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2:35p*Kelly A. Ayotte*

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To propose alternative requirements and limitations applicable to individuals detained at United States Naval Station, Guantanamo Bay, Cuba.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

**S. 1197**

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By

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AMENDMENTS intended to be proposed by

*Ayotte, Chambliss, Inhofe, Fischer,  
Fuzzi, Rubio*

Viz:

- 1 Strike section 1031 and insert the following:
- 2 **SEC. 1031. REQUIREMENTS FOR CERTIFICATIONS RELAT-**
- 3 **ING TO THE 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.—

1           (1) IN GENERAL.—Except as provided in para-  
2       graph (2) and subsection (d), the Secretary of De-  
3       fense may not use any amounts authorized to be ap-  
4       propriated or otherwise available to the Department  
5       of Defense to transfer any individual detained at  
6       Guantanamo to the custody or control of the individ-  
7       ual's country of origin, any other foreign country, or  
8       any other foreign entity unless the Secretary sub-  
9       mits to Congress the certification described in sub-  
10      section (b) not later than 30 days before the trans-  
11      fer of the individual.

12           (2) EXCEPTION.—Paragraph (1) shall not  
13      apply to any action taken by the Secretary to trans-  
14      fer any individual detained at Guantanamo to effec-  
15      tuate an order affecting the disposition of the indi-  
16      vidual that is issued by a court or competent tri-  
17      bunal of the United States having lawful jurisdiction  
18      (which the Secretary shall notify Congress of  
19      promptly after issuance).

20           (b) CERTIFICATION.—A certification described in this  
21      subsection is a written certification made by the Secretary  
22      of Defense, with the concurrence of the Secretary of State  
23      and in consultation with the Director of National Intel-  
24      ligence, that—

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

5                   (A) is not a designated state sponsor of  
6           terrorism or a designated foreign terrorist orga-  
7           nization;

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

12                  (C) is not, as of the date of the certifi-  
13          cation, facing a threat that is likely to substan-  
14          tially affect its ability to exercise control over  
15          the individual;

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

20                  (E) has taken or agreed to take such ac-  
21          tions as the Secretary of Defense determines  
22          are necessary to ensure that the individual can-  
23          not engage or reengage in any terrorist activity;  
24          and

1 (F) has agreed to share with the United  
2 States any information that—

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

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

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

11 (c) PROHIBITION IN CASES OF PRIOR CONFIRMED  
12 RECIDIVISM.—

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

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

9       (d) NATIONAL SECURITY WAIVER.—

10           (1) IN GENERAL.—The Secretary of Defense  
11       may waive the applicability to a detainee transfer of  
12       a certification requirement specified in subparagraph  
13       (D) or (E) of subsection (b)(1) or the prohibition in  
14       subsection (c), if the Secretary certifies the rest of  
15       the criteria required by subsection (b) for transfers  
16       prohibited by (c) and, with the concurrence of the  
17       Secretary of State and in consultation with the Di-  
18       rector of National Intelligence, determines that—

19           (A) alternative actions will be taken to ad-  
20       dress the underlying purpose of the requirement  
21       or requirements to be waived;

22           (B) in the case of a waiver of subpara-  
23       graph (D) or (E) of subsection (b)(1), it is not  
24       possible to certify that the risks addressed in  
25       the paragraph to be waived have been com-

1 pletely eliminated, but the actions to be taken  
2 under subparagraph (A) will substantially miti-  
3 gate such risks with regard to the individual to  
4 be transferred;

5 (C) in the case of a waiver of subsection  
6 (c), the Secretary has considered any confirmed  
7 case in which an individual who was transferred  
8 to the country subsequently engaged in terrorist  
9 activity, and the actions to be taken under sub-  
10 paragraph (A) will substantially mitigate the  
11 risk of recidivism with regard to the individual  
12 to be transferred; and

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

15 (2) REPORTS.—Whenever the Secretary makes  
16 a determination under paragraph (1), the Secretary  
17 shall submit to the appropriate committees of Con-  
18 gress, not later than 30 days before the transfer of  
19 the individual concerned, the following:

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

22 (B) A statement of the basis for the deter-  
23 mination, including—

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

4 (ii) in the case of a waiver of para-  
5 graph (D) or (E) of subsection (b)(1), an  
6 explanation why it is not possible to certify  
7 that the risks addressed in the paragraph  
8 to be waived have been completely elimi-  
9 nated; and

10 (iii) a classified summary of—

11 (I) the individual's record of co-  
12 operation while in the custody of or  
13 under the effective control of the De-  
14 partment of Defense; and

15 (II) the agreements and mecha-  
16 nisms in place to provide for con-  
17 tinuing cooperation.

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

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

24 (e) RECORD OF COOPERATION.—In assessing the risk  
25 that an individual detained at Guantanamo will engage in

1 terrorist activity or other actions that could affect the se-  
2 curity of the United States if released for the purpose of  
3 making a certification under subsection (b) or a waiver  
4 under subsection (d), the Secretary of Defense may give  
5 favorable consideration to any such individual—

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

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

16 (f) DEFINITIONS.—In this section:

17 (1) The term “appropriate committees of Con-  
18 gress” means—

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

22 (B) the Committee on Armed Services, the  
23 Committee on Appropriations, and the Perma-  
24 nent Select Committee on Intelligence of the  
25 House of Representatives.



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

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

8                   (B) is—

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

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

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

18       Strike section 1032.

19       Strike section 1033 and insert the following:

1 **SEC. 1033. PROHIBITION ON THE USE OF FUNDS FOR THE**  
2 **TRANSFER OR RELEASE OF INDIVIDUALS DE-**  
3 **TAINED AT UNITED STATES NAVAL STATION,**  
4 **GUANTANAMO BAY, CUBA.**

5 (a) PROHIBITION.—None of the funds authorized to  
6 be appropriated by this Act for fiscal year 2014 may be  
7 used to transfer, release, or assist in the transfer or re-  
8 lease to or within the United States, or the territories or  
9 possessions of the United States, of Khalid Sheikh Mo-  
10 hammed or any other detainee who—

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

13 (2) is or was held on or after January 20,  
14 2009, at United States Naval Station, Guantanamo  
15 Bay, Cuba, by the Department of Defense.

16 (b) EXCEPTION.—The prohibition in subsection (a)  
17 shall not apply to an individual who is transferred to  
18 United States Naval Station, Guantanamo Bay, Cuba,  
19 after the date of the enactment of this Act for the purpose  
20 of interrogation by the United States.

21 At the end of subtitle D of title X, add the following:

1 **SEC. 1035. 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) IN GENERAL.—No amounts authorized to be ap-  
7 propriated or otherwise made available for fiscal year 2014  
8 by this Act or any other Act may be used to construct  
9 or modify any facility in the United States, its territories,  
10 or possessions to house any individual detained at Guanta-  
11 namo for the purposes of detention or imprisonment un-  
12 less authorized by Congress.

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

16 (c) INDIVIDUAL DETAINED AT GUANTANAMO DE-  
17 FINED.—

18 (1) IN GENERAL.—In this section, the term “in-  
19 dividual detained at Guantanamo” means any indi-  
20 vidual located at United States Naval Station,  
21 Guantanamo Bay, Cuba, as of October 1, 2009,  
22 who—

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

26 (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.

6 (2) EXCLUSION.—The term does not mean any  
7 individual transferred to United States Naval Sta-  
8 tion, Guantanamo Bay, Cuba, after October 1,  
9 2009, who was not located at United States Naval  
10 Station, Guantanamo Bay, Cuba, on that date.

11 **SEC. 1036. PROHIBITION ON TRANSFER OR RELEASE TO**  
12 **YEMEN OF INDIVIDUALS DETAINED AT**  
13 **UNITED STATES NAVAL STATION, GUANTA-**  
14 **NAMO BAY, CUBA.**

15 None of the amounts authorized to be appropriated  
16 or otherwise available to the Department of Defense may  
17 be used to transfer, release, or assist in the transfer or  
18 release, during the period beginning on the date of the  
19 enactment of this Act and ending on December 31, 2014,  
20 of any individual detained in the custody or under the con-  
21 trol of the Department of Defense at United States Naval  
22 Station, Guantanamo Bay, Cuba, to the custody or control  
23 of the Republic of Yemen or any entity within Yemen.