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- National Defense Authorization Act For Fiscal Year 2010 (Section 1041)
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NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010

Public Law 111-84
111th Congress

An Act

To authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. <<NOTE: Oct. 28, 2009 - [H.R. 2647]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: National Defense Authorization Act for Fiscal Year 2010.>> assembled,

SEC. 1041. LIMITATION ON USE OF FUNDS FOR THE TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) Release Prohibition. <<NOTE: Time period.>> --During the period beginning on October 1, 2009, and ending on December 31, 2010, the Secretary of Defense may not use any of the amounts authorized to be appropriated in this Act or otherwise available to the Department of Defense to release into the United States, its territories, or possessions, any individual described in subsection (e).

(b) Transfer Limitation. <<NOTE: Time period. Deadline.>> --During the period beginning on October 1, 2009, and ending on December 31, 2010, the Secretary of Defense may not use any of the amounts authorized to be appropriated in this Act or otherwise available to the Department of Defense to transfer any individual described in subsection (e) to the United States, its territories, or possessions, until 45 days after the President has submitted to the congressional defense committees the plan described in subsection (c).

(c) Comprehensive Plan Required. <<NOTE: President.>> --The President shall submit to the congressional defense committees a plan for the disposition of each individual described in subsection (e) who is proposed to be transferred to the United States, its territories, or possessions. Such plan for each individual shall include, at a minimum--

- (1) an assessment of the risk that the individual described in subsection (e) poses to the national security of the United States, its territories, or possessions;
- (2) a proposal for the disposition of each such individual;
- (3) the measures to be taken to mitigate any risks described in paragraph (1);
- (4) the location or locations at which the individual will be held under the proposal for disposition required by paragraph (2);
- (5) the costs associated with executing the plan, including technical and financial assistance required to be provided to State and local law enforcement agencies, if necessary, to carry out the plan;

(6) a summary of the consultation required in subsection (d); and

(7) a certification by the Attorney General that under the plan the individual poses little or no security risk to the United States, its territories, or possessions.

(d) Consultation Required. <<NOTE: President.>> --The President shall consult with the chief executive of the State, the District of Columbia, or the territory or possession of the United States to which the disposition in subsection (c)(2) includes transfer to that State, District of Columbia, or territory or possession.

(e) Detainees Described.--An individual described in this subsection is any individual who is located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who--

(1) is not a citizen of the United States; and

(2) is--

(A) in the custody or under the effective control of the Department of Defense; or

(B) otherwise under detention at the United States Naval Station, Guantanamo Bay, Cuba.

IKE SKELTON NATIONAL DEFENSE AUTHORIZATION ACT FOR
FISCAL YEAR 2011

Public Law 111-383
111th Congress

An Act

To authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. <<NOTE: Jan. 7, 2011 - [H.R. 6523]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Ike Skelton National Defense Authorization Act for Fiscal Year 2011.>>

SEC. 1032. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR
RELEASE OF INDIVIDUALS DETAINED AT
UNITED STATES NAVAL STATION, GUANTANAMO
BAY, CUBA.

None <<NOTE: Khalid Sheikh Mohammed.>> of the funds authorized to be appropriated by this Act for fiscal year 2011 may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who--

- (1) is not a United States citizen or a member of the Armed Forces of the United States; and
- (2) is or was held on or after January 20, 2009, at United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.

SEC. 1033. CERTIFICATION REQUIREMENTS RELATING TO THE TRANSFER OF
INDIVIDUALS DETAINED AT NAVAL STATION,
GUANTANAMO BAY, CUBA, TO FOREIGN
COUNTRIES AND OTHER FOREIGN ENTITIES.

(a) Limitation.--

(1) <<NOTE: Time period. Deadline.>> In general.--Except as provided in paragraph (2), during the one-year period beginning on the date of the enactment of this Act, the Secretary of Defense may not use any of the amounts authorized to be appropriated by this Act or otherwise available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or effective control of the individual's country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) by not later than 30 days before the transfer of the individual.

(2) Exception.--Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal

of the United States having lawful jurisdiction. <<NOTE: Notification.>> The Secretary shall notify Congress promptly upon issuance of any such order.

(b) Certification.--The certification described in this subsection is a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State, that the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred--

(1) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

(2) maintains effective control over each detention facility in which an individual is to be detained if the individual is to be housed in a detention facility;

(3) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

(4) has agreed to take effective steps to ensure that the individual cannot take action to threaten the United States, its citizens, or its allies in the future;

(5) has taken such steps as the Secretary determines are necessary to ensure that the individual cannot engage or re-engage in any terrorist activity; and

(6) has agreed to share any information with the United States that--

(A) is related to the individual or any associates of the individual; and

(B) could affect the security of the United States, its citizens, or its allies.

(c) Prohibition and Waiver in Cases of Prior Confirmed Recidivism.--

(1) <<NOTE: Time period.>> Prohibition.--Except as provided in paragraph (3), during the one-year period beginning on the date of the enactment of this Act, the Secretary of Defense may not use any amount authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or effective control of the individual's country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to the foreign country or entity and subsequently engaged in any terrorist activity.

(2) <<NOTE: Determination.>> Waiver.--The Secretary of Defense may waive the prohibition in paragraph (1) if the Secretary determines that such a transfer is in the national security interests of the United States and includes, as part of the certification described in subsection (b) relating to such transfer, the determination of the Secretary under this paragraph.

(3) Exception.--Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction. <<NOTE: Notification.>> The Secretary shall notify Congress promptly upon issuance of any such order.

(d) Definitions.--For the purposes of this section:

(1) The term "individual detained at Guantanamo" means any individual who is located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who--

(A) is not a citizen of the United States or a

member of the Armed Forces of the United States; and
(B) is--

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

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

(2) The term "foreign terrorist organization" means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

SEC. 1034. PROHIBITION ON THE USE OF FUNDS TO MODIFY OR CONSTRUCT FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) In General.--None of the funds authorized to be appropriated by this Act may be used to construct or modify any facility in the United States, its territories, or possessions to house any individual described in subsection (c) for the purposes of detention or imprisonment in the custody or under the effective control of the Department of Defense.

(b) Exception.--The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) Individuals Described.--An individual described in this subsection is any individual who, as of October 1, 2009, is located at United States Naval Station, Guantanamo Bay, Cuba, and who--

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

(2) is--

(A) in the custody or under the effective control of the Department of Defense; or

(B) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

Public Law 112-81
112th Congress

An Act

To authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. <<NOTE: Dec. 31, 2011 - [H.R. 1540]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: National Defense Authorization Act for Fiscal Year 2012.>>

SEC. 1023. <<NOTE: 10 USC 801 note.>> PROCEDURES FOR PERIODIC
DETENTION REVIEW OF INDIVIDUALS DETAINED
AT UNITED STATES NAVAL STATION,
GUANTANAMO BAY, CUBA.

(a) Procedures Required.--Not <<NOTE: Deadline. Reports.>> later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth procedures for implementing the periodic review process required by Executive Order No. 13567 for individuals detained at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note).

(b) Covered Matters.--The procedures submitted under subsection (a) shall, at a minimum--

(1) clarify that the purpose of the periodic review process is not to determine the legality of any detainee's law of war detention, but to make discretionary determinations whether or not a detainee represents a continuing threat to the security of the United States;

(2) clarify that the Secretary of Defense is responsible for any final decision to release or transfer an individual detained in military custody at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Executive Order referred to in subsection (a), and that in making such a final decision, the Secretary shall consider the recommendation of a periodic review board or review committee established pursuant to such Executive Order, but shall not be bound by any such recommendation;

(3) clarify that the periodic review process applies to any individual who is detained as an unprivileged enemy belligerent at United States Naval Station, Guantanamo Bay, Cuba, at any time; and

(4) ensure that appropriate consideration is given to factors addressing the need for continued detention of the detainee, including--

(A) the likelihood the detainee will resume terrorist activity if transferred or released;

(B) the likelihood the detainee will reestablish ties with al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners if transferred or released;

(C) the likelihood of family, tribal, or government rehabilitation or support for the detainee if transferred or released;

(D) the likelihood the detainee may be subject to trial by military commission; and

(E) any law enforcement interest in the detainee.

(c) Appropriate Committees of Congress Defined.--In this section, the term "appropriate committees of Congress" means--

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 1024. <<NOTE: 10 USC 801 note.>> PROCEDURES FOR STATUS DETERMINATIONS.

(a) In General.--Not <<NOTE: Deadline. Reports.>> later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth the procedures for determining the status of persons detained pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) for purposes of section 1021.

(b) Elements of Procedures.--The procedures required by this section shall provide for the following in the case of any unprivileged enemy belligerent who will be held in long-term detention under the law of war pursuant to the Authorization for Use of Military Force:

(1) A military judge shall preside at proceedings for the determination of status of an unprivileged enemy belligerent.

(2) An unprivileged enemy belligerent may, at the election of the belligerent, be represented by military counsel at proceedings for the determination of status of the belligerent.

(c) Applicability.--The Secretary of Defense is not required to apply the procedures required by this section in the case of a person for whom habeas corpus review is available in a Federal court.

(d) Report on Modification of Procedures.--The Secretary of Defense shall submit to the appropriate committees of Congress a report on any modification of the procedures submitted under this section. The report on any such modification shall be so submitted not later than 60 days before the date on which such modification goes into effect.

(e) Appropriate Committees of Congress Defined.--In this section, the term "appropriate committees of Congress" means--

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 1026. PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) In General.--No amounts authorized to be appropriated or otherwise made available to the Department of Defense for fiscal year 2012 may be used to construct or modify any facility in the United

States, its territories, or possessions to house any individual detained at Guantanamo for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense unless authorized by Congress.

(b) Exception.--The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) Individual Detained at Guantanamo Defined.--In this section, the term 'individual detained at Guantanamo' has the meaning given that term in section 1028(e)(2).

(d) Repeal of Superseded Authority.--Section 1034 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4353) is amended by striking subsections (a), (b), and (c).

SEC. 1027. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR
RELEASE OF INDIVIDUALS DETAINED AT
UNITED STATES NAVAL STATION, GUANTANAMO
BAY, CUBA.

None <<NOTE: Khalid Sheikh Mohammed.>> of the funds authorized to be appropriated by this Act for fiscal year 2012 may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who--

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

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

SEC. 1028. <<NOTE: 10 USC 801 note.>> REQUIREMENTS FOR
CERTIFICATIONS RELATING TO THE TRANSFER
OF DETAINEES AT UNITED STATES NAVAL
STATION, GUANTANAMO BAY, CUBA, TO
FOREIGN COUNTRIES AND OTHER FOREIGN
ENTITIES.

(a) Certification Required Prior to Transfer.--

(1) <<NOTE: Deadline.>> In general.--Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense for fiscal year 2012 to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

(2) Exception.--Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate--

(A) <<NOTE: Notification.>> an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance); or

(B) a pre-trial agreement entered in a military commission case prior to the date of the enactment of this Act.

(b) Certification.--A certification described in this subsection is

a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, that--

(1) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred--

(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

(C) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

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

(E) has taken or agreed to take such actions as the Secretary of Defense determines are necessary to ensure that the individual cannot engage or reengage in any terrorist activity; and

(F) has agreed to share with the United States any information that--

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

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

(2) includes an assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or entity in relation to the Secretary's certifications.

(c) Prohibition in Cases of Prior Confirmed Recidivism.--

(1) Prohibition.--Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to such foreign country or entity and subsequently engaged in any terrorist activity.

(2) Exception.--Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate--

(A) <<NOTE: Notification.>> an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance); or

(B) a pre-trial agreement entered in a military commission case prior to the date of the enactment of this Act.

(d) National Security Waiver.--

(1) <<NOTE: Determination.>> In general.--The Secretary of Defense may waive the applicability to a detainee transfer of a certification requirement specified in subparagraph (D) or (E) of subsection (b)(1) or the prohibition in subsection (c), if the Secretary certifies the rest of the criteria required by

subsection (b) for transfers prohibited by subsection (c) and, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, determines that--

(A) alternative actions will be taken to address the underlying purpose of the requirement or requirements to be waived;

(B) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated, but the actions to be taken under subparagraph (A) will substantially mitigate such risks with regard to the individual to be transferred;

(C) in the case of a waiver of subsection (c), the Secretary has considered any confirmed case in which an individual who was transferred to the country subsequently engaged in terrorist activity, and the actions to be taken under subparagraph (A) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

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

(2) Reports.--Whenever the Secretary makes a determination under paragraph (1), the Secretary shall submit to the appropriate committees of Congress, not later than 30 days before the transfer of the individual concerned, the following:

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

(B) A statement of the basis for the determination, including--

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

(ii) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), an explanation why it is not possible to certify that the risks addressed in the subparagraph to be waived have been completely eliminated.

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

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

(e) Definitions.--In this section:

(1) The term "appropriate committees of Congress" means--

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

(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term "individual detained at Guantanamo" means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who--

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

(B) is--

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

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

(3) The term "foreign terrorist organization" means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

(4) Repeal of Superseded Authority.--Section 1033 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4351) is repealed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

Public Law 112-239
112th Congress

An Act

To authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. <<NOTE: Jan. 2, 2013 - [H.R. 4310]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: National Defense Authorization Act for Fiscal Year 2013.>>

SEC. 1022. PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) In General.--No amounts authorized to be appropriated or otherwise made available to the Department of Defense for fiscal year 2013 may be used to construct or modify any facility in the United States, its territories, or possessions to house any individual detained at Guantanamo for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense unless authorized by Congress.

(b) Exception.--The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) Individual Detained at Guantanamo Defined.--In this section, the term "individual detained at Guantanamo" has the meaning given that term in section 1028(f)(2).

SEC. 1027. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

None <<NOTE: Khalid Sheikh Mohammed.>> of the funds authorized to be appropriated by this Act for fiscal year 2013 may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who--

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

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

SEC. 1028. <<NOTE: 10 USC 801 note.>> REQUIREMENTS FOR CERTIFICATIONS RELATING TO THE TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES.

(a) Certification Required Prior to Transfer.--

(1) <<NOTE: Deadline.>> In general.--Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense for fiscal year 2013 to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

(2) <<NOTE: Notification.>> Exception.--Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

(b) <<NOTE: Consultation.>> Certification.--A certification described in this subsection is a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, that--

(1) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred--

(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

(C) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

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

(E) has taken or agreed to take such actions as the Secretary of Defense determines are necessary to ensure that the individual cannot engage or reengage in any terrorist activity; and

(F) has agreed to share with the United States any information that--

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

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

(2) <<NOTE: Assessment.>> includes an assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or entity in relation to the Secretary's certifications.

(c) Prohibition in Cases of Prior Confirmed Recidivism.--

(1) Prohibition.--Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was

detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to such foreign country or entity and subsequently engaged in any terrorist activity.

(2) <<NOTE: Notification.>> Exception.--Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

(c) National Security Waiver.--

(1) <<NOTE: Consultation. Determination.>> In general.--The Secretary of Defense may waive the applicability to a detainee transfer of a certification requirement specified in subparagraph (D) or (E) of subsection (b)(1) or the prohibition in subsection (c), if the Secretary certifies the rest of the criteria required by subsection (b) for transfers prohibited by (c) and, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, determines that--

(A) alternative actions will be taken to address the underlying purpose of the requirement or requirements to be waived;

(B) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated, but the actions to be taken under subparagraph (A) will substantially mitigate such risks with regard to the individual to be transferred;

(C) in the case of a waiver of subsection (c), the Secretary has considered any confirmed case in which an individual who was transferred to the country subsequently engaged in terrorist activity, and the actions to be taken under subparagraph (A) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

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

(2) Reports.--Whenever the Secretary makes a determination under paragraph (1), the Secretary shall submit to the appropriate committees of Congress, not later than 30 days before the transfer of the individual concerned, the following:

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

(B) A statement of the basis for the determination, including--

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

(ii) in the case of a waiver of paragraph (D) or (E) of subsection (b)(1), an explanation why it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated; and

(iii) a classified summary of--

(I) the individual's record of cooperation while in the custody of or under the effective control of the Department of Defense; and

(II) the agreements and mechanisms in place to provide for continuing

cooperation.

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

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

(e) Record of Cooperation.--In assessing the risk that an individual detained at Guantanamo will engage in terrorist activity or other actions that could affect the security of the United States if released for the purpose of making a certification under subsection (b) or a waiver under subsection (d), the Secretary of Defense may give favorable consideration to any such individual--

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

(2) for whom agreements and effective mechanisms are in place, to the extent relevant and necessary, to provide for continued cooperation with United States intelligence and law enforcement authorities.

(F) Definitions.--In this section:

(1) The term "appropriate committees of Congress" means--

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

(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term "individual detained at Guantanamo" means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who--

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

(B) is--

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

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

(3) The term "foreign terrorist organization" means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

Public Law 113-66
113th Congress

An Act

To authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. <<NOTE: Dec. 26, 2013 - [H.R. 3304]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: National Defense Authorization Act for Fiscal Year 2014.>>

SEC. 1033. PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY
FACILITIES IN THE UNITED STATES TO HOUSE
DETAINEES TRANSFERRED FROM UNITED STATES
NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) <<NOTE: Time period.>> In General.--No amounts authorized to be appropriated or otherwise made available to the Department of Defense may

be used during the period beginning on the date of the enactment of this Act and ending on December 31, 2014, to construct or modify any facility in the United States, its territories, or possessions to house any individual detained at Guantanamo for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense unless authorized by Congress.

(b) Exception.--The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) Individual Detained at Guantanamo Defined.--In this section, the term "individual detained at Guantanamo" has the meaning given that term in section 1035(e)(2).

SEC. 1034. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR
RELEASE OF INDIVIDUALS DETAINED AT
UNITED STATES NAVAL STATION, GUANTANAMO
BAY, CUBA.

No <<NOTE: Khalid Sheikh Mohammed.>> amounts authorized to be appropriated or otherwise made available to the Department of Defense may be used during the period beginning on the date of the enactment of this Act and ending on December 31, 2014, to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who--

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

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

SEC. 1035. <<NOTE: 10 USC 801 note.>> TRANSFERS TO FOREIGN
COUNTRIES OF INDIVIDUALS DETAINED AT
UNITED STATES NAVAL STATION, GUANTANAMO
BAY, CUBA.

(a) Authority to Transfer Under Certain Circumstances.--The Secretary of Defense is authorized to transfer or release any individual detained at Guantanamo to the individual's country of origin, or any other foreign country, if--

(1) <<NOTE: Determination.>> the Secretary determines, following a review conducted in accordance with the requirements of section 1023 of the National Defense Authorization Act for Fiscal Year 2012 (10 U.S.C. 801 note) and Executive Order No. 13567, that the individual is no longer a threat to the national security of the United States; or

(2) such transfer or release outside the United States is to effectuate an order affecting disposition of the individual by a court or competent tribunal of the United States having jurisdiction.

(b) Determination Required Prior to Transfer.--Except as provided in subsection (a), the Secretary of Defense may transfer an individual detained at Guantanamo to the custody or control of the individual's country origin, or any other foreign country, only if the Secretary determines that--

(1) actions that have been or are planned to be taken will substantially mitigate the risk of such individual engaging or reengaging in any terrorist or other hostile activity that threatens the United States or United States persons or interests; and

(2) the transfer is in the national security interest of the United States.

(c) Factors to Be Considered in Making Determination.--In making the determination specified in subsection (b), the Secretary of Defense shall specifically evaluate and take into consideration the following factors:

(1) The recommendations of the Guantanamo Detainee Review Task Force established pursuant to Executive Order No. 13492 and the recommendations of the Periodic Review Boards established pursuant to No. Executive Order 13567, as applicable.

(2) The security situation in the foreign country to which the individual is to be transferred, including whether or not the country is a state sponsor of terrorism, the presence of foreign terrorist groups, and the threat posed by such groups to the United States.

(3) Any confirmed case in which an individual transferred to the foreign country to which the individual is to be transferred subsequently engaged in terrorist or other hostile activity that threatened the United States or United States persons or interests.

(4) Any actions taken by the United States or the foreign country to which the individual is to be transferred, or change in circumstances in such country, that reduce the risk of reengagement of the type described in paragraph (3).

(5) Any assurances provided by the government of the foreign country to which the individual is to be transferred, including that--

(A) such government maintains control over any facility at which the individual is to be detained if the individual is to be housed in a government-controlled facility; and

(B) such government has taken or agreed to take

actions to substantially mitigate the risk of the individual engaging or reengaging in any terrorist or other hostile activity that threatens the United States or United States persons or interests.

(6) An assessment of the capacity, willingness, and past practices (if applicable) of the foreign country described in paragraph (5) in meeting any assurances it has provided, including assurances under paragraph (5) regarding its capacity and willingness to mitigate the risk of reengagement.

(7) Any record of cooperation by the individual to be transferred with United States intelligence and law enforcement authorities, pursuant to a pre-trial agreement, while in the custody of or under the effective control of the Department of Defense, and any agreements and effective mechanisms that may be in place, to the extent relevant and necessary, to provide continued cooperation with United States intelligence and law enforcement authorities.

(8) In the case of an individual who has been tried in a court or competent tribunal of the United States having jurisdiction on charges based on the same conduct that serves as a basis for the determination that the individual is an enemy combatant, whether or not the individual has been acquitted of such charges or has been convicted and has completed serving the sentence pursuant to the conviction.

(d) <<NOTE: Deadline.>> Notification.--The Secretary of Defense shall notify the appropriate committees of Congress of a determination of the Secretary under subsection (a) or (b) not later than 30 days before the transfer or release of the individual under such subsection. Each notification shall include, at a minimum, the following:

(1) A detailed statement of the basis for the transfer or release.

(2) An explanation of why the transfer or release is in the national security interests of the United States.

(3) A description of any actions taken to mitigate the risks of reengagement by the individual to be transferred or released, including any actions taken to address factors relevant to a prior case of reengagement described in subsection (c) (3).

(4) A copy of any Periodic Review Board findings relating to the individual.

(5) A description of the evaluation conducted pursuant to subsection (c), including a summary of the assessment required by paragraph (6) of such subsection.

(e) Definitions.--In this section:

(1) The term "appropriate committees of Congress" means--

(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term "individual detained at Guantanamo" means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who--

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

(B) is--

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

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

(f) Repeal of Superseded Authorities.--The following provisions of law are repealed:

(1) Section 1028 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1567; 10 U.S.C. 801 note).

(2) Section 1028 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1914; 10 U.S.C. 801 note).

CARL LEVIN AND HOWARD P. ``BUCK'' MCKEON NATIONAL
DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

Public Law 113-291
113th Congress

An Act

To authorize appropriations for fiscal year 2015 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. <<NOTE: Dec. 19, 2014 - [H.R. 3979]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Carl Levin and Howard P. ``Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015.>>

SEC. 1032. PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

Section 1033 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 127 Stat. 850) is amended by striking ``December 31, 2014'' and inserting ``December 31, 2015''.

SEC. 1033. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

Section 1034 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 127 Stat. 851) is amended by striking ``December 31, 2014'' and inserting ``December 31, 2015''.