

Temporary Transfers of Guantanamo Detainees to the United States for Emergency Medical Treatment

Summary

The Senate version of the FY 2018 National Defense Authorization Act (NDAA) would allow the U.S. government to temporarily transfer Guantanamo detainees to the United States for emergency medical treatment.¹ This provision, which has been approved by a bipartisan majority in the Senate for the last four years, is necessary now more than ever.

With an aging detainee population and limited access to medical treatment on base, the medical transfers provision is needed for the United States to comply with its legal obligations to provide adequate medical care to detainees.

This Fact Sheet answers key questions about the medical transfers provision in Section 1035 of the Senate version of the FY18 NDAA and why it should be included in the final bill.

FAQ

- What's in the Senate NDAA's medical transfers provision?**
 - The Secretary of Defense can temporarily transfer Guantanamo detainees to the United States for medical treatment that "is necessary to prevent death or imminent significant injury or harm" to the detainee.

- The required medical treatment must not be available at Guantanamo Bay and the costs of treatment in the United States must not be "excessive and unreasonable."
- The Department of Defense must provide "appropriate security measures for the custody and control" of the detainee while he is in the United States.
- The detainee must be returned to Guantanamo "as soon as feasible" after being medically cleared to travel.
- A detainee cannot challenge a decision not to transfer him to the United States for treatment.
- Detainees receiving medical treatment in the United States would not have any additional rights beyond the rights they have at Guantanamo Bay. For example, they would not be able to apply for asylum or be otherwise eligible for admission into the United States.
- The Secretary of Defense must notify the House and Senate Armed Services Committees of any temporary medical transfer within five days.
- Why is authority to temporarily transfer detainees for medical treatment necessary?**

The NDAA currently bans the U. S. government from transferring any Guantanamo detainee to the United States for any reason, including for emergency medical treatment. While serving as

¹ Sec. 1035, <https://www.congress.gov/115/bills/s1519/BILLS-115s1519pcs.pdf>.

Commander of U.S. Southern Command, General John Kelly expressed concern over the inability to transfer detainees to the United States for medical treatment: “[W]e lack certain specialty medical capabilities necessary to treat potentially complex emergencies and various chronic diseases. In the event a detainee is in need of emergency medical treatment that exceeds on-island capacity, I cannot evacuate him to the United States, as I would a service member.”² The temporary medical transfers provision may also be necessary for the United States to comply with its legal obligation to provide proper medical care for detainees held at Guantanamo.³

What kind of problems are caused by the lack of a medical exception to the ban on detainee transfers to the United States?

To take one example, a neurosurgery team was flown to Guantanamo in September 2017 to conduct emergency spinal surgery on detainee Abd al Hadi al Iraqi (also known as Nashwan al Tamir).⁴ In January, doctors advised that Hadi was at risk of paralysis if he did not receive surgery. It was only when he lost feeling below his waist and became incontinent that doctors were flown to Cuba just as Hurricane Irma was approaching. Had Hadi received proper care in the United States earlier, the government would not have had to take these unnecessary and costly risks.

What other issues are likely to arise without a temporary medical transfers provision?

With an aging population at Guantanamo, detainees are increasingly in need of complex care and treatment for chronic conditions. For example, Saifullah Paracha is 70 years old and suffers from a serious heart condition⁵ and Mustafa al Hawsawi has a rectal prolapse stemming from his treatment while incarcerated in the CIA’s detention and rendition program.⁶ Hawsawi was operated on last October;⁷ however, his surgery was not fully successful and he will require additional medical treatment. Further, an MRI was recently delivered to Guantanamo to conduct a court-ordered brain scan of detainee Abd al Rahim al Nashiri.⁸ The MRI will be at the base for four months, at a cost of \$370,000. The medical needs of these and other detainees, will only increase with time.

Can detainees be transferred to the United States for medical treatment securely?

Yes. The medical transfers provision explicitly requires the Department of Defense to provide “appropriate security measures for the custody and control” of detainees who are transferred to the United States for medical treatment. The practice of transferring individuals held in U.S. detention facilities to hospitals for medical treatment is routinely handled without incident. The United States is more than capable of providing medical care to detainees while ensuring the safety of American citizens. ■

² https://www.armed-services.senate.gov/imo/media/doc/Kelly_03-13-14.pdf.

³ Common Article III of the Geneva Conventions; <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf> at 36.

⁴ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article171882522.html>.

⁵ <http://www.foxnews.com/world/2013/10/10/lawyers-argue-some-guantanamo-bay-prisoners-too-sick-to-keep-locked-up.html>.

⁶ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article118930393.html>.

⁷ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article108484372.html>.

⁸ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article176631141.html>.