

114TH CONGRESS
2D SESSION

S. _____

To amend section 1034 of the National Defense Authorization Act for Fiscal Year 2016 to strengthen the certification requirements relating to the transfer or release of detainees at United States Naval Station, Guantanamo Bay, Cuba.

IN THE SENATE OF THE UNITED STATES

Mr. MORAN (for himself, Mr. DAINES, Mr. TILLIS, Mr. BLUNT, Mr. RUBIO, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend section 1034 of the National Defense Authorization Act for Fiscal Year 2016 to strengthen the certification requirements relating to the transfer or release of detainees at United States Naval Station, Guantanamo Bay, Cuba.

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 “Protections Against
5 Terrorist Transfer Act of 2016”.

1 **SEC. 2. STRENGTHENING OF CERTIFICATION REQUIRE-**
2 **MENTS RELATING TO THE TRANSFER OR RE-**
3 **LEASE OF DETAINEES AT UNITED STATES**
4 **NAVAL STATION, GUANTANAMO BAY, CUBA.**

5 (a) CERTIFICATION REQUIREMENT GENERALLY.—

6 Subsection (a) of section 1034 of the National Defense
7 Authorization Act for Fiscal Year 2016 (Public Law 114–
8 92; 129 Stat. 969; 10 U.S.C. 801 note) is amended—

9 (1) in the subsection heading, by striking
10 “PRIOR”; and

11 (2) by striking paragraph (1) and inserting the
12 following new paragraph (1):

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), no amount authorized to be appropriated
15 or otherwise made available for the Department of
16 Defense or any other department, agency, or ele-
17 ment of the United States Government may be used
18 after the date of the enactment of the Protections
19 Against Terrorist Transfer Act of 2016 to transfer,
20 release, or assist in the transfer or release of any in-
21 dividual detained at Guantanamo to the custody or
22 control of any foreign country or other foreign entity
23 unless the Secretary of Defense certifies to the ap-
24 propriate committees of Congress that the individual
25 no longer poses a continuing threat to the security
26 of the United States, its citizens, and its interests as

1 described in subsection (b). The certification with re-
2 spect to an individual shall be submitted not later
3 than 30 days after the date on which the Secretary
4 makes the determination that the individual no
5 longer poses a continuing threat to the security of
6 the United States, its citizens, and its interests.”.

7 (b) CERTIFICATION ELEMENTS.—Subsection (b) of
8 such section is amended—

9 (1) by redesignating paragraphs (1) through
10 (4) as paragraphs (2) through (5), respectively;

11 (2) by inserting before paragraph (2), as redesi-
12 gnated by paragraph (1) of this subsection, the fol-
13 lowing new paragraph (1):

14 “(1) the individual to be transferred or released
15 no longer poses a continuing threat to the security
16 of the United States, its citizens, and its interests;”;

17 (3) in paragraph (2), as so redesignated, by in-
18 serting “or release” after “transfer”;

19 (4) by inserting “or released” after “trans-
20 ferred” each place it appears; and

21 (5) in subparagraph (B) of paragraph (4), as so
22 redesignated, by striking “paragraph (2)(C)” and in-
23 serting “paragraph (3)(C)”;

24 (c) BASIS FOR CERTIFICATION.—Such section is fur-
25 ther amended—

1 (1) by redesignating subsections (e) through (f)
2 as subsections (d) through (g), respectively; and

3 (2) by inserting after subsection (b) the fol-
4 lowing new subsection (c):

5 “(c) BASIS FOR CERTIFICATION.—

6 “(1) IN GENERAL.—In making the certification
7 described in subsection (b) with respect to an indi-
8 vidual, the Secretary shall take into account and re-
9 spond to each of the following:

10 “(A) The extent to which the individual
11 was involved in or facilitated terrorist activities,
12 including the extent to which the individual
13 may have planned or participated in specific
14 terrorist attacks.

15 “(B) The conduct of the individual when
16 acting as part of, or substantially supporting,
17 Taliban or al Qaeda forces, or the Islamic State
18 of Iraq and the Levant (ISIL) or any other ter-
19 rorist organization or forces, that are engaged
20 in hostilities against the United States or its co-
21 alition partners.

22 “(C) The level of knowledge, skills, or
23 training possessed by the individual that has
24 been or could be used for terrorist purposes, in-
25 cluding the following:

1 “(i) Training or ability to plan, lead,
2 finance, organize, or execute acts of ter-
3 rorism.

4 “(ii) Training or ability to facilitate
5 the movement or training of terrorists.

6 “(iii) Any specialized training or oper-
7 ational experience, including training in
8 paramilitary tactics, explosives, or weapons
9 of mass casualty.

10 “(D) The nature and extent of the ties of
11 the individual with individual terrorists, ter-
12 rorist organizations, terrorist support networks,
13 or other extremists.

14 “(E) Information pertaining to the likeli-
15 hood that the individual intends to or is likely
16 to engage in terrorist activities upon transfer or
17 release.

18 “(F) Information pertaining to the likeli-
19 hood that the individual will reestablish ties
20 after transfer or release with terrorists, ter-
21 rorist organizations, terrorist support networks,
22 or other extremists that are engaged in hos-
23 tilities against the United States or its coalition
24 partners, and information pertaining to whether

1 the group of which the individual was part at
2 the time of capture is now defunct.

3 “(G) Information pertaining to the des-
4 tination country, including, specifically, the fol-
5 lowing:

6 “(i) The presence of terrorist groups,
7 instability, or other factors in that country
8 that could negatively influence the poten-
9 tial of the individual to engage in terrorist
10 activities upon transfer or release.

11 “(ii) The accessibility and likelihood
12 the individual may contact or seek support
13 from family, tribal, or known associates.

14 “(iii) The likelihood of rehabilitation
15 or support for the individual by the receiv-
16 ing government or entity.

17 “(iv) The availability and credibility of
18 measures by the receiving government or
19 entity to mitigate substantially the as-
20 sessed threat posed by the individual, in-
21 cluding information regarding past de-
22 tainee transfers to that country or entity,
23 if applicable.

1 “(H) The likelihood the individual will be
2 subject to trial by military commission, or any
3 other law enforcement interest in the individual.

4 “(I) The conduct of the individual in the
5 custody of the Department of Defense, includ-
6 ing contact with any individual who is not a de-
7 tainee, behavior, habits, traits, rehabilitation ef-
8 forts, and whether the individual was consid-
9 ered a danger to other detainees or other indi-
10 viduals.

11 “(J) The physical and psychological condi-
12 tion of the individual, as assessed by a licensed
13 professional.

14 “(K) Any other relevant factors bearing on
15 the continuing threat to the security of the
16 United States, its citizens, and its interests
17 posed by the transfer or release of the indi-
18 vidual.

19 “(L) Any other relevant information bear-
20 ing on the national security and foreign policy
21 interests of the United States or the interests
22 of justice.

23 “(2) RECOMMENDATIONS.—In determining
24 whether to make a certification described in sub-
25 section (b) on an individual, the Secretary shall take

1 into account, and include with the certification, the
2 recommendations and military value analyses of the
3 following:

4 “(A) The Chairman of the Joint Chiefs of
5 Staff.

6 “(B) The Chiefs of Staff of the Armed
7 Forces, with respect to the effects of the trans-
8 fer or release on military personnel with a resi-
9 dence for their permanent duty station in the
10 geographic area, or forward deployed forces, in
11 the foreign country concerned.

12 “(C) The commander of the geographic
13 combatant command having the foreign country
14 or entity to which the individual will be trans-
15 ferred or released within its area of operational
16 responsibility.

17 “(D) The Commander of the United States
18 Southern Command.

19 “(3) PROVISION TO INDIVIDUALS.—Each indi-
20 vidual covered by a certification described in sub-
21 section (b) shall be provided an unclassified written
22 summary of the certification, in a language the indi-
23 vidual understands, not earlier than 30 days after
24 the Secretary submits the certification to the appro-
25 priate committees of Congress pursuant to sub-

1 section (a). The summary shall also be provided to
2 the personal representative and private counsel of
3 the individual.”.

4 (d) CONTINUING THREAT DEFINED.—Subsection (g)
5 of such section, as redesignated by subsection (e)(1) of
6 this section, is amended by adding at the end the following
7 new paragraph:

8 “(5) The term ‘continuing threat’, means a
9 threat to the security of the United States that may
10 require any type of security measure by the United
11 States or any other foreign country or other foreign
12 entity associated with the transfer or release of a de-
13 tainee.”.

14 (e) ADDITIONAL CONFORMING AMENDMENTS.—
15 Paragraph (3) of subsection (f) of such section, as so re-
16 designated, is amended—

17 (1) by striking “subsection (b)(2)(C)” and in-
18 serting “subsection (b)(3)(C)”; and

19 (2) by striking “subsection (b)(3)” and insert-
20 ing “subsection (b)(4)”.

21 (f) CLERICAL AMENDMENT.—The heading of such
22 section is amended to read as follows:

1 **“SEC. 1034. CERTIFICATION REQUIREMENTS RELATING TO**
2 **THE TRANSFER OR RELEASE OF DETAINEES**
3 **AT UNITED STATES NAVAL STATION, GUAN-**
4 **TANAMO BAY, CUBA.”**