonment in the custody or con-
15 trol of the United States Government unless authorized
16 by Congress.

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

20 (c) INDIVIDUAL DETAINED AT GUANTANAMO DE-
21 FINED.—In this section, the term “individual detained at
22 Guantanamo” means any individual located at United
23 States Naval Station, Guantanamo Bay, Cuba, as of Octo-
24 ber 1, 2009, who—

1 tories, or possessions of Khalid Sheikh Mohammed or any
 2 other detainee who—

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

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

8 (b) REPEAL OF SUPERSEDED PROHIBITION.—Sec-
 9 tion 1034 of the National Defense Authorization Act for
 10 Fiscal Year 2014 (Public Law 113–66; 127 Stat. 851),
 11 as amended by section 1033 of the Carl Levin and Howard
 12 P. “Buck” McKeon National Defense Authorization Act
 13 for Fiscal Year 2015 (Public Law 113–291), is repealed.

14 **SEC. 4. PROHIBITION ON USE OF FUNDS FOR TRANSFER OR**
 15 **RELEASE ABROAD OF INDIVIDUALS DE-**
 16 **TAINED AT UNITED STATES NAVAL STATION,**
 17 **GUANTANAMO BAY, CUBA, DETERMINED OR**
 18 **ASSESSED TO BE HIGH-RISK OR MEDIUM-**
 19 **RISK THREATS.**

20 (a) PROHIBITION.—

21 (1) IN GENERAL.—Notwithstanding any other
 22 provision of law, no amounts appropriated or other-
 23 wise available for any department or agency of the
 24 United States Government may be used, during the
 25 period beginning on the date of the enactment of

1 this Act and ending on the date that is two years
2 after the date of the enactment of this Act, to trans-
3 fer, release, or assist in the transfer or release of
4 any individual described in paragraph (2) to the cus-
5 tody or control of the individual's country of origin,
6 any other foreign country, or any other foreign enti-
7 ty.

8 (2) COVERED INDIVIDUALS.—An individual de-
9 scribed in this paragraph is any individual detained
10 in the custody or under the control of the Depart-
11 ment of Defense at United States Naval Station,
12 Guantanamo Bay, Cuba, who is currently or ever
13 has been determined or assessed by Joint Task
14 Force Guantanamo to be a high-risk or medium-risk
15 threat to the United States, its interests, or its al-
16 lies.

17 (b) EXCEPTION.—Subsection (a) shall not apply to
18 any action taken by the head of a department or agency
19 of the United States Government to transfer, release, or
20 assist in the transfer or release of any individual described
21 in that subsection to effectuate an order affecting the dis-
22 position of the individual that is issued by a court or com-
23 petent tribunal of the United States having lawful jurisdic-
24 tion (which the Secretary shall notify the appropriate com-
25 mittees of Congress promptly after issuance).

1 (c) APPROPRIATE COMMITTEES OF CONGRESS DE-
2 FINED.—In this section, the term “appropriate commit-
3 tees of Congress” means—

4 (1) the Committee on Armed Services, the
5 Committee on Appropriations, and the Select Com-
6 mittee on Intelligence of the Senate; and

7 (2) the Committee on Armed Services, the
8 Committee on Appropriations, and the Permanent
9 Select Committee on Intelligence of the House of
10 Representatives.

11 **SEC. 5. PROHIBITION ON USE OF FUNDS FOR TRANSFER OR**
12 **RELEASE TO YEMEN OF INDIVIDUALS DE-**
13 **TAINED AT UNITED STATES NAVAL STATION,**
14 **GUANTANAMO BAY, CUBA.**

15 Notwithstanding any other provision of law, no
16 amounts appropriated or otherwise available for any de-
17 partment or agency of the United States Government may
18 be used, during the period beginning on the date of the
19 enactment of this Act and ending on the date that is two
20 years after the date of the enactment of this Act, to trans-
21 fer, release, or assist in the transfer or release of any indi-
22 vidual detained in the custody or under the control of the
23 Department of Defense at United States Naval Station,
24 Guantanamo Bay, Cuba, to the custody or control of the
25 Republic of Yemen or any entity within Yemen.

1 **SEC. 6. REENACTMENT AND MODIFICATION OF CERTAIN**
2 **PRIOR REQUIREMENTS FOR CERTIFICATIONS**
3 **RELATING TO TRANSFER OF DETAINEES AT**
4 **UNITED STATES NAVAL STATION, GUANTA-**
5 **NAMO BAY, CUBA, TO FOREIGN COUNTRIES**
6 **AND OTHER FOREIGN ENTITIES.**

7 (a) CERTIFICATION REQUIRED PRIOR TO TRANS-
8 FER.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (3) and subsection (d), the Secretary of De-
11 fense may not use any amounts authorized to be ap-
12 propriated or otherwise available to the Department
13 of Defense to transfer any individual detained at
14 Guantanamo to the custody or control of the individ-
15 ual's country of origin, any other foreign country, or
16 any other foreign entity unless the Secretary sub-
17 mits to the appropriate committees of Congress the
18 certification described in subsection (b) not later
19 than 30 days before the transfer of the individual.

20 (2) SCOPE OF REQUIREMENT.—The require-
21 ment in paragraph (1) applies to any authorized
22 transfer or release of an individual described in that
23 paragraph after the date of the enactment of this
24 Act, including a transfer or release of such an indi-
25 vidual who is also described in paragraph (2) of sec-

1 tion 4(a) after the prohibition in section 4(a) ceases
2 to be in effect.

3 (3) EXCEPTION.—Paragraph (1) shall not
4 apply to any action taken by the Secretary to trans-
5 fer any individual detained at Guantanamo to effec-
6 tuate an order affecting the disposition of the indi-
7 vidual that is issued by a court or competent tri-
8 bunal of the United States having lawful jurisdiction
9 (which the Secretary shall notify the appropriate
10 committees of Congress of promptly after issuance).

11 (b) CERTIFICATION.—A certification described in this
12 subsection is a written certification made by the Secretary
13 of Defense, with the concurrence of the Secretary of State
14 and in consultation with the Director of National Intel-
15 ligence, that—

16 (1) the government of the foreign country or
17 the recognized leadership of the foreign entity to
18 which the individual detained at Guantanamo is to
19 be transferred—

20 (A) is not a designated state sponsor of
21 terrorism or a designated foreign terrorist orga-
22 nization;

23 (B) maintains control over each detention
24 facility in which the individual is to be detained

1 if the individual is to be housed in a detention
2 facility;

3 (C) is not, as of the date of the certifi-
4 cation, facing a threat that is likely to substan-
5 tially affect its ability to exercise control over
6 the individual;

7 (D) has taken or agreed to take effective
8 actions to ensure that the individual cannot
9 take action to threaten the United States, its
10 citizens, or its allies in the future;

11 (E) has taken or agreed to take such ac-
12 tions as the Secretary of Defense determines
13 are necessary to ensure that the individual can-
14 not engage or reengage in any terrorist activity;
15 and

16 (F) has agreed to share with the United
17 States any information that—

18 (i) is related to the individual or any
19 associates of the individual; and

20 (ii) could affect the security of the
21 United States, its citizens, or its allies; and

22 (2) includes an assessment, in classified or un-
23 classified form, of the capacity, willingness, and past
24 practices (if applicable) of the foreign country or en-
25 tity in relation to the Secretary's certifications.

1 (c) PROHIBITION IN CASES OF PRIOR CONFIRMED
2 RECIDIVISM.—

3 (1) PROHIBITION.—Except as provided in para-
4 graph (2) and subsection (d), the Secretary of De-
5 fense may not use any amounts authorized to be ap-
6 propriated or otherwise made available to the De-
7 partment of Defense to transfer any individual de-
8 tained at Guantanamo to the custody or control of
9 the individual's country of origin, any other foreign
10 country, or any other foreign entity if there is a con-
11 firmed case of any individual who was detained at
12 United States Naval Station, Guantanamo Bay,
13 Cuba, at any time after September 11, 2001, who
14 was transferred to such foreign country or entity
15 and subsequently engaged in any terrorist activity.

16 (2) EXCEPTION.—Subject to subsection (e),
17 paragraph (1) shall not apply to any action taken by
18 the Secretary to transfer any individual detained at
19 Guantanamo to effectuate an order affecting the dis-
20 position of the individual that is issued by a court
21 or competent tribunal of the United States having
22 lawful jurisdiction (which the Secretary shall notify
23 the appropriate committees of Congress of promptly
24 after issuance).

25 (d) NATIONAL SECURITY WAIVER.—

1 (1) IN GENERAL.—Subject to subsection (e),
2 the Secretary of Defense may waive the applicability
3 to a detainee transfer of a certification requirement
4 specified in subparagraph (D) or (E) of subsection
5 (b)(1) or the prohibition in subsection (c), if the
6 Secretary certifies the rest of the criteria required by
7 subsection (b) for transfers prohibited by subsection
8 (c) and, with the concurrence of the Secretary of
9 State and in consultation with the Director of Na-
10 tional Intelligence, determines that—

11 (A) alternative actions will be taken to ad-
12 dress the underlying purpose of the requirement
13 or requirements to be waived;

14 (B) in the case of a waiver of subpara-
15 graph (D) or (E) of subsection (b)(1), it is not
16 possible to certify that the risks addressed in
17 the paragraph to be waived have been com-
18 pletely eliminated, but the actions to be taken
19 under subparagraph (A) will substantially miti-
20 gate such risks with regard to the individual to
21 be transferred;

22 (C) in the case of a waiver of subsection
23 (c), the Secretary has considered any confirmed
24 case in which an individual who was transferred
25 to the country subsequently engaged in terrorist

1 activity, and the actions to be taken under sub-
2 paragraph (A) will substantially mitigate the
3 risk of recidivism with regard to the individual
4 to be transferred; and

5 (D) the transfer is in the national security
6 interests of the United States.

7 (2) REPORTS.—Whenever the Secretary makes
8 a determination under paragraph (1), the Secretary
9 shall submit to the appropriate committees of Con-
10 gress, not later than 30 days before the transfer of
11 the individual concerned, the following:

12 (A) A copy of the determination and the
13 waiver concerned.

14 (B) A statement of the basis for the deter-
15 mination, including—

16 (i) an explanation why the transfer is
17 in the national security interests of the
18 United States;

19 (ii) in the case of a waiver of para-
20 graph (D) or (E) of subsection (b)(1), an
21 explanation why it is not possible to certify
22 that the risks addressed in the paragraph
23 to be waived have been completely elimi-
24 nated; and

25 (iii) a classified summary of—

1 (I) the individual's record of co-
2 operation while in the custody of or
3 under the effective control of the De-
4 partment of Defense; and

5 (II) the agreements and mecha-
6 nisms in place to provide for con-
7 tinuing cooperation.

8 (C) A summary of the alternative actions
9 to be taken to address the underlying purpose
10 of, and to mitigate the risks addressed in, the
11 paragraph or subsection to be waived.

12 (D) The assessment required by subsection
13 (b)(2).

14 (e) COORDINATION WITH PROHIBITION ON TRANS-
15 FER TO YEMEN.—While the prohibition in section 5 is in
16 effect, the exception in subsection (c)(2) and the waiver
17 authority in subsection (d) shall not apply to authorize
18 the transfer of an individual detained at Guantanamo to
19 Yemen.

20 (f) RECORD OF COOPERATION.—In assessing the risk
21 that an individual detained at Guantanamo will engage in
22 terrorist activity or other actions that could affect the se-
23 curity of the United States if released for the purpose of
24 making a certification under subsection (b) or a waiver

1 under subsection (d), the Secretary of Defense may give
2 favorable consideration to any such individual—

3 (1) who has substantially cooperated with
4 United States intelligence and law enforcement au-
5 thorities, pursuant to a pre-trial agreement, while in
6 the custody of or under the effective control of the
7 Department of Defense; and

8 (2) for whom agreements and effective mecha-
9 nisms are in place, to the extent relevant and nec-
10 essary, to provide for continued cooperation with
11 United States intelligence and law enforcement au-
12 thorities.

13 (g) DEFINITIONS.—In this section:

14 (1) The term “appropriate committees of Con-
15 gress” means—

16 (A) the Committee on Armed Services, the
17 Committee on Appropriations, and the Select
18 Committee on Intelligence of the Senate; and

19 (B) the Committee on Armed Services, the
20 Committee on Appropriations, and the Perma-
21 nent Select Committee on Intelligence of the
22 House of Representatives.

23 (2) The term “individual detained at Guanta-
24 namo” means any individual located at United

1 States Naval Station, Guantanamo Bay, Cuba, as of
2 October 1, 2009, who—

3 (A) is not a citizen of the United States or
4 a member of the Armed Forces of the United
5 States; and

6 (B) is—

7 (i) in the custody or under the control
8 of the Department of Defense; or

9 (ii) otherwise under detention at
10 United States Naval Station, Guantanamo
11 Bay, Cuba.

12 (3) The term “foreign terrorist organization”
13 means any organization so designated by the Sec-
14 retary of State under section 219 of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1189).

16 (h) REPEAL OF SUPERSEDED REQUIREMENTS AND
17 LIMITATIONS.—Section 1035 of the National Defense Au-
18 thorization Act for Fiscal Year 2014 (Public Law 113–
19 66; 127 Stat. 851; 10 U.S.C. 801 note) is repealed.

20 **SEC. 7. REPORT ON CURRENT DETAINEES AT UNITED**
21 **STATES NAVAL STATION, GUANTANAMO BAY,**
22 **CUBA, DETERMINED OR ASSESSED TO BE**
23 **HIGH-RISK OR MEDIUM RISK.**

24 (a) REPORT REQUIRED.—Not later than 60 days
25 after the date of the enactment of this Act, the Secretary

1 of Defense shall submit to the appropriate committees of
2 Congress a report, in unclassified form, setting forth a list
3 of the individuals detained at Guantanamo as of the date
4 of the enactment of this Act who have been determined
5 or assessed by Joint Task Force Guantanamo, at any time
6 before the date of the report, to be a high-risk or medium-
7 risk threat to the United States, its interests, or its allies.

8 (b) ELEMENTS.—The report under subsection (a)
9 shall set forth, for each individual covered by the report,
10 the following:

11 (1) The name and country of origin.

12 (2) The date on which first designated or as-
13 sessed as a high-risk or medium-risk threat to the
14 United States, its interests, or its allies.

15 (3) Whether, as of the date of the report, cur-
16 rently designated or assessed as a high-risk or me-
17 dium-risk threat to the United States, its interests,
18 or its allies.

19 (4) If the designation or assessment changed
20 between the date specified pursuant to paragraph
21 (2) and the date of the report, the year and month
22 in which the designation or assessment changed and
23 the designation or assessment to which changed.

24 (5) To the extent practicable, without jeopard-
25 izing intelligence sources and methods—

1 (A) prior actions in support of terrorism,
2 hostile actions against the United States or its
3 allies, gross violations of human rights, and
4 other violations of international law; and

5 (B) any affiliations with al Qaeda, al
6 Qaeda affiliates, or other terrorist groups.

7 (c) DEFINITIONS.—In this section:

8 (1) The term “appropriate committees of Con-
9 gress” means—

10 (A) the Committee on Armed Services, the
11 Committee on Appropriations, and the Select
12 Committee on Intelligence of the Senate; and

13 (B) the Committee on Armed Services, the
14 Committee on Appropriations, and the Perma-
15 nent Select Committee on Intelligence of the
16 House of Representatives.

17 (2) The term “individual detained at Guanta-
18 namo” means any individual located at United
19 States Naval Station, Guantanamo Bay, Cuba, as of
20 October 1, 2009, who—

21 (A) is not a citizen of the United States or
22 a member of the Armed Forces of the United
23 States; and

24 (B) is—

1 (i) in the custody or under the control
2 of the Department of Defense; or

3 (ii) otherwise under detention at
4 United States Naval Station, Guantanamo
5 Bay, Cuba.

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