

114TH CONGRESS
2D SESSION

S. RES. 391

Expressing the sense of the Senate to oppose the transfer of foreign enemy combatants from the detention facilities at United States Naval Station, Guantanamo Bay, Cuba, to the United States homeland.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2016

Mr. ROBERTS (for himself, Mr. GARDNER, Mr. SCOTT, Mr. BLUNT, and Mr. MORAN) submitted the following resolution; which was referred to the Committee on Armed Services

RESOLUTION

Expressing the sense of the Senate to oppose the transfer of foreign enemy combatants from the detention facilities at United States Naval Station, Guantanamo Bay, Cuba, to the United States homeland.

Whereas, on January 22, 2009, President Barack Obama issued Executive Order 13492, requiring that the detention facilities housing foreign enemy combatants at United States Naval Station, Guantanamo Bay, Cuba, “shall be closed as soon as practicable, and no later than 1 year from the date of this order”;

Whereas Executive Order 13492 states that “[t]his order shall be implemented consistent with applicable law and subject to the availability of appropriations”;

Whereas the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Public Law 112–10), the Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112–55), the Consolidated Appropriations Act, 2012 (Public Law 112–74), the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6), the Consolidated Appropriations Act, 2014 (Public Law 113–76), the Continuing Appropriations Resolution, 2015 (Public Law 113–164), the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113–235), the Department of Homeland Security Appropriations Act, 2015 (Public Law 114–4), and the Continuing Appropriations Act, 2016 (Public Law 114–53) explicitly prohibit the transfer, release, or assisting in the transfer or release, of detainees at United States Naval Station, Guantanamo Bay, to the United States homeland;

Whereas the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239), the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66), the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291), and the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92) explicitly prohibit the transfer, release, or assisting in the transfer or release, of detainees at United States Naval Station, Guantanamo Bay, to the United States homeland;

Whereas the detention facilities at United States Naval Station, Guantanamo Bay, are legal, safe, and humane, and have been found consistent with international conventions regarding the laws of war;

Whereas, on February 23, 2009, a Department of Defense review found that the detention facilities at United States Naval Station, Guantanamo Bay, complied with the requirements of Common Article 3 of the Geneva Conventions of 1949 regarding the treatment of prisoners of war;

Whereas in 2015, teams from the Department of Defense visited Federal, military, and State-owned prisons in Kansas, Colorado, and South Carolina for the express purpose of relocating detainees at United States Naval Station, Guantanamo Bay, to the United States homeland;

Whereas Fort Leavenworth, Kansas, serves as the intellectual center of the United States Army as home to the Army University, the Command and General Staff College, and the Combined Arms Center;

Whereas Fort Leavenworth operates the United States Disciplinary Barracks and Midwest Joint Regional Corrections Facility, which holds convicted members of the Armed Forces;

Whereas section 812 of title 10, United States Code (article 12 of the Uniform Code of Military Justice), states that “[n]o member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces”;

Whereas the facilities at Fort Leavenworth do not provide a legal alternative for detainment of enemy combatants currently held at United States Naval Station, Guantanamo Bay;

Whereas the sites visited by the Department of Defense teams in Colorado are in close proximity to the densely

populated civilian areas of Pueblo and Colorado Springs, Colorado;

Whereas Colorado Springs is home to the United States Air Force Academy, Peterson Air Force Base, Schriever Air Force Base, and Fort Carson Army Post;

Whereas Peterson Air Force Base hosts the United States Northern Command (NORTHCOM) and the North American Aerospace Defense Command (NORAD), which are strategic military installations, vital to our national defense and military readiness;

Whereas Pueblo is home to the United States Army Pueblo Chemical Weapons Depot;

Whereas the Consolidated Naval Brig, Hanahan, South Carolina, has been visited by Department of Defense teams for consideration as a potential site to relocate dangerous international terrorists currently held in the detention facilities at United States Naval Station, Guantanamo Bay;

Whereas the Consolidated Naval Brig is located less than a mile from an elementary school, and is near other schools and residential neighborhoods;

Whereas the Consolidated Naval Brig is also in close proximity to one of the busiest ports in the United States, the Port of Charleston, as well as the City of Charleston, one of the most popular tourist destinations in the country;

Whereas the Consolidated Naval Brig is also located near the Space and Naval Warfare Systems Command (SPAWAR) Systems Center Atlantic and the Navy Nuclear Power Training Command, which are strategic military installations, vital to our national defense and military readiness;

Whereas Department of Defense efforts to scout locations for the express purpose of transferring detainees at United

States Naval Station, Guantanamo Bay, to the States of Kansas, Colorado, or South Carolina are in violation of current law, which explicitly prohibit the transfer, release, or assisting in the transfer or release, of such detainees to the United States homeland;

Whereas, on November 17, 2015, Attorney General Loretta Lynch stated to Congress that “[w]ith respect to individuals being transferred to the United States, the law currently does not allow that”;

Whereas, on January 26, 2016, Secretary of Defense Ashton Carter stated in an interview that “it’s against the law now to establish another detention facility [in the U.S.], so therefore we have to get the support of Congress”;

Whereas, on February 23, 2016, the Department of Defense issued a report pursuant to section 1035 of the National Defense Authorization Act for Fiscal Year 2016, entitled “Plan for Closing of the Guantanamo Bay Detention Facility”;

Whereas the report states that “the Administration will work with Congress to relocate [detainees] from the Guantanamo Bay detention facility to a secure detention facility in the United States”; and

Whereas the report does not address or attempt to mitigate the risks posed to local communities by the potential transfer of foreign enemy combatants from United States Naval Station, Guantanamo Bay, to United States soil, including to communities in Kansas, Colorado, and South Carolina: Now, therefore, be it

1 *Resolved*, That the Senate—

2 (1) rejects the “Plan to Close Guantanamo Bay
3 Detention Facility”, presented by the President on

1 February 23, 2016, to transfer, release, or assist in
2 the transfer or release of detainees at United States
3 Naval Station, Guantanamo Bay, Cuba, to the
4 United States homeland;

5 (2) determines that any attempt by the Presi-
6 dent to transfer, release, or assist in the transfer or
7 release of detainees at United States Naval Station,
8 Guantanamo Bay, to the United States homeland is
9 in direct violation of the Department of Defense and
10 Full-Year Continuing Appropriations Act, 2011
11 (Public Law 112–10), the Consolidated and Further
12 Continuing Appropriations Act, 2012 (Public Law
13 112–55), the Consolidated Appropriations Act, 2012
14 (Public Law 112–74), the Consolidated and Further
15 Continuing Appropriations Act, 2013 (Public Law
16 113–6), the Consolidated Appropriations Act, 2014
17 (Public Law 113–76), the Continuing Appropria-
18 tions Resolution, 2015 (Public Law 113–164), the
19 Consolidated and Further Continuing Appropria-
20 tions Act, 2015 (Public Law 113–235), the Depart-
21 ment of Homeland Security Appropriations Act,
22 2015 (Public Law 114–4), and the Continuing Ap-
23 propriations Act, 2016 (Public Law 114–53);

24 (3) finds that the detention facility at United
25 States Naval Station, Guantanamo Bay, is the opti-

1 mal location to house dangerous foreign enemy com-
2 batants and should not be closed;

3 (4) asserts that any potential transfer or re-
4 lease of detainees at United States Naval Station,
5 Guantanamo Bay, to the United States homeland
6 represents a threat to United States national secu-
7 rity due to the risk of providing law of war detainees
8 with rights and protections under the United States
9 Constitution, including the potential for release into
10 the United States, and, particularly, a threat to the
11 safety and security of local communities in the
12 States of Kansas, Colorado, and South Carolina;
13 and

14 (5) demands that the President immediately
15 abandon any ill-conceived and illegal plans to trans-
16 fer detainees at United States Naval Station, Guan-
17 tanamo Bay, to the United States homeland without
18 explicit authorization from Congress.

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