SEC. __. REPEAL OF RESTRICTIONS ON TRANSFERS AND MILITARY CONSTRUCTION RELATED TO DETAINEES AT GUANTANAMO BAY, CUBA.

The following provisions of law are repealed:

(1) Sections 1031, 1032, and 1034 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 968, 969; 10 U.S.C. 801 note).

(2) Sections 527 and 528 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016 (division B of Public Law 114-113; 129 Stat. ____).

(3) Sections 8103, 8104, and 8105 of the Department of Defense Appropriations Act, 2016 (division C of Public Law 114-113; 129 Stat. ____).

(4) Section 532 of the Department of Homeland Security Appropriations Act, 2016 (division F of Public Law 114-113; 129 Stat. ____).

(5) Section 412 of the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2016 (division J of Public Law 114-113; 129 Stat. ____).

(6) Sections 601 and 602 of the Intelligence Authorization Act for Fiscal Year 2016 (division M of Public Law 114-113; 129 Stat. ____).

Section-by-Section Analysis

This proposal removes statutory limitations that purport to limit the President's ability to exercise his powers as Commander-in-Chief with regard to the detention and transfer of individuals held in the detention facilities at Guantanamo Bay, Cuba. This proposal grants the Executive the authority to study, design, and construct facilities in the United States capable of detaining these individuals and permits the transfer of these individuals to the United States for further medical treatment, detention, trial, and confinement thereafter. This proposal does not alter the legal bases upon which the Government has maintained its legal authority to detain alien unlawful enemy belligerents for the duration of hostilities. Instead, it would restore necessary

and proper flexibility to the President concerning his execution of national security policy priorities.

Changes to Existing Law: This proposal would amend the National Defense Authorization Act for Fiscal Year 2016, the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, the Department of Defense Appropriations Act, 2016, the Department of Homeland Security Appropriations Act, 2016, the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2016, and the Intelligence Authorization Act for Fiscal Year 2016, as follows:

National Defense Authorization Act for Fiscal Year 2016

~~SEC. 1031. PROHIBITION ON USE OF FUNDS FOR TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO THE UNITED STATES.~~

~~No amounts authorized to be appropriated or otherwise made available for 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, 2016, 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. 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.~~

~~(a) IN GENERAL.—No amounts authorized to be appropriated or otherwise made available for 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, 2016, 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 1034(f)(2).~~

~~SEC. 1034. REENACTMENT AND MODIFICATION OF CERTAIN PRIOR REQUIREMENTS FOR CERTIFICATIONS RELATING TO 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) IN GENERAL.—Except as provided in paragraph (2), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise 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 unless the Secretary submits to the appropriate committees of 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 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 the appropriate committees of Congress of promptly after issuance).~~

~~(b) CERTIFICATION.—A certification described in this subsection is a written certification made by the Secretary that—~~

~~(1) the transfer concerned is in the national security interests of the United States;~~
~~(2) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo concerned 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) has taken or agreed to take appropriate steps to substantially mitigate any risk the individual could attempt to reengage in terrorist activity or otherwise threaten the United States or its allies or interests; and~~
~~(D) has agreed to share with the United States any information that is related to the individual;~~
~~(3) if the country to which the individual is to be transferred is a country to which the United States transferred an individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, and such transferred individual subsequently engaged in any terrorist activity, the Secretary has—~~
~~(A) considered such circumstances; and~~
~~(B) determined that the actions to be taken as described in paragraph (2)(C) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and~~

~~(4) includes an intelligence assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or foreign entity concerned in relation to the certification of the Secretary under this subsection.~~

~~(c) COORDINATION WITH PROHIBITION ON TRANSFER TO CERTAIN COUNTRIES.—While the prohibition in section 1033 is in effect, no certification may be made under subsection (b) in connection with the transfer of an individual detained at Guantanamo to a country specified in such section.~~

~~(d) 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 national security of the United States if released for the purpose of making a certification under subsection (b), the Secretary 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.~~

~~(e) REPORT.—Whenever the Secretary makes a certification under subsection (b) with respect to an individual detained at Guantanamo, the Secretary shall submit to the appropriate committees of Congress, together with such certification, a report that shall include, at a minimum, the following:~~

~~(1) A detailed statement of the basis for the transfer of the individual.~~

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

~~(3) A description of actions taken to mitigate the risks of reengagement by the individual as described in subsection (b)(2)(C), including any actions taken to address factors relevant to an applicable prior case of reengagement described in subsection (b)(3).~~

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

~~(5) A copy of the final recommendation by the Guantanamo Detainee Review Task Force established pursuant to Executive Order 13492 relating to the individual and, if applicable, updated information related to any change to such recommendation.~~

~~(6) An assessment whether, as of the date of the certification, the country to which the individual is to be transferred is facing a threat that could substantially affect its ability to exercise control over the individual.~~

~~(7) A classified summary of—~~

~~(A) the individual's record of cooperation, if any, while in the custody of or under the effective control of the Department of Defense; and~~

~~(B) any agreements and mechanisms in place to provide for continuing cooperation.~~

~~(f) 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 Foreign Affairs, 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) The term ''state sponsor of terrorism'' has the meaning given that term in section 301(13) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8541(13)).~~

~~(g) REPEAL OF SUPERSEDED REQUIREMENTS AND LIMITATIONS.—Section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66; 127 Stat. 851; 10 U.S.C. 801 note) is repealed.~~

Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016

~~SEC. 527. None of the funds appropriated or otherwise made available in this or any other Act may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions 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 June 24, 2009, at the United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.~~

~~SEC. 528. (a) None of the funds appropriated or otherwise made available in this or any other Act may be used to construct, acquire, 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) The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.~~

~~(c) An individual described in this subsection is any individual who, as of June 24, 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.~~

Department of Defense Appropriations Act, 2016

~~SEC. 8103. None of the funds appropriated or otherwise made available in this or any other Act may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions 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 June 24, 2009, at United States Naval Station, Guantánamo Bay, Cuba, by the Department of Defense.~~

~~SEC. 8104. (a) None of the funds appropriated or otherwise made available in this or any other Act may be used to construct, acquire, 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) The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantánamo Bay, Cuba.~~

~~(c) An individual described in this subsection is any individual who, as of June 24, 2009, is located at United States Naval Station, Guantánamo 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, Guantánamo Bay, Cuba.~~

~~SEC. 8105. None of the funds appropriated or otherwise made available in this Act may be used to transfer any individual detained at United States Naval Station Guantánamo Bay, Cuba, to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity except in accordance with sections 1033 and 1034 of the National Defense Authorization Act for Fiscal Year 2016.~~

Department of Homeland Security Appropriations Act, 2016

~~SEC. 532. None of the funds appropriated or otherwise made available in this or any other Act may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions 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 June 24, 2009, at the United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.~~

Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2016

~~SEC. 412. (a) IN GENERAL.—None of the funds appropriated or otherwise made available to the Department of Defense in this Act may be used to construct, renovate, or expand any facility in the United States, its territories, or possessions to house any individual detained at United States Naval Station, Guantánamo Bay, Cuba, for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense.~~

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

~~(c) An individual described in this subsection is any individual who, as of June 24, 2009, is located at United States Naval Station, Guantánamo 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, Guantánamo Bay, Cuba.~~

Intelligence Authorization Act for Fiscal Year 2016

~~SEC. 601. PROHIBITION ON USE OF FUNDS FOR TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO THE UNITED STATES.~~

~~No amounts authorized to be appropriated or otherwise made available to an element of the intelligence community may be used during the period beginning on the date of the enactment of this Act and ending on December 31, 2016, to transfer, release, or assist in the transfer or release, to or within the United States, its territories, or possessions, 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. 602. 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 an element of the intelligence community may be used during the period beginning on the date of the enactment of this Act and ending on December 31, 2016, 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'' means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, 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 control of the Department of Defense; or~~

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