

AMENDMENT TO H.R. 5136, AS REPORTED
OFFERED BY MR. GINGREY OF GEORGIA

At the end of subtitle D of title X, insert the following:

1 **SEC. 10___ . LIMITATION ON TRANSFER OR RELEASE OF IN-**
2 **DIVIDUALS DETAINED AT NAVAL STATION,**
3 **GUANTANAMO BAY, CUBA, TO PREVENT**
4 **THEM FROM REUNITING WITH TERRORIST**
5 **CELLS.**

6 (a) FINDINGS.—Congress makes the following find-
7 ings:

8 (1) Congress passed the Authorization to use
9 Military Force in the wake of the devastating at-
10 tacks on United States soil on September 11, 2001.

11 (2) Many persons captured during Operation
12 Enduring Freedom and otherwise were transferred
13 to Naval Station, Guantanamo Bay, Cuba (herein-
14 after in this section referred to as “Guantanamo
15 Bay”).

16 (3) The detention facility at Guantanamo Bay
17 is the only complex in the world that can safely hold
18 individuals that pose a high-security risk to the
19 United States.

1 (4) Such facility is a secure location away from
2 population centers, provides maximum security re-
3 quired to prevent escape, provides multiple levels of
4 confinement opportunities based on compliance of
5 the detainee, and provides medical care not available
6 to a majority of the population of the world.

7 (5) As of the date of the enactment of this Act,
8 there are 198 individuals detained at Guantanamo
9 Bay.

10 (6) These detainees include terrorist trainers,
11 terrorist financiers, bomb makers, Osama bin
12 Laden's bodyguards, terrorist recruiters and
13 facilitators, and would-be suicide bombers.

14 (7) Detainees remaining at Guantanamo Bay
15 fall into the following three categories:

16 (A) Detainees who have been cleared for
17 release, but for whom the United States has not
18 been able to find a foreign country willing to
19 accept them.

20 (B) Detainees who have been tried, had
21 charges referred to trial, or are awaiting for re-
22 ferral to trial, including for alleged violations of
23 the law of war.

24 (C) Detainees who either pose a high
25 threat to the United States or who have been

1 placed in preventive detention to stop them
2 from returning to the battlefield.

3 (8) Although 779 individuals have been trans-
4 ferred to Guantanamo Bay since early 2002, the
5 substantial majority of Guantanamo Bay detainees
6 have ultimately been transferred to a third country
7 for continued detention or release.

8 (9) Since 2002, of the 779 total detainees, more
9 than 550 have departed Guantanamo Bay for other
10 countries, including Albania, Afghanistan, Australia,
11 Bangladesh, Bahrain, Belgium, Denmark, Egypt,
12 France, Iran, Iraq, Jordan, Kuwait, Kazakhstan,
13 Libya, Maldives, Mauritania, Morocco, Pakistan,
14 Qatar, Russia, Saudi Arabia, Spain, Sweden, Sudan,
15 Tajikistan, Turkey, Uganda, the United Kingdom,
16 United States, and Yemen.

17 (10) In the Department of State publication en-
18 titled "Country Reports on Terrorism 2008," print-
19 ed on April 30, 2009, there are listed 22 nations
20 and regions that are considered to be terrorist safe
21 havens and 4 nations considered to be state sponsors
22 of terrorism.

23 (11) As of the date of the enactment of this
24 Act, individuals who were detained at Guantanamo
25 Bay have been transferred for detention or release

1 to 4 of the 22 regions or nations considered terrorist
2 safe havens and 2 of the 4 nations listed as State
3 Sponsors of terrorism.

4 (12) Iraq is recognized as a nation with ter-
5 rorist activity by the Department of State, and at
6 least 7 individuals who were detained at Guanta-
7 namo Bay have been transferred to or released into
8 Iraq.

9 (13) Afghanistan is recognized as a terrorist
10 safe haven by the Department of State, and at least
11 199 individuals who were detained at Guantanamo
12 Bay have been transferred to or released into Af-
13 ghanistan.

14 (14) Pakistan is recognized as a terrorist safe
15 haven by the Department of State, and at least 63
16 individuals who were detained at Guantanamo Bay
17 have been transferred to or released into Pakistan.

18 (15) Iran is recognized as “the most active
19 state sponsor of terrorism” by the Department of
20 State, and at least 2 individuals who were detained
21 at Guantanamo Bay have been transferred to or re-
22 leased into Iran.

23 (16) Sudan is recognized as a state sponsor of
24 terrorism by the Department of State, and at least

1 9 individuals who were detained at Guantanamo Bay
2 have been transferred to or released into Sudan.

3 (17) Yemen is recognized as a terrorist safe
4 haven by the Department of State, and at least 21
5 individuals who were detained at Guantanamo Bay
6 have been transferred to or released into Yemen.

7 (18) There are approximately 90 Yemeni na-
8 tionals who are detained at Guantanamo Bay as of
9 the date of the enactment of this Act, approximately
10 45 of which have been qualified for repatriation.

11 (19) Said Ali al-Shihri, who is suspected of in-
12 volvement in the bombing of the United States Em-
13 bassy in Yemen on September 17, 2008, was re-
14 leased from detention at Guantanamo Bay to Saudi
15 Arabia in 2007, passed through a Saudi rehabilita-
16 tion program, and has resurfaced as the new deputy
17 leader of al Qaeda in Yemen.

18 (20) On December 25, 2009, there was an at-
19 tempted terrorist attack on American soil when
20 Umar Farouk Abdulmutallab detonated an explosive
21 device that fortunately malfunctioned.

22 (21) Al Qaeda in Yemen has declared that it
23 trained Abdulmutallab, who now has sworn charges
24 against him, in terrorist activity.

1 (22) Although President Obama has tempo-
2 rarily halted the transfer of Guantanamo Bay de-
3 tainees to Yemen, detainees are still permitted to be
4 transferred to other nations recognized by the De-
5 partment of State as being complicit in terrorist ac-
6 tivity, being that they are terrorist safe havens or
7 state sponsors of terrorism.

8 (23) According to the Department of Defense
9 special report entitled "Ex-Guantanamo Detainees
10 Who Have Returned to the Fight" published on
11 April 7, 2009, 14 percent of the former Guantanamo
12 Bay detainees have been confirmed or suspected of
13 reengaging in terrorist activities.

14 (24) The special report also says "of the more
15 than 530 Guantanamo detainees transferred from
16 Department of Defense custody at Guantanamo
17 Bay, 27 were confirmed and 47 were suspected of
18 reengaging in terrorist activity. Between December
19 2008 and March 2009, nine detainees were added to
20 the confirmed list, six of whom were previously on
21 the suspected list."

22 (25) It has been reported that the recidivism
23 rate for Guantanamo Bay detainees that have been
24 transferred or released from the detention facility at

1 Guantanamo Bay, Cuba, has risen from 14 percent
2 to 20 percent since the special report was published.

3 (26) The threat to the national security inter-
4 ests of the United States and the welfare of its peo-
5 ple is at a greater risk when Guantanamo Bay de-
6 tainees are transferred or released into nations rec-
7 ognized as terrorist safe havens or state sponsors of
8 terrorism.

9 (27) The world is globally connected and mobile
10 and allows for the transport of individuals across na-
11 tional and international boundaries with minimal or
12 no supervision.

13 (b) LIMITATION ON TRANSFER AND RELEASE OF IN-
14 DIVIDUALS DETAINED AT NAVAL STATION, GUANTANAMO
15 BAY, CUBA.—No individual who is detained at Naval Sta-
16 tion, Guantanamo Bay, Cuba, as of the date of the enact-
17 ment of this Act, may be transferred or repatriated, for
18 the purposes of release or detention, into a nation or re-
19 gion that is recognized by the Department of State or the
20 Department of Defense as a haven of any manner, kind,
21 or fashion for terrorist activity or that has been classified
22 as a state sponsor of terrorism.

