

Ron Johnson

AMENDMENT NO. _____

Calendar No. _____

Purpose: To require the Secretary of Defense to submit to Congress an unclassified notice and memorandum of understanding between the United States and the foreign country or entity concerned before the transfer of any individual detained at United States Naval Station, Guantanamo Bay, Cuba, to a foreign country or entity.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 2943

To aut	AMENDMENT NO 4464	ary
ac	<i>Johnson</i>	ary
cc	By _____	art-
m	To: _____	nel
st	<i>S. 2943</i>	ses.
Refer	<i>9</i>	nd
	Page(s)	
	<small>GPO: 2010 63-070 (mac)</small>	

AMENDMENT intended to be proposed by Mr. JOHNSON

Viz:

- 1 Strike section 1027 and insert the following:

1 **SEC. 1027. UNCLASSIFIED NOTICE AND MEMORANDUM OF**
2 **UNDERSTANDING BETWEEN THE UNITED**
3 **STATES AND THE FOREIGN COUNTRY OR EN-**
4 **TITY CONCERNED BEFORE TRANSFER OF**
5 **ANY DETAINEE AT UNITED STATES NAVAL**
6 **STATION, GUANTANAMO BAY, CUBA, TO A**
7 **FOREIGN COUNTRY OR ENTITY.**

8 (a) FINDINGS.—Congress makes the following find-
9 ings:

10 (1) The detention facilities at United States
11 Naval Station, Guantanamo Bay, Cuba, were estab-
12 lished in 2002 for the purpose of detaining those
13 who plan, authorize, commit, or aid in the planning,
14 authorizing, or committing of acts of terrorism
15 against the United States.

16 (2) The facilities have detained individuals who
17 have killed, maimed, or otherwise harmed innocent
18 civilians and members of the United States Armed
19 Forces, as well as combatants who have received
20 specialized training in the conduct and facilitation of
21 acts of terrorism against the United States, its citi-
22 zens, and its allies. This includes 9/11 mastermind
23 Khalid Sheik Mohammed and scores of other known
24 terrorists.

25 (3) The location of the detention facilities at
26 Guantanamo Bay protects the United States, its

1 citizens, and its allies. No prisoner has ever escaped
2 from Guantanamo Bay.

3 (4) On January 22, 2009, President Barack
4 Obama issued Executive Order 13492 ordering the
5 closure of the detention facilities at Guantanamo
6 Bay, consistent with the national security and for-
7 eign policy interests of the United States and the in-
8 terests of justice.

9 (5) Executive Order 13492 directs the Depart-
10 ment of State to participate in the review of each de-
11 tainee to determine whether it is possible to transfer
12 or release the individual consistent with the national
13 security and foreign policy interests of the United
14 States.

15 (6) The Secretary of State is ordered to expedi-
16 tiously pursue and direct negotiations and diplo-
17 matic efforts with foreign governments as are nec-
18 essary and appropriate to implement Executive
19 Order 13492.

20 (7) Since 2009, the Department of State has
21 played a substantial role in the review and transfer
22 of enemy combatants from the jurisdiction of the
23 United States to the custody or control of foreign
24 governments through the appointment of a Special
25 Envoy for Guantanamo Closure.

1 (8) President Obama has released numerous de-
2 tainees from Guantanamo Bay since taking office,
3 some of whom are known or suspected to have re-
4 engaged in terrorist activity.

5 (9) The transfer of individuals from Guanta-
6 namo Bay to foreign countries sharply increased
7 from 2014 to 2016, bringing the number of detain-
8 ees remaining at Guantanamo Bay to less than 100.

9 (10) The administration often transfers detain-
10 ees to countries in close proximity to their countries
11 of origin. In some cases, prisoners have been relo-
12 cated within blocks of United States diplomatic fa-
13 cilities located in countries with governments that
14 have publicly stated no intention to monitor or re-
15 strict travel of potentially dangerous former detain-
16 ees or that otherwise lack the capacity to mitigate
17 threat potential.

18 (11) The administration is required to notify
19 Congress of its intent to transfer individuals de-
20 tained at Guantanamo pursuant to section 1034 of
21 the National Defense Authorization Act for Fiscal
22 Year 2016 (Public Law 114–92) and certify that
23 among other things, the foreign country to which the
24 individual is proposed to be transferred has taken or
25 agreed to take appropriate steps to substantially

1 mitigate any risk the individual could attempt to re-
2 engage in terrorist activity or otherwise threaten the
3 United States or its allies or interests.

4 (12) While not required by law, the administra-
5 tion has classified these notifications so that only a
6 small number of individuals are able to know their
7 contents.

8 (13) The information contained in such a notice
9 does not warrant classification, given that third-
10 party nations and the detainees themselves possess
11 such information.

12 (14) The decision to classify the notice and cer-
13 tification results in a process that is not trans-
14 parent, thereby preventing the American public from
15 knowing pertinent information about the release of
16 these individuals.

17 (b) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that—

19 (1) the people of the United States deserve to
20 know who is being released from the detention facili-
21 ties at United States Naval Station, Guantanamo
22 Bay, Cuba, their countries of origin, their destina-
23 tions, and the ability of the host nation to prevent
24 recidivism; and

1 (2) the people of the United States deserve
2 transparency in the manner in which the Obama Ad-
3 ministration complies with Executive Order 13492.

4 (c) NOTICE REQUIRED.—Not less than 30 days prior
5 to the transfer of any individual detained at Guantanamo
6 to the custody or control of the individual's country of ori-
7 gin, any other foreign country, or any other foreign entity,
8 the Secretary of Defense shall, in consultation with the
9 Secretary of State, submit to the appropriate committees
10 of Congress an unclassified notice that includes—

11 (1) the name, country of origin, and country of
12 destination of the individual;

13 (2) the number of individuals detained at Guan-
14 tanamo previously transferred to the country to
15 which the individual is proposed to be transferred;
16 and

17 (3) the number of such individuals who are
18 known or suspected to have reengaged in terrorist
19 activity after being transferred to that country.

20 (d) BRIEFING.—The Secretary of Defense shall brief
21 the appropriate committees of Congress within 5 days of
22 transmitting the notice required by subsection (c). Such
23 briefing shall include an explanation of why the destina-
24 tion country was chosen for the transferee and an overview
25 of countries being considered for future transfers.

1 (e) MEMORANDUM OF UNDERSTANDING.—Section
2 1034(b) of the National Defense Authorization Act for
3 Fiscal Year 2016 (129 Stat. 969; 10 U.S.C. 801 note)
4 is amended—

5 (1) in paragraph (3), by striking “and” at the
6 end;

7 (2) by redesignating paragraph (4) as para-
8 graph (5); and

9 (3) by inserting after paragraph (3) the fol-
10 lowing new paragraph (4):

11 “(4) both—

12 “(A) the United States Government, on
13 the one hand, and the government of the for-
14 eign country or the recognized leadership of the
15 foreign entity, on the other hand, have entered
16 into a written memorandum of understanding
17 (MOU) regarding the transfer of the individual;
18 and

19 “(B) the memorandum of understanding—

20 “(i) has been transmitted to the ap-
21 propriate committees of Congress in un-
22 classified form (unless the Secretary deter-
23 mines that the memorandum of under-
24 standing must be transmitted to the appro-
25 priate committees of Congress in classified

1 form and, upon making such determina-
2 tion, submits to Congress a detailed un-
3 classified report explaining why the memo-
4 randum of understanding is being kept
5 classified); and

6 “(ii) includes an assessment of the ca-
7 pacity, willingness, and past practices (if
8 applicable) of the foreign country or for-
9 eign entity, as the case may be, with re-
10 spect to the matters certified by the Sec-
11 retary pursuant to paragraphs (2) and (3)
12 that has been transmitted to the appro-
13 priate committee of Congress in unclassi-
14 fied form (unless the Secretary determines
15 that the assessment must be transmitted
16 to the appropriate committees of Congress
17 in classified form and, upon making such
18 determination, submits to Congress a de-
19 tailed unclassified report explaining why
20 the assessment is being kept classified);
21 and”.

22 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to be inconsistent with the require-
24 ments of section 1034 of the National Defense Authoriza-
25 tion Act for Fiscal Year 2016.

1 (g) DEFINITIONS.—In this section:

2 (1) The term “appropriate committees of Con-
3 gress” means—

4 (A) the Committee on Armed Services, the
5 Committee on Appropriations, and the Com-
6 mittee on Foreign Relations of the Senate; and

7 (B) the Committee on Armed Services, the
8 Committee on Appropriations, and the Com-
9 mittee on Foreign Affairs of the House of Rep-
10 resentatives.

11 (2) The term “individual detained at Guanta-
12 namo” has the meaning given such term in section
13 1034(f)(2) of the National Defense Authorization
14 Act for Fiscal Year 2016.