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1ST SESSION

S. 551

To improve procedures for the detention and review of status of detainees of the United States in connection with the continuing armed conflict with al Qaeda, the Taliban, and affiliated groups.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2011

Mr. MCCAIN (for himself, Mr. GRAHAM, Mr. LIEBERMAN, Mr. CHAMBLISS, Ms. AYOTTE, and Mr. BROWN of Massachusetts) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To improve procedures for the detention and review of status of detainees of the United States in connection with the continuing armed conflict with al Qaeda, the Taliban, and affiliated groups.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Detainee Pro-
5 cedures Improvement Act of 2011”.

1 **SEC. 2. REAFFIRMATION OF AUTHORITY OF THE PRESI-**
2 **DENT TO DETAIN UNPRIVILEGED ENEMY**
3 **BELLIGERENTS IN CONNECTION WITH THE**
4 **CONTINUING ARMED CONFLICT WITH AL**
5 **QAEDA, THE TALIBAN, AND AFFILIATED**
6 **GROUPS.**

7 (a) **IN GENERAL.**—Congress reaffirms that the
8 United States is in an armed conflict with al Qaeda, the
9 Taliban, and affiliated groups and that those entities con-
10 tinue to pose a threat to the United States and its citizens,
11 both domestically and abroad.

12 (b) **AUTHORITY.**—Congress reaffirms that the Presi-
13 dent is authorized to detain unprivileged enemy belliger-
14 ents in connection with the continuing armed conflict with
15 al Qaeda, the Taliban, and affiliated groups, regardless
16 of the place of capture, until the termination of hostilities.

17 (c) **RULE OF CONSTRUCTION.**—The authority de-
18 scribed in subsection (b) shall not be construed to alter
19 or limit the authority of the President under the Constitu-
20 tion of the United States to detain belligerents in the con-
21 tinuing armed conflict with al Qaeda, the Taliban, and af-
22 filiated groups, or in any other armed conflict.

23 (d) **DEFINITIONS.**—In this section:

24 (1) The term “hostilities” means any conflict
25 subject to the laws of war.

1 (2) The term “privileged belligerent” means an
2 individual belonging to one of the eight categories
3 enumerated in Article 4 of the Geneva Convention
4 Relative to the Treatment of Prisoners of War, done
5 at Geneva August 12, 1949 (6 UST 3316).

6 (3) The term “unprivileged enemy belligerent”
7 means an individual (other than a privileged belligerent)
8 who before, on, or after September 11,
9 2001—

10 (A) has engaged in hostilities against the
11 United States or its coalition partners;

12 (B) has purposefully and materially supported
13 hostilities against the United States or
14 its coalition partners; or

15 (C) was a member of, part of, or operated
16 in a clandestine, covert, or military capacity on
17 behalf of al Qaeda, the Taliban, or an affiliated
18 group against which the Authorization for Use
19 of Military Force (Public Law 107–40) applies.

20 **SEC. 3. MILITARY CUSTODY FOR MEMBERS OF AL QAEDA,**
21 **THE TALIBAN, AND AFFILIATED GROUPS SUB-**
22 **JECT TO THE AUTHORIZATION FOR USE OF**
23 **MILITARY FORCE.**

24 (a) CUSTODY PENDING DISPOSITION UNDER LAW OF
25 WAR.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (3), an unprivileged enemy belligerent shall be
3 held in military custody pending disposition under
4 the law of war.

5 (2) DISPOSITION UNDER LAW OF WAR.—The
6 disposition of a person under the law of war as de-
7 scribed in paragraph (1) may include the following:

8 (A) Long-term detention under the law of
9 war without trial until the end of hostilities
10 against the nations, organizations, and persons
11 subject to the Authorization for Use of Military
12 Force.

13 (B) Trial under chapter 47A of title 10,
14 United States Code (as amended by the Mili-
15 tary Commissions Act of 2009 (title XVIII of
16 Public Law 111–84)).

17 (C) Subject to the availability of appropria-
18 tions—

19 (i) transfer for trial by an alternative
20 court or competent tribunal having lawful
21 jurisdiction; or

22 (ii) transfer to the custody or control
23 of the person’s country of origin, any other
24 foreign country, or any other foreign entity
25 under section 4.

1 (3) WAIVER FOR NATIONAL SECURITY.—The
2 Secretary of Defense may waive the requirement
3 under paragraph (1) if the Secretary submits to
4 Congress certification in writing that such a waiver
5 is in the national security interests of the United
6 States.

7 (b) DEFINITIONS.—In this section:

8 (1) The term “hostilities” means any conflict
9 subject to the laws of war.

10 (2) The term “privileged belligerent” means a
11 person belonging to one of the eight categories enu-
12 merated in Article 4 of the Geneva Convention Rel-
13 ative to the Treatment of Prisoners of War, done at
14 Geneva August 12, 1949 (6 UST 3316).

15 (3) The term “unprivileged enemy belligerent”
16 means a person (other than a privileged belligerent)
17 who before, on, or after September 11, 2001—

18 (A) has engaged in hostilities against the
19 United States or its coalition partners;

20 (B) has purposefully and materially sup-
21 ported hostilities against the United States or
22 its coalition partners; or

23 (C) was a member of, part of, or operated
24 in a clandestine, covert, or military capacity on
25 behalf of al Qaeda, the Taliban, or an affiliated

1 group against which the Authorization for Use
2 of Military Force (Public Law 107–40) applies.

3 (c) EFFECTIVE DATE.—This section shall take effect
4 on the date of the enactment of this Act, and shall apply
5 with respect to unprivileged enemy belligerents who are
6 taken into the custody or brought under the control of
7 the United States on or after that date.

8 **SEC. 4. PERMANENT REQUIREMENTS FOR CERTIFICATIONS**
9 **RELATING TO THE TRANSFER OF DETAINEES**
10 **AT NAVAL STATION GUANTANAMO BAY,**
11 **CUBA, TO FOREIGN COUNTRIES AND OTHER**
12 **FOREIGN ENTITIES.**

13 (a) CERTIFICATION REQUIRED PRIOR TO TRANS-
14 FER.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the Secretary of Defense may not use any
17 amounts authorized to be appropriated or otherwise
18 available to the Department of Defense to transfer
19 any individual detained at Guantanamo to the cus-
20 tody or control of the individual’s country of origin,
21 any other foreign country, or any other foreign enti-
22 ty unless the Secretary submits to Congress the cer-
23 tification described in subsection (b) not later than
24 30 days before the transfer of the individual.

1 (2) EXCEPTION.—Paragraph (1) shall not
2 apply to any action taken by the Secretary to trans-
3 fer any individual detained at Guantanamo to effec-
4 tuate an order affecting the disposition of the indi-
5 vidual that is issued by a court or competent tri-
6 bunal of the United States having lawful jurisdic-
7 tion. The Secretary shall notify Congress promptly
8 upon the issuance of any such order.

9 (b) CERTIFICATION.—A certification described in this
10 subsection is a written certification made by the Secretary
11 of Defense, with the concurrence of the Secretary of State,
12 that the government of the foreign country or the recog-
13 nized leadership of the foreign entity to which the indi-
14 vidual detained at Guantanamo is to be transferred—

15 (1) is not a designated state sponsor of ter-
16 rorism or a designated foreign terrorist organization;

17 (2) maintains control over each detention facil-
18 ity in which the individual is to be detained if the
19 individual is to be housed in a detention facility;

20 (3) is not, as of the date of the certification,
21 facing a threat that is likely to substantially affect
22 its ability to exercise control over the individual;

23 (4) has agreed to take effective actions to en-
24 sure that the individual cannot take action to threat-

1 en the United States, its citizens, or its allies in the
2 future;

3 (5) has taken such actions as the Secretary of
4 Defense determines are necessary to ensure that the
5 individual cannot engage or reengage in any ter-
6 rorist activity; and

7 (6) has agreed to share with the United States
8 any information that—

9 (A) is related to the individual or any asso-
10 ciates of the individual; and

11 (B) could affect the security of the United
12 States, its citizens, or its allies.

13 (c) PROHIBITION AND WAIVER IN CASES OF PRIOR
14 CONFIRMED RECIDIVISM.—

15 (1) PROHIBITION.—Except as provided in para-
16 graph (3), the Secretary of Defense may not use any
17 amounts authorized to be appropriated or otherwise
18 made available to the Department of Defense to
19 transfer any individual detained at Guantanamo to
20 the custody or control of the individual's country of
21 origin, any other foreign country, or any other for-
22 eign entity if there is a confirmed case of any indi-
23 vidual who was detained at United States Naval Sta-
24 tion, Guantanamo Bay, Cuba, at any time after Sep-
25 tember 11, 2001, who was transferred to such for-

1 eign country or entity and subsequently engaged in
2 any terrorist activity.

3 (2) WAIVER.—The Secretary may waive the
4 prohibition in paragraph (1) if the Secretary deter-
5 mines that a transfer otherwise covered by that
6 paragraph is in the national security interests of the
7 United States and includes, as part of the certifi-
8 cation described in subsection (b) relating to such
9 transfer, the determination of the Secretary under
10 this paragraph.

11 (3) EXCEPTION.—Paragraph (1) shall not
12 apply to any action taken by the Secretary to trans-
13 fer any individual detained at Guantanamo to effec-
14 tuate an order affecting the disposition of the indi-
15 vidual that is issued by a court or competent tri-
16 bunal of the United States having lawful jurisdic-
17 tion. The Secretary shall notify Congress promptly
18 upon the issuance of any such order.

19 (d) DEFINITIONS.—In this section:

20 (1) The term “individual detained at Guanta-
21 namo” means any individual located at United
22 States Naval Station, Guantanamo Bay, Cuba, as of
23 October 1, 2009, who—

1 (A) is not a citizen of the United States or
2 a member of the Armed Forces of the United
3 States; and

4 (B) is—

5 (i) in the custody or under the control
6 of the Department of Defense; or

7 (ii) otherwise under detention at
8 United States Naval Station, Guantanamo
9 Bay, Cuba.

10 (2) The term “foreign terrorist organization”
11 means any organization so designated by the Sec-
12 retary of State under section 219 of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1189).

14 (e) REPEAL OF SUPERSEDED AUTHORITY.—Section
15 1033 of the Ike Skelton National Defense Authorization
16 Act for Fiscal Year 2011 (Public Law 111–383) is re-
17 pealed.

18 **SEC. 5. PERMANENT PROHIBITION ON USE OF FUNDS TO**
19 **CONSTRUCT OR MODIFY FACILITIES IN THE**
20 **UNITED STATES TO HOUSE DETAINEES**
21 **TRANSFERRED FROM NAVAL STATION GUAN-**
22 **TANAMO BAY, CUBA.**

23 (a) IN GENERAL.—No amounts authorized to be ap-
24 propriated or otherwise made available to the Department
25 of Defense may be used to construct or modify any facility

1 in the United States, its territories, or possessions to
2 house any individual described in subsection (c) for the
3 purposes of detention or imprisonment in the custody or
4 under the control of the Department of Defense.

5 (b) EXCEPTION.—The prohibition in subsection (a)
6 shall not apply to any modification of facilities at United
7 States Naval Station, Guantanamo Bay, Cuba.

8 (c) COVERED INDIVIDUALS.—An individual described
9 in this subsection is any individual located at United
10 States Naval Station, Guantanamo Bay, Cuba, as of Octo-
11 ber 1, 2009, who—

12 (1) is not a citizen of the United States or a
13 member of the Armed Forces of the United States;
14 and

15 (2) is—

16 (A) in the custody or under the control of
17 the Department of Defense; or

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

20 (d) REPEAL OF SUPERSEDED AUTHORITY.—Section
21 1034 of the Ike Skelton National Defense Authorization
22 Act for Fiscal Year 2011 (Public Law 111–383) is amend-
23 ed by striking subsections (a) and (b).

1 **SEC. 6. UNIFORM PROCEDURES FOR DETENTION REVIEW**
2 **AND STATUS DETERMINATION REGARDING**
3 **SUSPECTED UNPRIVILEGED ENEMY BELLIG-**
4 **ERENTS.**

5 The Detainee Treatment Act of 2005 (title XIV of
6 Public Law 109–163; 10 U.S.C. 801 note) is amended by
7 inserting after section 1405 the following new sections:

8 **“SEC. 1405A. PROCEDURES FOR ANNUAL DETENTION RE-**
9 **VIEW.**

10 “(a) PROCEDURES.—

11 “(1) IN GENERAL.—Not later than 180 days
12 after the date of the enactment of this section, the
13 Secretary of Defense shall submit to the appropriate
14 committees of Congress a report setting forth the
15 procedures for an annual review process to rec-
16 ommend to the President whether to release, trans-
17 fer, or continue to detain in military custody each
18 detainee described in subsection (b), subject to the
19 exceptions in subsection (c).

20 “(2) RECOMMENDATIONS.—Recommendations
21 pursuant to the annual review process shall be made
22 by a panel consisting of military experts in military
23 operations, intelligence, and anti-terrorism matters,
24 and shall not bind the President.

25 “(b) COVERED DETAINEES.—A detainee described in
26 this subsection is any individual who is currently detained

1 by the United States in military custody at United States
2 Naval Station Guantanamo Bay, Cuba, as an unprivileged
3 enemy belligerent.

4 “(c) EXCEPTIONS.—A detainee shall not be treated
5 as a detainee described in subsection (b) under cir-
6 cumstances as follows:

7 “(1) In the case of a detainee upon whom
8 charges have been served in accordance with section
9 948s of title 10, United States Code (as amended by
10 the Military Commissions Act of 2009 (title XVIII
11 of Public Law 111–84)), until after final judgment
12 has been reached on such charges.

13 “(2) In the case of a detainee who has been
14 convicted by a military commission under chapter
15 47A of such title (as so amended) of an offense
16 under subchapter VIII of that chapter (as so amend-
17 ed), until after the detainee has completed his sen-
18 tence.

19 “(3) If the detainee has been designated by the
20 Department of Defense for release or transfer out of
21 United States custody or has been ordered released
22 by a court of competent jurisdiction.

23 “(d) CONSIDERATIONS.—In considering the rec-
24 ommendation to make regarding a detainee under the an-
25 nual review process, a panel shall determine—

1 “(1) whether the detainee represents a con-
2 tinuing threat to the United States or its allies; and

3 “(2) whether there are other factors that form
4 a need for continued detention of the detainee, in-
5 cluding—

6 “(A) the likelihood the detainee will re-
7 sume terrorist activity if transferred or re-
8 leased;

9 “(B) the likelihood the detainee will rees-
10 tablish ties with an organization engaged in
11 hostilities against the United States or its allies
12 if transferred or released;

13 “(C) the likelihood of family, tribal, or gov-
14 ernment rehabilitation or support for the de-
15 tainee if transferred or released;

16 “(D) the likelihood the detainee may be
17 subject to trial by military commission; and

18 “(E) any law enforcement interest in the
19 detainee.

20 “(e) DEFINITIONS.—In this section:

21 “(1) The term ‘appropriate committees of Con-
22 gress’ means—

23 “(A) the Committee on Armed Services
24 and the Select Committee on Intelligence of the
25 Senate; and

1 “(B) the Committee on Armed Services
2 and the Permanent Select Committee on Intel-
3 ligence of the House of Representatives.

4 “(2) The term ‘hostilities’ means any conflict
5 subject to the laws of war.

6 “(3) The term ‘privileged belligerent’ means an
7 individual belonging to one of the eight categories
8 enumerated in Article 4 of the Geneva Convention
9 Relative to the Treatment of Prisoners of War, done
10 at Geneva August 12, 1949 (6 UST 3316).

11 “(4) The term ‘unprivileged enemy belligerent’
12 means an individual (other than a privileged bellig-
13 erent) who before, on, or after September 11,
14 2001—

15 “(A) has engaged in hostilities against the
16 United States or its coalition partners;

17 “(B) has purposefully and materially sup-
18 ported hostilities against the United States or
19 its coalition partners; or

20 “(C) was a member of, part of, or operated
21 in a clandestine, covert, or military capacity on
22 behalf of al Qaeda, the Taliban, or an affiliated
23 group against which the Authorization for Use
24 of Military Force (Public Law 107–40) applies.

1 **“SEC. 1405B. PROCEDURES FOR STATUS DETERMINATION**
2 **OF UNPRIVILEGED ENEMY BELLIGERENTS.**

3 “(a) IN GENERAL.—Not later than 90 days after the
4 date of the enactment of this section, the Secretary of De-
5 fense shall submit to the appropriate committees of Con-
6 gress a report setting forth the procedures for determining
7 the status of unprivileged enemy belligerents under the
8 custody or control of the United States who are captured
9 after the date of the enactment of this section, regardless
10 of the place of capture.

11 “(b) ELEMENTS OF PROCEDURES.—The procedures
12 required by this section shall provide for the following:

13 “(1) A military judge shall preside at pro-
14 ceedings for the determination of status of an
15 unprivileged enemy belligerent.

16 “(2) An unprivileged enemy belligerent may, at
17 the election of the belligerent, be represented by
18 military counsel at proceedings for the determination
19 of status of the belligerent.

20 “(c) REPORT ON MODIFICATION OF PROCEDURES.—
21 The Secretary of Defense shall submit to the appropriate
22 committees of Congress a report on any modification of
23 the procedures submitted under this section. The report
24 on any such modification shall be so submitted not later
25 than 60 days before the date on which such modification
26 goes into effect.

1 “(d) DEFINITIONS.—In this section, the terms ‘ap-
2 appropriate committees of Congress’ and ‘unprivileged
3 enemy belligerent’ have the meaning given such terms in
4 section 1405A(e).”.

5 **SEC. 7. CLARIFICATION OF RIGHT TO PLEAD GUILTY IN**
6 **TRIAL OF CAPITAL OFFENSE BY MILITARY**
7 **COMMISSION.**

8 (a) CLARIFICATION OF RIGHT.—Section 949m(b)(2)
9 of title 10, United States Code, is amended—

10 (1) in subparagraph (C), by inserting before the
11 semicolon the following: “, or a guilty plea was ac-
12 cepted and not withdrawn prior to announcement of
13 the sentence in accordance with section 949i(b) of
14 this title”; and

15 (2) in subparagraph (D), by inserting “on the
16 sentence” after “vote was taken”.

17 (b) PRE-TRIAL AGREEMENTS.—Section 949i of such
18 title is amended by adding at the end the following new
19 subsection:

20 “(c) PRE-TRIAL AGREEMENTS.—(1) A plea of guilty
21 made by the accused that is accepted by a military judge
22 under subsection (b) and not withdrawn prior to an-
23 nouncement of the sentence may form the basis for an
24 agreement reducing the maximum sentence approved by
25 the convening authority, including the reduction of a sen-

1 tence of death to a lesser punishment, or that the case
2 will be referred to a military commission under this chap-
3 ter without seeking the penalty of death. Such an agree-
4 ment may provide for terms and conditions in addition to
5 a guilty plea by the accused in order to be effective.

6 “(2) A plea agreement under this subsection may not
7 provide for a sentence of death imposed by a military
8 judge alone. A sentence of death may only be imposed by
9 the votes of all members of a military commission concur-
10 ring in the sentence of death as provided in section
11 949m(b)(2)(D) of this title.”.

12 **SEC. 8. SENSE OF CONGRESS ON TARGETING OF INDIVID-**
13 **UALS INVOLVED IN TERRORIST ATTACKS**
14 **AGAINST THE UNITED STATES.**

15 (a) FINDINGS.—Congress makes the following find-
16 ings:

17 (1) Al Qaeda and affiliated groups planned and
18 perpetrated the heinous terrorist attacks of Sep-
19 tember 11, 2001, against our Nation, and have
20 planned and attempted numerous other terrorist at-
21 tacks against the United States before and after
22 September 11, 2001.

23 (2) Al Qaeda and its affiliated organizations
24 continue to actively plot attacks against the United
25 States and its citizens.

1 (3) The United States Government has dis-
2 rupted several attacks against the United States and
3 its citizens in recent months, including attacks at-
4 tempting specifically to target civilians.

5 (4) Under the Authorization for Use of Military
6 Force (Public Law 107–40), the President is author-
7 ized to use “all necessary and appropriate force”
8 against nations, terrorist organizations, and individ-
9 uals the President determines planned, authorized,
10 committed, or aided the September 11, 2001, at-
11 tacks in order to prevent future acts of international
12 terrorism against the United States.

13 (5) On May 21, 2009, President Barack Obama
14 stated “[n]ow let me be clear: we are indeed at war
15 with al Qaeda and its affiliates”.

16 (6) The United States has a legitimate right to
17 defend itself against imminent threats to its sov-
18 ereign territory and its citizens.

19 (7) The United States Government has stated
20 its commitment to seek to defend the United States
21 against al Qaeda and affiliated groups by using all
22 instruments of power at its disposal, including diplo-
23 matic, intelligence, military, legal, and economic in-
24 struments.

1 (8) The United States Armed Forces are en-
2 gaged in active combat operations against al Qaeda
3 and its affiliates, including through combat oper-
4 ations in Afghanistan and through lethal action op-
5 erations against legitimate military objectives.

6 (9) Decisions to target legitimate military ob-
7 jectives for lethal action are rightfully made by the
8 President, as Commander in Chief of the United
9 States Armed Forces, and military commanders;

10 (10) The United States Government believes
11 that al Qaeda and its affiliates continue to actively
12 plot terrorist attacks, and recruit terrorist operatives
13 to carry out attacks against the United States.

14 (b) SENSE OF CONGRESS.—It is the sense of Con-
15 gress—

16 (1) that, under the Authorization for Use of
17 Military Force, the President has the authority to
18 use lethal force against legitimate military objec-
19 tives, including nations, organizations, and persons
20 determined by the President to be members of al
21 Qaeda and its affiliated terrorist organizations that
22 plot, facilitate, or undertake terrorist attacks against
23 the United States and its citizens, and that pose an
24 imminent threat by actively plotting or participating
25 in terrorist attacks against the United States or its

1 interests that cannot be otherwise obviated due to a
2 host nation's refusal or inability to arrest, detain, or
3 prosecute the individuals or organizations;

4 (2) that the President, as Commander in Chief
5 of the United States Armed Forces, has the author-
6 ity and responsibility, along with his advisors and
7 commanders of the United States Armed Forces, to
8 identify legitimate military objectives and to deter-
9 mine the most appropriate and efficacious cir-
10 cumstances and tactical means for carrying out le-
11 thal action against legitimate military objectives; and

12 (3) to reaffirm its commitment to ensuring that
13 lethal action is undertaken in accordance with
14 United States obligations under international law,
15 including its obligations to uphold the principles of
16 military necessity, discrimination, and proportion-
17 ality, and to conduct timely, rigorous, and sustained
18 oversight over lethal action policies, decisions, and
19 operations.

20 **SEC. 9. SENSE OF CONGRESS ON JUSTICE FOR VICTIMS**
21 **AND FAMILIES OF THOSE KILLED OR IN-**
22 **JURED IN AL QAEDA ATTACKS ON THE**
23 **UNITED STATES.**

24 (a) FINDINGS.—Congress makes the following find-
25 ings:

1 (1) Al Qaeda planned and carried out attacks
2 against United States embassies in Nairobi, Kenya,
3 and Dar es Salaam, Tanzania, on August 7, 1998,
4 resulting in 224 deaths, including 12 United States
5 citizens and 3 members of the United States Armed
6 Forces, and injuries to approximately 4,085 people.

7 (2) Al Qaeda planned and carried out the
8 bombing of the U.S.S. Cole in Aden, Yemen, on Oc-
9 tober 12, 2000, resulting in the deaths of 17 Amer-
10 ican sailors and serious injuries to 39 other mem-
11 bers of the crew of the U.S.S. Cole. The attack dis-
12 abled an American warship.

13 (3) Al Qaeda and its affiliated groups planned
14 and carried out the attacks against the United
15 States in New York, Virginia, and Pennsylvania on
16 September 11, 2001, resulting in the deaths of near-
17 ly 3,000 men, women, and children. The over-
18 whelming majority of casualties were civilians, in-
19 cluding nationals of over 70 countries. Among the
20 targets attacked was the Pentagon, the official head-
21 quarters of the United States Armed Forces, where
22 184 people were killed.

23 (4) Under the Authorization for Use of Military
24 Force (Public Law 107–40), the President is author-
25 ized to use “all necessary and appropriate force”

1 against those nations, terrorist organizations, and
2 persons the President determines planned, author-
3 ized, committed, or aided the September 11, 2001,
4 attacks in order to prevent future acts of inter-
5 national terrorism against the United States.

6 (5) Al Qaeda and its affiliated groups continue
7 to actively plot attacks against the United States
8 and its citizens, including—

9 (A) the attempted bombing on December
10 25, 2009, of a civilian airliner carrying nearly
11 300 innocent people near Detroit, Michigan;

12 (B) the attempted bombing of Times
13 Square in New York, New York, on May 3,
14 2010; and

15 (C) an attempted parcel bomb attack di-
16 rected to addresses in Chicago, Illinois, that
17 was disrupted outside the United States on Oc-
18 tober 29, 2010.

19 (6) The criminal trial of Ahmed Ghailani, who
20 was captured on July 25, 2004, for his participation
21 in the al Qaeda bombing of the United States em-
22 bassies in East Africa resulted in a conviction on
23 November 17, 2010, on a single count of conspiracy
24 and a finding of not guilty on 284 other counts in-

1 including all counts of murder of United States citi-
2 zens.

3 (7) On May 21, 2009, President Barack Obama
4 stated “[n]ow let me be clear: we are indeed at war
5 with al Qaeda and its affiliates”.

6 (8) The 10-year anniversary of the bombing of
7 the U.S.S. Cole was marked on October 12, 2010,
8 and an alleged key participant in the bombing, Abd
9 al-Rahim al-Nashiri, who was first charged in prepa-
10 ration for trial by military commission in June,
11 2008, remains in detention without charges at
12 United States Naval Station Guantanamo Bay,
13 Cuba.

14 (9) The 10-year anniversary of the al Qaeda at-
15 tacks on the United States on September 11, 2001,
16 occurs this year.

17 (10) The alleged mastermind of those attacks
18 on the United States, Khalid Sheikh Mohammed,
19 was first charged in preparation for trial by military
20 commission on April 15, 2008, and charges were
21 lawfully referred to a military commission on May 9,
22 2008.

23 (11) According to media reports at the time,
24 Khalid Sheikh Mohammed and his co-conspirators
25 were prepared to plead guilty to their participation

1 in those attacks on the United States before a mili-
2 tary commission.

3 (12) Khalid Sheikh Mohammed has made state-
4 ments, including those during his Combatant Status
5 Review Tribunal held at United States Naval Sta-
6 tion Guantanamo Bay, that he is responsible for
7 planning those attacks on the United States.

8 (13) One of the first acts of the Obama Admin-
9 istration upon taking office was to suspend all mili-
10 tary commissions on January 21, 2009.

11 (14) The Attorney General announced on No-
12 vember 13, 2009, that the cases of five detainees
13 held at United States Naval Station Guantanamo
14 Bay should be prosecuted by military commission,
15 including the alleged bomber of the U.S.S. Cole, but
16 all these cases have not gone forward to trial.

17 (15) Congress has twice enacted a statute on
18 military commissions, once at the request of the
19 George W. Bush Administration in 2006, and a sec-
20 ond time, with significant reforms and changes with
21 the assistance of the Department of Justice and the
22 Department of Defense, at the request of the Obama
23 Administration in 2009.

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

1 (1) the military commissions system enacted by
2 Congress and approved by the President is fully con-
3 sistent with the rule of law and the international ob-
4 ligations of the United States, including the Geneva
5 Conventions;

6 (2) the attacks on the United States by al
7 Qaeda and its affiliated groups to which the Author-
8 ization for Use of Military Force applies are viola-
9 tions of the law of war for which trial by military
10 commission has traditionally been used to mete out
11 justice during the history of the United States; and

12 (3) members of al Qaeda and its affiliated
13 groups who have long been detained under the law
14 of war and who are, in the opinion of the cognizant
15 officials, responsible for attacks against the United
16 States, should be tried without further delay by a
17 military commission held at United States Naval
18 Station, Guantanamo Bay, Cuba.

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