

107TH CONGRESS
1ST SESSION

H. R. 3564

To authorize the limited use of military tribunals absent a war declared by Congress in cases arising out of acts of international terrorism committed in the United States.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2001

Mr. BARR of Georgia introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize the limited use of military tribunals absent a war declared by Congress in cases arising out of acts of international terrorism committed in the United States.

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 “Terrorism Tribunal
5 Act of 2001”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) The Authorization for Use of Military Force
2 (Public Law 107–40) provides limited presidential
3 authority related only to the use of force against
4 those nations, organizations, or persons the Presi-
5 dent determines planned, authorized, committed, or
6 aided the terrorist attacks against the United States
7 that occurred on September 11, 2001.

8 (2) The Congress has not enacted a declaration
9 of war to address all aspects of responding to the at-
10 tacks of September 11, 2001.

11 (3) The Presidential Military Order of Novem-
12 ber 13, 2001 provides for the detention, treatment,
13 and trial of certain non-citizens in the war against
14 terrorism while the United States is in a state of
15 armed conflict, not under formal declaration of war.

16 (4) Article 1, section 8 of the Constitution pro-
17 vides that the Congress shall have the power to con-
18 stitute tribunals inferior to the Supreme Court.

19 (b) PURPOSE.—It is the purpose of this Act—

20 (1) to support the President and the United
21 States Armed Forces in their actions to deter and
22 prevent acts of international terrorism;

23 (2) to provide the appropriate mechanisms for
24 the United States to prosecute individuals suspected

1 of committing or supporting acts of international
2 terrorism; and

3 (3) to establish the proper statutory authority
4 for the President to convene military tribunals ab-
5 sent a declaration of war.

6 **SEC. 3. AUTHORITY TO USE MILITARY TRIBUNALS IN CASES**
7 **ARISING OUT OF INTERNATIONAL TER-**
8 **RORISM ABSENT A WAR DECLARED BY CON-**
9 **GRESS.**

10 (a) IN GENERAL.—Absent a declaration of war by
11 Congress or a specific authorization by a law enacted after
12 the date of the enactment of this Act, a military tribunal
13 for the trial of a case arising out of international terrorism
14 within the United States, its territories, or possessions
15 may be convened only in accordance with this section.

16 (b) CERTIFICATION OF NATIONAL SECURITY NECES-
17 SITY.—A military tribunal may be convened under sub-
18 section (a) only after the President submits to Congress
19 the President’s certification that, were the case to be tried
20 in a United States district court, the procedures available
21 (including the procedures under the Classified Information
22 Procedures Act (18 U.S.C. App.)) would be inadequate to
23 protect intelligence sources and methods.

24 (c) PRESERVATION OF HABEAS CORPUS.—With re-
25 spect to an individual subject to a military tribunal speci-

1 fied in subsection (a), nothing in any executive or military
2 order, rule, or regulation may adversely affect any privi-
3 lege of the writ of habeas corpus under any provision of
4 title 28, United States Code, or under any other provision
5 of law as long as the use of the protections under those
6 provisions do not compromise classified information or in-
7 telligence sources and methods.

8 **SEC. 4. PROCEDURES TO BE PRESCRIBED IN UNCLASSI-**
9 **FIED EXECUTIVE ORDER.**

10 The President shall prescribe the regulations, rules,
11 and procedures for conduct of a trial by military tribunal.
12 Those regulations, rules and procedures shall be pre-
13 scribed through an unclassified Executive order shall be
14 consistent, to the maximum extent practicable, with those
15 applicable to trials under the Uniform Code of Military
16 Justice. A certification under section 3(b) may not be
17 transmitted to Congress before that Executive order is
18 issued.

19 **SEC. 5. CONSULTATION WITH ATTORNEY GENERAL AND JU-**
20 **DICIAL CONFERENCE.**

21 (a) IN GENERAL.—The regulations, rules, and proce-
22 dures prescribed by the President under Section 4 shall
23 be—

24 (1) developed in consultation with the Attorney
25 General and the Judicial Conference of the United

1 States, which shall provide recommendations on
2 modifications to the Federal Rules of Civil Proce-
3 dure applied in Federal district court litigation that
4 are needed to properly protect classified information
5 and intelligence sources and methods for trials au-
6 thorized by this Act; and

7 (2) issued in conjunction with the requirements
8 of subchapter II of chapter 5 of title 5, United
9 States Code (commonly referred to as the Adminis-
10 trative Procedures Act).

11 (b) ANALYSIS REQUIRED.—Such regulations, rules,
12 and procedures shall be accompanied by an analysis by
13 the Attorney General and Judicial Conference of the
14 United States that examines the constitutional aspects of
15 such regulations, rules, and procedures and their effect on
16 the administration of justice by the Federal courts.

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