

112TH CONGRESS
1ST SESSION

S. 553

To provide for the review of challenges to the detention of unprivileged enemy belligerents and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2011

Mr. GRAHAM (for himself, Mr. CHAMBLISS, Mr. MCCAIN, Ms. AYOTTE, and Mr. BURR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the review of challenges to the detention of unprivileged enemy belligerents and for other purposes.

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 “Detention of
5 Unprivileged Enemy Belligerents Act”.

6 **SEC. 2. STATEMENT OF AUTHORITY.**

7 (a) IN GENERAL.—Congress reaffirms that the
8 United States is in an armed conflict with al Qaeda, the
9 Taliban, and associated forces and that those entities con-

1 tinue to pose a threat to the United States and its citizens,
2 both domestically and abroad.

3 (b) **AUTHORITY.**—Congress reaffirms that the Presi-
4 dent is authorized to detain unprivileged enemy belliger-
5 ents in connection with the continuing armed conflict with
6 al Qaeda, the Taliban, and associated forces, regardless
7 of the place of capture, until the termination of hostilities.

8 (c) **RULE OF CONSTRUCTION.**—The authority under
9 section 2256 of title 28, United States Code (as amended
10 by section 3(a)), shall not be construed to alter or limit
11 the authority of the President under the Constitution of
12 the United States to detain belligerents in the continuing
13 armed conflict with al Qaeda, the Taliban, and associated
14 forces, or in any other armed conflict.

15 **SEC. 3. HABEAS CORPUS REVIEW FOR CERTAIN**
16 **UNPRIVILEGED ENEMY BELLIGERENTS.**

17 (a) **HABEAS CORPUS REVIEW.**—Chapter 153 of title
18 28, United States Code, is amended by striking section
19 2256, as added by section 250 of the Act entitled “An
20 Act to establish a uniform Law on the Subject of Bank-
21 ruptcies”, approved November 6, 1978 (Public Law 95–
22 598; 92 Stat. 2672), and inserting the following:

23 **“§ 2256. Habeas corpus review for certain**
24 **unprivileged enemy belligerents**

25 **“(a) DEFINITIONS.**—In this section—

1 “(1) the term ‘attorney for the Government’
2 means the attorney representing the United States
3 in a habeas corpus proceeding under this section;

4 “(2) the term ‘coalition partner’, with respect
5 to hostilities engaged in by the United States, means
6 any State or armed force directly engaged along
7 with the United States in such hostilities or pro-
8 viding direct operational support to the United
9 States in connection with such hostilities;

10 “(3) the term ‘covered individual’ means an in-
11 dividual who—

12 “(A)(i) is held by the United States at
13 Naval Station, Guantanamo Bay, Cuba; or

14 “(ii) the United States otherwise holds or
15 seeks to hold as an unprivileged enemy bellig-
16 erent; and

17 “(B) is subject to the habeas corpus juris-
18 diction of the Federal courts;

19 “(4) the term ‘hostilities’ means any conflict
20 subject to the laws of war;

21 “(5) the term ‘privileged belligerent’ means an
22 individual belonging to one of the eight categories
23 enumerated in Article 4 of the Geneva Convention
24 Relative to the Treatment of Prisoners of War, done
25 at Geneva August 12, 1949 (6 UST 3316); and

1 “(6) the term ‘unprivileged enemy belligerent’
2 means an individual (other than a privileged belligerent)
3 erent) who—

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

6 “(B) has purposefully and materially supported
7 hostilities against the United States or
8 its coalition partners; or

9 “(C) was a member of, part of, or operated
10 in a clandestine, covert, or military capacity on
11 behalf of the Taliban, al Qaeda, or associated
12 forces.

13 “(b) JURISDICTION AND VENUE.—

14 “(1) IN GENERAL.—The United States District
15 Court for the District of Columbia (in this section
16 referred to as the ‘District Court’) shall have exclusive
17 jurisdiction of, and shall be the exclusive venue
18 for consideration of, all applications for habeas corpus
19 by or on behalf of any covered individual that
20 is pending on or filed on or after the date of enactment
21 of the Detention of Unprivileged Enemy Belligerents Act.
22

23 “(2) SCOPE OF JURISDICTION.—An application
24 for habeas corpus filed under paragraph (1) by or on
25 behalf of a covered individual—

1 “(A) may challenge the legality of the con-
2 tinued detention of the covered individual; and

3 “(B) may not include any other claim re-
4 lating to the detention, transfer, treatment,
5 trial, or conditions of confinement of the cov-
6 ered individual or any other action against the
7 United States or its agents.

8 “(3) CONSOLIDATED MOTIONS PRACTICE.—All
9 applications for a writ of habeas corpus by or on be-
10 half of a covered individual brought after the date
11 of enactment of the Detention of Unprivileged
12 Enemy Belligerents Act shall be consolidated before
13 the Chief Judge of the District Court or a designee
14 of the Chief Judge for consolidated proceedings and
15 determinations on common questions of fact or law,
16 including questions concerning the procedures to be
17 conducted on the applications.

18 “(4) TRANSFER.—Consistent with section
19 1404(a) of this title, any court of the United States
20 shall transfer a case within the exclusive jurisdiction
21 of the District Court under this section.

22 “(c) NOTICE OF ORGANIZATIONS CONSIDERED ASSO-
23 CIATED FORCES.—

24 “(1) IN GENERAL.—In a proceeding instituted
25 by an application for habeas corpus by or on behalf

1 of a covered individual under subsection (b)(1), the
2 Government may provide notice to the District Court
3 that the Government considers a particular organi-
4 zation or organizations to be among the associated
5 forces of al Qaeda or the Taliban.

6 “(2) DEFERENCE TO THE EXECUTIVE.—In de-
7 termining whether a particular organization is
8 among the associated forces of al Qaeda or the
9 Taliban, the District Court shall give utmost def-
10 erence to the inclusion of the organization in a no-
11 tice under this subsection.

12 “(d) PROCEDURES.—

13 “(1) BURDEN OF PROOF.—

14 “(A) IN GENERAL.—In a proceeding insti-
15 tuted by an application for habeas corpus by or
16 on behalf of a covered individual under sub-
17 section (b)(1), the burden shall be on the Gov-
18 ernment to submit a return in the form of a
19 written declaration describing the factual basis
20 upon which the Government is detaining the
21 covered individual.

22 “(B) BURDEN OF PROOF.—The burden
23 shall be on the Government to prove that there
24 is probable cause to believe that the covered in-
25 dividual is an unprivileged enemy belligerent.

1 “(C) RULE OF CONSTRUCTION.—The
2 standard and burden under this paragraph shall
3 not be construed to impose or imply the exist-
4 ence of a standard or burden on the detention
5 power of the President for any other purpose or
6 in any other proceeding.

7 “(D) PRESUMPTIONS RELATED TO MEM-
8 BERSHIP.—

9 “(i) PRESUMPTION RELATED TO AT-
10 TENDANCE AT A TRAINING CAMP.—Upon a
11 determination that the Government has
12 proved that there is probable cause to be-
13 lieve that a covered individual received and
14 executed orders from members of the
15 Taliban, al Qaeda, or associated forces at
16 a military-style training camp, or attended
17 a military-style training camp or guest-
18 house of the Taliban, al Qaeda, or associ-
19 ated forces, there shall be a rebuttable pre-
20 sumption that the covered individual is an
21 unprivileged enemy belligerent.

22 “(ii) PRESUMPTION AGAINST WITH-
23 DRAWAL OF MEMBERSHIP.—

24 “(I) IN GENERAL.—Upon a de-
25 termination that the Government has

1 proved that there is probable cause to
2 believe that a covered individual was
3 an unprivileged enemy belligerent at a
4 particular time prior to the individ-
5 ual's capture, there shall be a rebutta-
6 ble presumption that the covered indi-
7 vidual remained an unprivileged
8 enemy belligerent at the time of such
9 capture.

10 “(II) REBUTTAL OF PRESUMP-
11 TION RELATED TO MEMBERSHIP.—A
12 covered individual may rebut the pre-
13 sumption under subclause (I) only by
14 showing that the covered individual
15 took affirmative action to withdraw
16 from the organization in question
17 prior to the individual's capture.

18 “(III) LIMITATION.—A covered
19 individual who was an unprivileged
20 enemy belligerent at the time of the
21 individual's capture shall remain sub-
22 ject to detention under this chapter,
23 without regard to any argument or
24 evidence that the covered individual

1 sought to withdraw from the organiza-
2 tion in question after such capture.

3 “(E) ORDER.—

4 “(i) DENIAL OF APPLICATION.—If the
5 District Court finds that the Government
6 has met its burden of proof under subpara-
7 graph (B), then the District Court shall
8 deny the application for habeas corpus.

9 “(ii) GRANT OF APPLICATION.—If the
10 District Court finds that the Government
11 has failed to prove that there is probable
12 cause to believe that the covered individual
13 is an unprivileged enemy belligerent, then
14 the District Court shall grant the applica-
15 tion for habeas corpus and order the re-
16 lease of the covered individual.

17 “(2) DISCOVERY.—

18 “(A) SCOPE OF DISCOVERY.—

19 “(i) IN GENERAL.—Subject to sub-
20 paragraph (B), a covered individual may
21 request from the Government as the dis-
22 covery relating to a habeas corpus pro-
23 ceeding under this section, and if requested
24 by a covered individual, the Government
25 shall provide—

1 “(I) any documents or objects in
2 the possession of the Government that
3 the Government relies upon to justify
4 detention;

5 “(II) any reasonably available
6 evidence in the possession of the Gov-
7 ernment that tends materially to un-
8 dermine the information presented to
9 support the justification of the Gov-
10 ernment for detaining the covered in-
11 dividual; and

12 “(III) all statements, whether
13 oral, written, or recorded, made or
14 adopted by the covered individual that
15 are known to the attorney for the
16 Government and directly related to
17 the information in the return sub-
18 mitted by the Government.

19 “(ii) REASONABLY AVAILABLE EVI-
20 DENCE DEFINED.—In this subparagraph,
21 the term ‘reasonably available evidence’
22 means—

23 “(I) evidence contained in any in-
24 formation reviewed by Government at-

1 torneys preparing factual returns for
2 covered individuals; and

3 “(II) evidence discovered by Gov-
4 ernment attorneys while litigating ha-
5 beas corpus petitions filed by covered
6 individuals.

7 “(B) PROTECTION OF NATIONAL SECURITY
8 INFORMATION.—

9 “(i) GENERALLY.—Classified informa-
10 tion shall be protected and is privileged
11 from disclosure in habeas corpus pro-
12 ceedings relating to a covered individual.
13 The rule under this subparagraph applies
14 to all stages of any proceeding relating to
15 an application for habeas corpus filed
16 under subsection (b)(1).

17 “(ii) SUBSTITUTE.—If any informa-
18 tion described in subparagraph (A) is clas-
19 sified, the attorney for the Government
20 shall either—

21 “(I) provide the covered indi-
22 vidual with an adequate substitute, to
23 the extent practicable and consistent
24 with national security; or

1 “(II) make the classified infor-
2 mation available to properly cleared
3 counsel for the covered individual.

4 “(iii) NONDISCLOSURE OF CLASSIFIED
5 INFORMATION.—Under no circumstances
6 shall the Government be required to pro-
7 vide a covered individual, or any other per-
8 son detained as an unprivileged enemy bel-
9 ligerent, with access to classified informa-
10 tion as part of a habeas corpus proceeding
11 under this section.

12 “(iv) SOURCES AND METHODS.—The
13 Government shall not be required to dis-
14 close the classified sources, methods, or ac-
15 tivities by which the Government acquired
16 information described in subparagraph (A).
17 The District Court may require the Gov-
18 ernment to present, to the extent prac-
19 ticable and consistent with national secu-
20 rity, an unclassified summary of the
21 sources, methods, or activities by which the
22 Government acquired such information.

23 “(v) ORDER.—Upon motion of the
24 Government, the District Court shall issue

1 an order to protect against the disclosure
2 of any classified information.

3 “(vi) EX PARTE AND IN CAMERA RE-
4 VIEW.—If the Government seeks to protect
5 classified information from disclosure pur-
6 suant to the protections of this subpara-
7 graph, the court shall review the Govern-
8 ment’s submission ex parte and in camera.

9 “(vii) INTERLOCUTORY APPEAL.—The
10 Government may take an interlocutory ap-
11 peal from a decision of the District Court
12 relating to the disclosure of classified in-
13 formation subject to the same expedited
14 procedures that would apply to such an ap-
15 peal pursuant to section 7 of the Classified
16 Information Procedures Act (18 U.S.C.
17 App.).

18 “(3) EVIDENCE.—

19 “(A) CONSIDERATIONS.—

20 “(i) IN GENERAL.—The District
21 Court shall consider the totality of the cir-
22 cumstances and the evidence as a whole in
23 determining whether the Government has
24 carried its burden as required by this sub-
25 section.

1 “(ii) ANALYSIS.—In considering
2 whether the Government has carried its
3 burden as required by this subsection, the
4 District Court shall not require that each
5 piece of the Government’s evidence bear
6 weight without regard to any other evi-
7 dence in the case.

8 “(B) REBUTTABLE PRESUMPTION OF AU-
9 THENTICITY.—Any evidence relied upon by the
10 Government in its declaration shall be subject
11 to a rebuttable presumption that such evidence
12 is authentic.

13 “(C) EVIDENTIARY HEARING.—

14 “(i) IN GENERAL.—To the maximum
15 extent possible, habeas corpus proceedings
16 under this section shall be decided on the
17 basis of a written return and a written
18 declaration. The District Court may grant
19 an evidentiary hearing only after consid-
20 ering whether such a hearing would enable
21 the covered individual to prove that the ap-
22 plication’s factual allegations, if true,
23 would entitle the covered individual to re-
24 lief. If the record before the District Court
25 refutes the factual allegations in the appli-

1 cation, the District Court is not required
2 to hold a hearing.

3 “(ii) ADMISSIBILITY.—The rules con-
4 cerning the admissibility of evidence in
5 Federal civil or criminal trials shall not
6 apply to the presentation and consideration
7 of information at any evidentiary hearing
8 under this section. The District Court may
9 consider any probative evidence, including
10 hearsay from military, intelligence, and law
11 enforcement sources. The District Court
12 may consider the reliability of hearsay evi-
13 dence, as determined by the totality of the
14 circumstances, for the purposes of deter-
15 mining its probative weight, but not its ad-
16 missibility.

17 “(iii) WITNESS PRODUCTION.—The
18 District Court may grant a motion for oral
19 testimony relating to an evidentiary hear-
20 ing pursuant to this paragraph only if the
21 District Court finds by clear and con-
22 vincing evidence that military and intel-
23 ligence operations would not be harmed by
24 the production of the witness and oral tes-
25 timony would be likely to provide a mate-

1 rial benefit to the resolution by the District
2 Court of the disputed matter.

3 “(4) VOLUNTARINESS OF STATEMENTS.—

4 “(A) EXCLUSION OF STATEMENTS OB-
5 TAINED BY TORTURE OR CRUEL, INHUMAN, OR
6 DEGRADING TREATMENT.—No statement ob-
7 tained by the use of torture or by cruel, inhu-
8 man, or degrading treatment (as defined by sec-
9 tion 1003 of the Detainee Treatment Act of
10 2005 (42 U.S.C. 2000dd)), whether or not
11 under color of law, shall be admissible in a pro-
12 ceeding to consider an application for habeas
13 corpus by or on behalf of any covered individual
14 under this section, except against a person ac-
15 cused of torture or such treatment as evidence
16 that the statement was made.

17 “(B) IN GENERAL.—A statement of the
18 covered individual applying for habeas corpus
19 may be admitted into evidence in a proceeding
20 considering the application for habeas corpus
21 only upon a finding that—

22 “(i) the statement was made incident
23 to lawful conduct during military oper-
24 ations at the point of capture or during
25 closely related active combat engagement,

1 and the interests of justice would best be
2 served by admission of the statement into
3 evidence;

4 “(ii) the statement was made incident
5 to lawful interrogation conducted by au-
6 thorized personnel of—

7 “(I) a Federal, State, or local law
8 enforcement agency; or

9 “(II) a department or agency of
10 the United States;

11 “(iii) the statement was made volun-
12 tarily and incident to lawful interrogation
13 conducted by authorized personnel of a for-
14 eign government, entity, or law enforce-
15 ment or intelligence agency; or

16 “(iv) the statement was voluntarily
17 made.

18 “(C) DETERMINATION OF VOLUNTARI-
19 NESS.—In determining whether a statement
20 was voluntarily made, the District Court shall
21 consider the totality of the circumstances, in-
22 cluding, as appropriate, the following:

23 “(i) The details of the making of the
24 statement, accounting for the cir-
25 cumstances of the conduct of military and

1 intelligence operations during or in relation
2 to hostilities.

3 “(ii) The relevant characteristics of
4 the applicant, such as military training,
5 age, and education level.

6 “(iii) Any lapse of time, change of lo-
7 cation, or change in personnel questioning
8 the applicant between the statement
9 sought to be admitted and any prior ques-
10 tioning of the applicant.

11 “(D) STATEMENTS BEFORE COMBAT STA-
12 TUS REVIEW TRIBUNAL OR ADMINISTRATIVE
13 REVIEW BOARD.—There shall be a rebuttable
14 presumption in favor of the voluntariness of
15 statements against interest made before a Com-
16 bat Status Review Tribunal, Administrative Re-
17 view Board, or comparable review board, or as
18 a result of treatment in compliance with the
19 Army Field Manual.

20 “(E) RELIABILITY.—There shall be a re-
21 buttable presumption in favor of the reliability
22 of statements against interest made during or
23 as a result of interrogation conducted pursuant
24 to the Army Field Manual, or made before a

1 Combat Status Review Tribunal, Administrative
2 Review Board, or comparable review board.

3 “(5) ATTORNEYS.—

4 “(A) IN GENERAL.—For the purposes of
5 habeas corpus proceedings under this section
6 only, a covered individual shall be represented
7 by an attorney if the attorney—

8 “(i) is retained by or on behalf of the
9 covered individual or appointed by the Dis-
10 trict Court solely to provide assistance dur-
11 ing the course of such proceedings;

12 “(ii) has been determined to be eligi-
13 ble for access to classified information that
14 is classified at the level Secret or higher,
15 as required, and has signed the appro-
16 priate nondisclosure agreement for access
17 to such classified information; and

18 “(iii) has signed a written agreement
19 to comply with all applicable regulations or
20 instructions for attorneys in habeas corpus
21 proceedings before the District Court, in-
22 cluding any rules of court for conduct dur-
23 ing the proceedings.

24 “(B) CLASSIFIED INFORMATION.—Any at-
25 torney for a covered individual—

1 “(i) shall protect any classified infor-
2 mation received by or made known to such
3 attorney during the course of representa-
4 tion of the covered individual in accordance
5 with all applicable law governing the pro-
6 tection of classified information; and

7 “(ii) may not divulge such information
8 to any person not authorized to receive
9 such information, including a covered indi-
10 vidual.

11 “(6) VIDEO HEARINGS.—The District Court
12 shall not require the physical presence of a covered
13 individual for the purpose of any proceeding under
14 this section, including any oral testimony or evi-
15 dentiary hearing, although the District Court in its
16 discretion may permit a detainee to participate in
17 certain proceedings through available technological
18 means, if appropriate and consistent with the proce-
19 dures for the protection of classified information and
20 national security under this section and with the
21 conduct of military and intelligence operations.

22 “(e) EXHAUSTION OF MILITARY COMMISSION PRO-
23 CEDURES AND STAY PENDING EXECUTIVE TRANSFER
24 EFFORTS.—

1 “(1) STAY OF APPLICATIONS PENDING MILI-
2 TARY COMMISSIONS.—Any application for habeas
3 corpus that is pending on or after the date of enact-
4 ment of the Detention of Unprivileged Enemy Bel-
5 ligerents Act by or on behalf of a covered individual
6 against whom charges have been sworn under chap-
7 ter 47A of title 10 shall be stayed pending resolution
8 of the proceedings under chapter 47A of title 10.

9 “(2) HABEAS PROCEDURES FOR PERSONS CON-
10 VICTED BY FINAL JUDGMENT OF A MILITARY COM-
11 MISSION.—

12 “(A) IN GENERAL.—Subject to the restric-
13 tions under sections 950g and 950j of title 10,
14 an application for a writ of habeas corpus by or
15 on behalf of a covered individual in custody
16 pursuant to a final judgment of a military com-
17 mission shall not be considered until the appli-
18 cant has exhausted the remedies available under
19 chapter 47A of title 10.

20 “(B) REMEDIES NOT EXHAUSTED.—A cov-
21 ered individual shall not be determined to have
22 exhausted the remedies available under chapter
23 47A of title 10, within the meaning of this sec-
24 tion, if the covered individual has the right
25 under chapter 47A of title 10 to raise, by any

1 available procedure, the question presented in
2 an application for a writ of habeas corpus.

3 “(C) LIMITATIONS.—An application for a
4 writ of habeas corpus by or on behalf of a cov-
5 ered individual in custody pursuant to the judg-
6 ment of a military commission under chapter
7 47A of title 10 shall not be granted with re-
8 spect to any claim that was adjudicated on the
9 merits in military commission proceedings
10 under chapter 47A of title 10 or that could
11 have been raised before the military commis-
12 sion, except where the commission was without
13 jurisdiction to impose such a judgment.

14 “(D) SCOPE OF REVIEW.—Subject to the
15 restrictions under subparagraph (C), in review-
16 ing any other claim on an application for a writ
17 of habeas corpus on behalf of a covered indi-
18 vidual in custody pursuant to the sentence of a
19 military commission under chapter 47A of title
20 10, the District Court shall apply the same def-
21 erence applicable to a court reviewing an appli-
22 cation on behalf of a person in custody pursu-
23 ant to the sentence of a court martial.

24 “(3) STAY PENDING EXECUTIVE TRANSFER EF-
25 FORTS.—Any application for habeas corpus that is

1 pending on or after the date of enactment of the De-
2 tention of Unprivileged Enemy Belligerents Act by
3 or on behalf of a covered individual who has been
4 designated for transfer or release to another coun-
5 try, shall, upon a representation by the attorney for
6 the Government that good faith efforts are being
7 made to facilitate such transfer or release by the Ex-
8 ecutive branch, be stayed pending resolution of such
9 transfer or release efforts.

10 “(f) LIMITS ON SECOND OR SUCCESSIVE APPLICA-
11 TIONS.—

12 “(1) IN GENERAL.—A claim presented in a sec-
13 ond or successive application for habeas corpus
14 under this section that was presented in a prior ap-
15 plication shall be dismissed.

16 “(2) CLAIMS NOT INCLUDED IN PRIOR APPLICA-
17 TION.—A claim presented in a second or successive
18 application for habeas corpus under this section that
19 was not presented in a prior application shall be dis-
20 missed unless—

21 “(A) the factual predicate for the claim
22 could not have been discovered previously
23 through the exercise of due diligence; and

24 “(B) the facts underlying the claim, if
25 proven and viewed in light of the evidence as a

1 whole, would be sufficient to establish by clear
2 and convincing evidence that no reasonable
3 factfinder would have found that the covered in-
4 dividual was lawfully detained.

5 “(3) PROCEDURES FOR SECOND AND SUCCES-
6 SIVE APPLICATIONS.—

7 “(A) IN GENERAL.—The District Court
8 may only consider a second or successive appli-
9 cation for habeas corpus under this section if
10 the court determines that the covered individual
11 makes a prima facie showing that the applica-
12 tion satisfies the requirements under paragraph
13 (2) for consideration of a second or successive
14 application for habeas corpus.

15 “(B) APPEAL.—The Government may take
16 an interlocutory appeal from a decision by the
17 District Court to grant consideration of a sec-
18 ond or successive habeas corpus application
19 under this paragraph to the United States
20 Court of Appeals for the District of Columbia
21 Circuit. The District Court shall stay pro-
22 ceedings pending the decision on an interlocu-
23 tory appeal.

24 “(g) RELEASE.—

1 “(1) COVERED INDIVIDUALS ORDERED RE-
2 LEASED.—

3 “(A) IN GENERAL.—No court shall order
4 the release of a covered individual into the
5 United States, its territories, or possessions.

6 “(B) VISAS AND IMMIGRATION.—The Sec-
7 retary of State shall not issue any visa and the
8 Secretary of Homeland Security shall not admit
9 or provide any type of immigration status to a
10 covered individual described in subparagraph
11 (A) that may permit the covered individual to
12 enter, be admitted, or otherwise be at liberty in
13 the United States.

14 “(C) PAROLE.—Neither the Attorney Gen-
15 eral or the Secretary of Homeland Security may
16 parole into the United States any alien who, as
17 of January 1, 2009, was being detained by the
18 Department of Defense at Guantanamo Bay
19 Naval Base.

20 “(2) TRANSFER.—

21 “(A) IN GENERAL.—If the District Court
22 grants an application for a writ of habeas cor-
23 pus and orders the release of a covered indi-
24 vidual, the covered individual shall be released
25 into the custody of the Department of Home-

1 land Security for the purpose of transferring
2 the individual to the country of citizenship of
3 the individual or to another country. If custody
4 by the Department of Homeland Security is not
5 practicable, or the President or a designee of
6 the President determines that alternative cus-
7 tody pending release is more appropriate, the
8 covered individual may be released into the cus-
9 tody of an alternative department or agency of
10 the Federal Government selected by the Presi-
11 dent or such designee.

12 “(B) TRANSFER.—An individual in the
13 custody of the Department of Homeland Secu-
14 rity or an alternative department or agency
15 pursuant to subparagraph (A) shall be housed
16 separately from aliens detained as unprivileged
17 enemy belligerents by the Department of De-
18 fense and in a manner consistent with the safe-
19 ty and security of United States personnel and
20 citizens. A transfer made pursuant to subpara-
21 graph (A) shall be effected as expeditiously as
22 possible and in a manner that is consistent with
23 the policy set out in section 2242 of the For-
24 eign Relations Authorization Act, Fiscal Years
25 1998 and 1999 (subdivision B of division G of

1 Public Law 105–277; 8 U.S.C. 1231 note), and
2 with the national security interests of the
3 United States.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 153 of such title is amended
6 by adding at the end the following new item:

 “2256. Habeas corpus review for certain unprivileged enemy belligerents.”.

7 **SEC. 4. LIMITATION ON HABEAS CORPUS REVIEW FOR DE-**
8 **TAINED ALIENS AWAITING STATUS DETER-**
9 **MINATION UNDER LAW OF WAR.**

10 Section 2241(e) of title 28, United States Code, is
11 amended by adding at the end the following new para-
12 graph:

13 “(3) No court, justice, or judge shall have jurisdiction
14 to hear or consider an application for a writ of habeas
15 corpus filed by or on behalf of an alien detained by the
16 United States who is awaiting a status determination
17 under the law of war, except in the case of undue delay.”.

○