

House Votes to Keep Guantanamo Open

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The House passed its version of the 2016 National Defense Authorization Act (2016 NDAA), [H.R. 1735](#), on May 15, 2015. After rejecting a [floor amendment](#) that would have eased Guantanamo detainee transfer restrictions after the Administration's submission of a detailed plan to close the Guantanamo Bay detention facility, the House voted to clamp down on detainee transfers, prohibiting them altogether in certain circumstances. The bill would also [beef up reporting requirements](#) regarding detainee recidivism, and require receipt of a set of unredacted correspondence and documents related to the controversial [transfer of five high-level Taliban detainees to Qatar in exchange for U.S. Army Sergeant Bowe Bergdahl](#), a swap that was [challenged as unlawful](#) by its critics, and limit expenditures by the Office of the Secretary of Defense until their submission is accomplished. The [Administration has objected to the Guantanamo provisions](#) and threatened to recommend a presidential veto if Congress approves them.

Transfer of Guantanamo detainees into the United States. The bill would continue the absolute bar on the transfer of Guantanamo detainees into the United States for any purpose, as well as the prohibition on building or modifying facilities in the United States to house such detainees. [As amended on the floor](#), both prohibitions would apply to all federal government agencies and would extend for two years after the bill's enactment.

Transfer of Guantanamo detainees to foreign countries. The bill would repeal [Section 1035 of the 2014 NDAA](#) (described in a prior [Legal Sidebar post](#) and this [CRS report](#)) and revert to the previous set of restrictions on detainee transfers to foreign countries (as described in more detail in [this CRS report](#)). In essence, unless the detainee has been ordered released by a court, his transfer would require a [certification of specified favorable security circumstances](#), with some criteria subject to a possible [national security waiver](#) (and substitute criteria). However, under the House bill, the Secretary of Defense would have no authority to issue a national security waiver with respect to any detainee who has ever been "determined or assessed to be a detainee referred for prosecution, a detainee approved for detention, or a detainee approved for conditional detention by the [Guantanamo Detainee Review Task Force](#) established pursuant to [Executive Order number 13492](#)." (Conditional detention refers to [Yemeni detainees](#) who were approved to transfer to countries other than their home country due to security conditions there.) These restrictions and certification requirements would continue through December 31, 2016.

The bill would also add some new restrictions. Specifically, the bill would altogether prohibit detainee [transfers to Yemen](#) for two years following its enactment. It would also [prohibit](#), until the end of December 2016, the transfer or release of detainees to areas designated as [combat zones for servicemember tax exemption purposes](#). Under [this definition](#), it appears that no detainees could be transferred to Yemen, Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Afghanistan, Pakistan, Tajikistan, Jordan, Israel, Somalia, Djibouti, Kyrgyzstan, Uzbekistan, Turkey, Egypt, Kosovo or the Philippines, irrespective of any court order or national security waiver.

Required Submission of Documents Related to the Bergdahl-Taliban Five Exchange. [Section 1040](#) of the bill would require the Attorney General and the Secretary of Defense to submit to Congress all correspondence in the possession of their respective departments related to the prisoner swap, especially the [legal analysis](#) of applicable provisions of law to the transfer of detainees to Qatar. [Section 1041](#) would require the submission of unredacted copies of documents that were submitted in response to a request by the House Armed Services Committee as well as future documents responsive to that request, regarding the transfer of detainees to Qatar. Submission of these

materials would be required within 30 days of enactment, and a failure to submit them would result in the withholding of 25 percent of funds available to the Office of the Secretary of Defense.

For a background of issues related to U.S. wartime detention legislation, see [CRS Report R42143, *Wartime Detention Provisions in Recent Defense Authorization Legislation*](#).

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