

117TH CONGRESS
1ST SESSION

S. 2718

To clarify that an authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2021

Mrs. FEINSTEIN (for herself, Mr. LEE, Mr. WHITEHOUSE, Mr. CRUZ, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To clarify that an authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States, 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 “Due Process Guar-
5 antee Act”.

1 **SEC. 2. PROHIBITION ON THE INDEFINITE DETENTION OF**
2 **CITIZENS AND LAWFUL PERMANENT RESI-**
3 **DENTS.**

4 (a) LIMITATION ON DETENTION.—

5 (1) IN GENERAL.—Section 4001(a) of title 18,
6 United States Code, is amended—

7 (A) by striking “No citizen” and inserting
8 the following:

9 “(1) No citizen or lawful permanent resident of the
10 United States”; and

11 (B) by adding at the end the following:

12 “(2) Any Act of Congress that authorizes an impris-
13 onment or detention described in paragraph (1) shall be
14 consistent with the Constitution and expressly authorize
15 such imprisonment or detention.”.

16 (2) APPLICABILITY.—Nothing in section
17 4001(a)(2) of title 18, United States Code, as added
18 by paragraph (1)(B), may be construed to limit, nar-
19 row, abolish, or revoke any detention authority con-
20 ferred by statute, declaration of war, authorization
21 to use military force, or similar authority effective
22 prior to the date of the enactment of this Act.

23 (b) RELATIONSHIP TO AN AUTHORIZATION TO USE
24 MILITARY FORCE, DECLARATION OF WAR, OR SIMILAR
25 AUTHORITY.—Section 4001 of title 18, United States
26 Code, as amended by subsection (a) is further amended—

1 (1) by redesignating subsection (b) as sub-
2 section (c); and

3 (2) by inserting after subsection (a) the fol-
4 lowing:

5 “(b)(1) No United States citizen or lawful permanent
6 resident who is apprehended in the United States may be
7 imprisoned or otherwise detained without charge or trial
8 unless such imprisonment or detention is expressly author-
9 ized by an Act of Congress.

10 “(2) A general authorization to use military force, a
11 declaration of war, or any similar authority, on its own,
12 may not be construed to authorize the imprisonment or
13 detention without charge or trial of a citizen or lawful per-
14 manent resident of the United States apprehended in the
15 United States.

16 “(3) Paragraph (2) shall apply to an authorization
17 to use military force, a declaration of war, or any similar
18 authority enacted before, on, or after the date of the en-
19 actment of the Due Process Guarantee Act.

20 “(4) This section may not be construed to authorize
21 the imprisonment or detention of a citizen of the United
22 States, a lawful permanent resident of the United States,
23 or any other person who is apprehended in the United
24 States.”.

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