

114TH CONGRESS
2D SESSION

S. 2589

To require the Secretary of State to submit to Congress an unclassified notice before the transfer of any individual detained at United States Naval Station, Guantanamo Bay, Cuba, to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2016

Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To require the Secretary of State to submit to Congress an unclassified notice before the transfer of any individual detained at United States Naval Station, Guantanamo Bay, Cuba, to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity, 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 “Terrorist Release
5 Transparency Act”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The detention facilities at United States
4 Naval Station, Guantanamo Bay, Cuba, were estab-
5 lished in 2002 for the purpose of detaining those
6 who plan, authorize, commit, or aid in the planning,
7 authorizing, or committing of acts of terrorism
8 against the United States.

9 (2) The facilities have detained individuals who
10 have killed, maimed, or otherwise harmed innocent
11 civilians and members of the United States Armed
12 Forces, as well as combatants who have received
13 specialized training in the conduct and facilitation of
14 acts of terrorism against the United States, its citi-
15 zens, and its allies. This includes 9/11 mastermind
16 Khalid Sheik Mohammed and scores of other known
17 terrorists.

18 (3) The location of the detention facilities at
19 Guantanamo Bay protects the United States, its
20 citizens, and its allies. No prisoner has ever escaped
21 from Guantanamo Bay.

22 (4) On January 20, 2009, President Barack
23 Obama issued Executive Order 13492 ordering the
24 closure of the detention facilities at Guantanamo
25 Bay, consistent with the national security and for-

1 eign policy interests of the United States and the in-
2 terests of justice.

3 (5) Executive Order 13492 directs the Depart-
4 ment of State to participate in the review of each de-
5 tainee to determine whether it is possible to transfer
6 or release the individual consistent with the national
7 security and foreign policy interests of the United
8 States.

9 (6) The Secretary of State is ordered to expedi-
10 tiously pursue and direct negotiations and diplo-
11 matic efforts with foreign governments as are nec-
12 essary and appropriate to implement Executive
13 Order 13492.

14 (7) Since 2009, the Department of State has
15 played a substantial role in the review and transfer
16 of enemy combatants from the jurisdiction of the
17 United States to the custody or control of foreign
18 governments through the appointment of a Special
19 Envoy for Guantanamo Closure.

20 (8) President Obama has released numerous de-
21 tainees from Guantanamo Bay since taking office,
22 some of whom are known or suspected to have re-
23 engaged in terrorist activity.

24 (9) The transfer of individuals from Guanta-
25 namo Bay to foreign countries sharply increased

1 from 2014 to 2016, bringing the number of detain-
2 ees remaining at Guantanamo Bay to less than 100.

3 (10) The administration often transfers detain-
4 ees to countries in close proximity to their countries
5 of origin. In some cases, prisoners have been relo-
6 cated within blocks of United States diplomatic fa-
7 cilities located in countries with governments that
8 have publicly stated no intention to monitor or re-
9 strict travel of potentially dangerous former detain-
10 ees or that otherwise lack the capacity to mitigate
11 threat potential.

12 (11) The administration is required to notify
13 Congress of its intent to transfer individuals de-
14 tained at Guantanamo pursuant to section 1034 of
15 the National Defense Authorization Act for Fiscal
16 Year 2016 (Public Law 114–92) and certify that
17 among other things, the foreign country to which the
18 individual is proposed to be transferred has taken or
19 agreed to take appropriate steps to substantially
20 mitigate any risk the individual could attempt to re-
21 engage in terrorist activity or otherwise threaten the
22 United States or its allies or interests.

23 (12) While not required by law, the administra-
24 tion has classified these notifications so that only a

1 small number of individuals are able to know their
2 contents.

3 (13) The information contained in such a notice
4 does not warrant classification, given that third-
5 party nations and the detainees themselves possess
6 such information.

7 (14) The decision to classify the notice and cer-
8 tification results in a process that is not trans-
9 parent, thereby preventing the American public from
10 knowing pertinent information about the release of
11 these individuals.

12 **SEC. 3. SENSE OF CONGRESS.**

13 It is the sense of Congress that—

14 (1) the people of the United States deserve to
15 know who is being released from the detention facili-
16 ties at United States Naval Station, Guantanamo
17 Bay, Cuba, their countries of origin, their destina-
18 tions, and the ability of the host nation to prevent
19 recidivism; and

20 (2) the people of the United States deserve
21 transparency in the manner in which the Obama Ad-
22 ministration complies with Executive Order 13492.

1 **SEC. 4. UNCLASSIFIED NOTICE REQUIRED PRIOR TO**
2 **TRANSFER OF DETAINEES AT UNITED**
3 **STATES NAVAL STATION, GUANTANAMO BAY,**
4 **CUBA, TO FOREIGN COUNTRIES AND OTHER**
5 **FOREIGN ENTITIES.**

6 (a) NOTICE REQUIRED.—Not less than 15 days prior
7 to the transfer of any individual detained at Guantanamo
8 to the custody or control of the individual's country of ori-
9 gin, any other foreign country, or any other foreign entity,
10 the Secretary of State shall submit to the appropriate
11 committees of Congress an unclassified notice that in-
12 cludes—

13 (1) the name, country of origin, and country of
14 destination of the individual;

15 (2) the number of individuals detained at Guan-
16 tanamo previously transferred to the country to
17 which the individual is proposed to be transferred;
18 and

19 (3) the number of such individuals who are
20 known or suspected to have reengaged in terrorist
21 activity after being transferred to that country.

22 (b) BRIEFING.—The Secretary of State shall brief
23 the appropriate committees of Congress within 5 days of
24 transmitting the notice required by subsection (a). Such
25 briefing shall include an explanation of why the destina-

1 tion country was chosen for the transferee and an overview
2 of countries being considered for future transfers.

3 (c) RULE OF CONSTRUCTION.—Nothing in this Act
4 shall be construed to be inconsistent with the requirements
5 of section 1034 of the National Defense Authorization Act
6 for Fiscal Year 2016 (Public Law 114–92).

7 (d) DEFINITIONS.—In this section:

8 (1) The term “appropriate committees of Con-
9 gress” means the Committee on Armed Services, the
10 Committee on Appropriations, and the Committee on
11 Foreign Relations of the Senate and the Committee
12 on Armed Services, the Committee on Appropria-
13 tions, and the Committee on Foreign Affairs of the
14 House of Representatives.

15 (2) The term “individual detained at Guanta-
16 namo” has the meaning given such term in section
17 1034(f)(2) of the National Defense Authorization
18 Act for Fiscal Year 2016 (Public Law 114–92).

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