

111TH CONGRESS
1ST SESSION

H. R. 3728

To make certain improvements in the laws applicable to the detention of individuals at United States detentionment facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2009

Mr. HASTINGS of Florida introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Armed Services and Select Intelligence (Permanent Select), 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 make certain improvements in the laws applicable to the detention of individuals at United States detentionment facilities, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Detainment Reform Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
7 as follows:

Sec. 1. Short title; table of contents.

TITLE I—POLICY OF THE UNITED STATES GOVERNMENT AND
FINDINGS

- Sec. 101. Statement of policy.
Sec. 102. Findings.
Sec. 103. Definitions.

TITLE II—DETENTION CRITERIA; DEFINITION OF DETAINEE

- Sec. 201. Findings.
Sec. 202. Detention criteria and procedures.
Sec. 203. Detention proceedings.

TITLE III—TRANSPARENCY AND ACCOUNTABILITY OF AMERICAN
DETENTION FACILITIES

- Sec. 301. Notification and access of International Committee of the Red Cross
with respect to detainees at American detention facilities.
Sec. 302. Report by the Department of Defense.

TITLE IV—HABEAS-EXCEPTION TREATMENT OF DETAINEES

- Sec. 401. Findings.
Sec. 402. Habeas-exception treatment of detainees.
Sec. 403. Sense of Congress.
Sec. 404. Detention.
Sec. 405. Reporting.
Sec. 406. Rules of construction.
Sec. 407. Sunset.

1 **TITLE I—POLICY OF THE**
2 **UNITED STATES GOVERN-**
3 **MENT AND FINDINGS**

4 **SEC. 101. STATEMENT OF POLICY.**

5 It shall be the policy of the United States to—

6 (1) vigorously implement a sustained national
7 strategy to combat the short- and long-term threat
8 to national security posed by terrorism and terrorist
9 organizations;

10 (2) arrest, detain, and prosecute to the full ex-
11 tent of the law individuals who are involved in or are
12 providing material support for terrorist activities,
13 and use all appropriate means to obtain from indi-

1 individuals lawfully in United States custody timely, ac-
2 curate, and actionable intelligence to protect the na-
3 tional security interests of the United States;

4 (3) provide personnel working in support of the
5 Federal Government and involved in the arrest, de-
6 tention, interrogation, and prosecution of terrorist
7 suspects with training to uphold principles set forth
8 in the Constitution, Federal law, international
9 human rights law, and the law of armed conflict;

10 (4) prohibit personnel from applying forms of
11 torture, cruel and inhuman or degrading treatment
12 or punishment during arrest, detention, interroga-
13 tion, and prosecution of terrorist suspects;

14 (5) abide by the rule of law and due process
15 with accountability and transparency including
16 International Committee of the Red Cross (ICRC)
17 access to detainees being held in American detention
18 facilities;

19 (6) research and develop the most effective
20 practices for arrest, detention, interrogation, and
21 prosecution of terrorist suspects which are consistent
22 with the United States strategic goals of weakening
23 terrorist organizations and their recruitment capa-
24 bilities and strengthening the international leader-
25 ship of the United States by cooperating with, and

1 incorporating insight from the experiences of, allied
2 nations in combating terrorism and terrorist organi-
3 zations, in addition to the United States national ex-
4 perience; and

5 (7) regularly monitor policies related to the ar-
6 rest, detention, interrogation, and prosecution of ter-
7 rorist suspects to ensure that the policy objectives in
8 paragraphs (1) through (6) are being met.

9 **SEC. 102. FINDINGS.**

10 Congress makes the following findings:

11 (1) Since 2002, terrorists have been captured
12 by the United States and their allies and detained
13 in facilities at United States Naval Station, Guanta-
14 namo Bay (hereinafter in this Act referred to as
15 “GTMO”), Cuba.

16 (2) The detainee complex at GTMO can safely
17 hold individuals who pose a high security risk to the
18 United States. GTMO provides the maximum secu-
19 rity required to prevent escape and multiple levels of
20 confinement opportunities based on compliance of
21 the detainee.

22 (3) Intelligence information obtained from ques-
23 tioning detainees currently held at GTMO in-
24 cludes—

1 (A) the organizational structure of Al
2 Qaeda and other terrorist groups;

3 (B) the extent of the presence of terrorist
4 networks in Europe, the United States, the
5 Middle East, and possibly other areas;

6 (C) Al Qaeda's pursuit of weapons of mass
7 destruction;

8 (D) methods of recruitment and locations
9 of recruitment centers;

10 (E) terrorist skill sets, including general
11 and specialized operative training; and

12 (F) how legitimate financial activities are
13 used to hide terrorist operations.

14 (4) Since 2002, the United States has trans-
15 ferred the substantial majority of detainees at
16 GTMO to other countries including Albania, Algeria,
17 Bermuda, Bosnia and Herzegovina, Chad, Denmark,
18 Egypt, France, Iran, Iraq, Ireland, Jordan, Kuwait,
19 Kazakhstan, Libya, Maldives, Mauritania, Morocco,
20 Pakistan, Portugal, Qatar, Russia, Saudi Arabia,
21 Somaliland, Spain, Sweden, Sudan, Tajikistan, Tu-
22 nisia, Turkey, Uganda, United Arab Emirates, the
23 United Kingdom, and Yemen.

24 (5) There are a substantial number of detainees
25 from over 30 countries remaining at GTMO.

1 (6) These detainees allegedly include terrorist
2 trainers, terrorist financiers, bombmakers, Osama
3 bin Laden's bodyguards, recruiters, and facilitators.
4 Detainees remaining at GTMO fall into three cat-
5 egories:

6 (A) Detainees who have been placed in
7 preventative detention to stop them from re-
8 turning to the battlefield.

9 (B) Detainees who have violated American
10 criminal laws and, besides being subject to pre-
11 ventative detention, have been brought or are
12 expected to be brought before a military or
13 other tribunal to face criminal charges, includ-
14 ing for alleged violations of the laws of war.

15 (C) Detainees who have been cleared for
16 transfer or release to a foreign country, either
17 because—

18 (i) they are not believed to have been
19 engaged in hostilities, or

20 (ii) although they were found to have
21 been enemy belligerents, they are no longer
22 considered a threat to United States secu-
23 rity.

24 Such detainees continue to be held at GTMO
25 until their transfer can be effectuated.

1 (7) The United States is still engaged in armed
2 conflict with terrorist organizations, and will likely
3 continue to capture terrorists or other hostile actors
4 who will need to be detained.

5 (8) If the detention facility at GTMO is closed,
6 some United States domestic or overseas detention
7 facilities will house the detainees while they await
8 disposition.

9 (9) In addition to the facilities at GTMO, the
10 American military currently detains approximately
11 600 individuals at the military detention facility at
12 Bagram Air Base in Afghanistan.

13 (10) Though the number of detainees at GTMO
14 is currently decreasing, the number of detainees at
15 Bagram is increasing.

16 (11) Detainees at Bagram currently do not
17 have access to lawyers, have no right to hear the al-
18 legations against them, and only receive rudimentary
19 reviews of their status as “enemy combatants”.
20 Many detainees there have been held for years with-
21 out charge or access to legal representation.

22 (12) Recent guidelines proposed by the Depart-
23 ment of Defense assign each detainee a United
24 States military official advocate on the detainee’s be-
25 half. These officials, however, are not attorneys and

1 the proposed proceedings do not adequately remedy
2 detention procedure problems nor do they ensure
3 transparency and accountability in the review proc-
4 ess.

5 (13) At least one United States District Court,
6 in *Maqaleh v. Gates*, has ruled that some detainees
7 at Bagram are entitled to some form of Constitu-
8 tional protection.

9 **SEC. 103. DEFINITIONS.**

10 In this Act—

11 (1) the terms “agent of a foreign power”, “for-
12 eign power”, and “United States person” have the
13 meanings given such terms in section 101 of the
14 Foreign Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1801);

16 (2) the term “covered individual” means an in-
17 dividual who is not a United States person;

18 (3) the term “District Court” means the United
19 States District Court for the District of Columbia;
20 and

21 (4) the term “Geneva Conventions” means—

22 (A) the Convention for the Amelioration of
23 the Condition of the Wounded and Sick in
24 Armed Forces in the Field, done at Geneva,
25 August 12, 1949 (6 UST 3217);

1 (B) the Convention for the Amelioration of
2 the Condition of the Wounded, Sick, and Ship-
3 wrecked Members of the Armed Forces at Sea,
4 done at Geneva, August 12, 1949 (6 UST
5 3217);

6 (C) the Convention Relative to the Treat-
7 ment of Prisoners of War, done at Geneva, Au-
8 gust 12, 1949 (6 UST 3316); and

9 (D) the Convention Relative to the Protec-
10 tion of Civilian Persons in Time of War, done
11 at Geneva, August 12, 1949 (6 UST 3516).

12 **TITLE II—DETENTION CRITERIA;**
13 **DEFINITION OF DETAINEE**

14 **SEC. 201. FINDINGS.**

15 Congress makes the following findings:

16 (1) The Supreme Court has stated that, at a
17 minimum, Common Article 3 applies to the conflict
18 with Al Qaeda and its affiliates.

19 (2) The United Nations Commission on Human
20 Rights has said “the indefinite detention of pris-
21 oners of war and civilian internees for purposes of
22 continued interrogation is inconsistent with the pro-
23 visions of the Geneva Conventions”.

1 (3) In *Hamdi v. Rumsfeld*, the Supreme Court
2 held that military detention is justified only to pre-
3 vent a combatant's return to the battlefield.

4 (4) The Geneva Conventions, other binding
5 treaties regulating the conduct of hostilities, and the
6 customary laws of war offer an appropriate legal
7 framework for the detention and internment of com-
8 batants and civilians in zones of active military oper-
9 ations in international armed conflicts. Congress
10 does not seek to subject detentions within this
11 framework to the oversight of United States courts
12 to the extent they are not already subject to such
13 oversight.

14 (5) Zones of active military operations do not
15 necessarily correspond to national boundaries.

16 (6) Outside of zones of active military oper-
17 ations, the President claims the authority to detain
18 persons who were part of, or substantially sup-
19 ported, Taliban or Al Qaeda forces or associated
20 forces that are engaged in hostilities against the
21 United States or its coalition partners, including any
22 person who has committed a belligerent act, or has
23 directly supported hostilities in aid of such enemy
24 armed forces.

1 (7) Some United States courts have adopted a
2 narrower view of the President’s authority to detain
3 enemy forces, leaving the President’s detention au-
4 thority outside of active military operations unde-
5 fined and vulnerable to challenge. This lack of defi-
6 nition is dangerous both to Taliban and Al Qaeda
7 forces and to associated forces, including foreign ter-
8 rorist forces that are cobelligerents of the Taliban or
9 Al Qaeda.

10 (8) There exist no agreed-upon substantive or
11 procedural standards in United States courts to gov-
12 ern the detention of individuals arrested outside of
13 zones of active military operations.

14 (9) In some instances, the executive branch
15 may prefer to subject even combatants in zones of
16 active military operations to more rigorous judicial
17 review than the laws of war require at the outset of
18 a detention out of concern to avoid lengthy habeas
19 corpus litigation leading ultimately both to adverse
20 judgments in specific cases and adverse develop-
21 ments in the law.

22 (10) A set of rigorous, fair, and flexible judicial
23 procedures to govern the detention of non-United
24 States persons who pose an imperative threat to se-
25 curity are necessary to promote regularity and legal

1 certainty in American detention policy, as well as to
2 ensure that detainees receive timely and predictable
3 access to judicial review based on known procedures
4 and substantive standards.

5 **SEC. 202. DETENTION CRITERIA AND PROCEDURES.**

6 (a) DETERMINATION OF THREAT.—For covered indi-
7 viduals taken into custody, as of the date of enactment
8 of this Act, the President shall make a specific determina-
9 tion as to whether the covered individual poses a danger
10 to the security and interests of the United States based
11 on the criteria in subsection (b). An individual who meets
12 any of the criteria contained in subsection (b) shall con-
13 stitute an imperative threat to the interests of the United
14 States and, thus, is detainable under this Act.

15 (b) DETENTION CRITERIA.—The President shall
16 make such a determination, on a case-by-case basis, using
17 the following criteria:

18 (1) The covered individual is an agent of a for-
19 eign power.

20 (2) That foreign power is one against which the
21 use of military force was authorized under the Au-
22 thorization for Use of Military Force (Public Law
23 107–40; 115 Stat. 224; 50 U.S.C. 1541 note).

24 (3) The actions of the covered individual, in his
25 capacity as an agent of the foreign power described

1 in paragraphs (1) and (2) pose a danger both to any
2 person and to the interests of the United States.

3 (c) INITIAL DETENTION OF NON-UNITED STATES
4 PERSONS.—

5 (1) IN GENERAL.—The Government may de-
6 tain, for not more than 14 days, a covered individual
7 who the President reasonably believes meets the re-
8 quirements under subsection (b).

9 (2) ARREST NOTICE.—The Government shall
10 promptly present to any covered individual detained
11 under subsection (a)—

12 (A) a notice of arrest that includes the rea-
13 sons for which the covered individual is being
14 detained;

15 (B) a notice that detention under sub-
16 section (a) shall be for not more than 14 days;

17 (C) a notice that the Government may
18 apply for a detention order under section 4; and

19 (D) an explanation of the laws and proce-
20 dures governing such an application and deten-
21 tion order, including the right of the detainee to
22 counsel in connection with such proceedings.

23 (3) INFORMATION PROVIDED.—All information
24 provided a covered individual under paragraph (2)

1 shall be provided to the covered individual in a lan-
2 guage understood by the covered individual.

3 (4) END OF INITIAL DETENTION.—

4 (A) IN GENERAL.—Not later than 14 days
5 after the date on which the Government detains
6 a covered individual under subsection (a), the
7 Government shall initiate proceedings under
8 section 203, initiate proceedings under another
9 legal authority, release the covered individual,
10 lawfully transfer the covered individual to a for-
11 eign government, or transfer the covered indi-
12 vidual to an international tribunal that has ju-
13 risdiction to hold a trial of such detainee.

14 (B) PROCEEDINGS PENDING.—The Gov-
15 ernment may continue to detain a covered indi-
16 vidual under this Act while any proceeding
17 under section 203 is pending before the District
18 Court and during the pendency of an appeal by
19 the Government of a decision in a proceeding
20 under section 203.

21 **SEC. 203. DETENTION PROCEEDINGS.**

22 (a) IN GENERAL.—

23 (1) DETERMINATION.—Upon petition by the
24 Government, the District Court shall determine
25 whether a covered individual meets the requirements

1 under section 202(b) of this Act for detention as an
2 imperative threat to security.

3 (2) STANDARD OF PROOF.—In a proceeding
4 under this section, the burden of proof shall be on
5 the Government to demonstrate by a preponderance
6 of the evidence that a covered individual detained
7 under section 202 meets the requirements under sec-
8 tion 202(b).

9 (b) DEFERENCE TO EXECUTIVE.—In determining
10 whether a foreign power is a foreign power against which
11 the use of military force was authorized under the Author-
12 ization for Use of Military Force (Public Law 107–40; 115
13 Stat. 224; 50 U.S.C. 1541 note), the District Court shall
14 give deference to the identification of an organization by
15 the Director of National Intelligence in a report submitted
16 under section 406 of this Act.

17 (c) HEARING PROCEDURES.—

18 (1) IN GENERAL.—In any proceeding under this
19 section, the Attorney General shall submit a written
20 declaration supporting the contention that the cov-
21 ered individual meets the requirements under section
22 202(b) for detention as an imperative threat to secu-
23 rity.

24 (2) DISCOVERY.—

1 (A) SCOPE OF DISCOVERY.—Subject to
2 subparagraph (B), a covered individual may re-
3 quest from the Government as discovery relat-
4 ing to a proceeding under this section, and if
5 requested by the covered individual the Govern-
6 ment shall provide—

7 (i) any document or object referenced
8 in the petition or written declaration sub-
9 mitted by the Government under this sec-
10 tion;

11 (ii) any evidence in the Government’s
12 possession that tends materially to under-
13 mine information in the petition or written
14 declaration submitted by the Government
15 under this section;

16 (iii) any statement, whether oral, writ-
17 ten, or recorded, made or adopted by the
18 covered individual that is in the Govern-
19 ment’s possession and both related and
20 material to the information in the petition
21 or written declaration submitted by the
22 Government under this section; and

23 (iv) any other evidence in the Govern-
24 ment’s possession that is both related and
25 material to the information in the petition

1 or written declaration submitted by the
2 Government under this section.

3 (B) PROTECTION OF NATIONAL SECURITY
4 INFORMATION.—

5 (i) GENERALLY.—Classified informa-
6 tion shall be protected and is privileged
7 from disclosure to the covered individual in
8 proceedings under this section. The rule
9 under this subparagraph applies to all
10 stages of any proceeding under this sec-
11 tion.

12 (ii) SUBSTITUTE.—If any information
13 described in subparagraph (A) is classified,
14 the attorney for the Government shall sub-
15 mit such information to the District Court
16 and shall prepare for the court's approval
17 an unclassified summary of the specific
18 classified evidence or a statement admit-
19 ting relevant facts that the specific classi-
20 fied information would tend to prove. The
21 District Court shall approve the summary
22 or statement if the District Court finds
23 that it is sufficient to enable the detainee
24 to prepare a defense. The Government
25 shall deliver to the detainee a copy of the

1 unclassified summary or statement ap-
2 proved under this subparagraph.

3 (iii) DISAPPROVAL.—In general, if an
4 unclassified summary or statement is not
5 approved by the District Court under
6 clause (ii), the Government shall expedi-
7 tiously correct the deficiencies identified by
8 the court and submit a revised unclassified
9 summary. If the revised unclassified sum-
10 mary is not approved by the District
11 Court, the proceeding shall be terminated.

12 (iv) CLASSIFIED INFORMATION AVAIL-
13 ABLE TO COUNSEL FOR DETAINEE.—Clas-
14 sified information withheld from a detainee
15 shall be available to properly cleared coun-
16 sel, if any, for the covered individual, and
17 the District Court shall afford such prop-
18 erly cleared counsel the opportunity to ob-
19 ject to the adequacy of any substitute
20 under clause (ii). If the Government de-
21 clines to make such information available
22 to properly cleared counsel for the covered
23 individual, the proceeding shall be termi-
24 nated unless the Government substitutes a
25 statement admitting relevant facts that the

1 specific classified information would tend
2 to prove and the District Court certifies
3 that such statement is sufficient to provide
4 the properly cleared counsel with substan-
5 tially the same ability to make a defense as
6 would disclosure of the specific classified
7 information.

8 (v) INTERLOCUTORY APPEAL.—The
9 Government may take an interlocutory ap-
10 peal from a decision of the District Court
11 relating to the disclosure of classified in-
12 formation subject to the same expedited
13 procedures that would apply to such an ap-
14 peal under section 406 of the Classified In-
15 formation Procedures Act (18 U.S.C. 14
16 App.).

17 (3) WITNESS PRODUCTION.—

18 (A) IN GENERAL.—To the maximum ex-
19 tent possible, proceedings under this section
20 shall be decided on the basis of written plead-
21 ings and written declarations.

22 (B) BASIS FOR IN-PERSON TESTIMONY.—
23 The District Court shall grant a motion for oral
24 testimony relating to an evidentiary hearing
25 under this section when the District Court finds

1 that military and intelligence operations would
2 not be substantially harmed by the production
3 of the witness and that oral testimony would
4 provide a material benefit to the resolution by
5 the District Court of the disputed matter. The
6 District Court shall allow witnesses stationed
7 overseas or otherwise unavailable to appear in
8 court to participate from remote locations
9 through available technological means.

10 (4) PUBLIC PROCEEDINGS.—To the maximum
11 extent practicable, proceedings under this section
12 shall be conducted in a fashion open to the public.
13 The District Court shall have authority to close pro-
14 ceedings to ensure the security of classified informa-
15 tion.

16 (5) CERTAIN EVIDENCE.—

17 (A) IN GENERAL.—In determining whether
18 a covered individual meets the requirements
19 under section 202(b) for detention as an imper-
20 ative threat to security, the District Court may
21 not consider any evidence obtained by a means
22 that violates—

23 (i) the Detainee Treatment Act of
24 2005 (Public Law 109–148; 119 Stat.
25 2739; 10 U.S.C. 801 note); or

1 (ii) Common Article 3 of the Geneva
2 Conventions. Conduct that violates Com-
3 mon Article 3 includes, but is not limited
4 to, the following techniques, each of which
5 is prohibited by Army Field Manual 2-
6 22.3: forcing a person to be naked, per-
7 form sexual acts, or pose in a sexual man-
8 ner; applying beatings, electric shocks,
9 burns, or other forms of physical pain to
10 the person; waterboarding the person;
11 threatening the person with dogs; inducing
12 hypothermia or heat injury; conducting a
13 mock execution; and depriving the person
14 of necessary food, water, or medical care.

15 (B) OTHER EVIDENCE.—The rules con-
16 cerning the admissibility of evidence in civil or
17 criminal trials shall not apply to the presen-
18 tation and consideration of information at any
19 evidentiary hearing under this section. To the
20 maximum extent allowable under the Constitu-
21 tion, the District Court may consider any reli-
22 able and probative evidence, including hearsay
23 from military, intelligence, and law enforcement
24 sources that the District Court determines
25 would be probative to a reasonable person. If

1 any hearsay evidence is admitted, the covered
2 individual shall be entitled to offer evidence im-
3 peaching the credibility of the declarant.

4 (6) ATTORNEYS.—

5 (A) IN GENERAL.—The District Court
6 shall appoint an attorney to represent a covered
7 individual in proceedings under this section, un-
8 less the covered individual has retained an at-
9 torney for such purposes.

10 (B) REQUIREMENTS FOR ATTORNEYS.—An
11 attorney may represent a covered individual in
12 a proceeding under this section if the attor-
13 ney—

14 (i) except as provided in subparagraph
15 (E), has been determined to be eligible for
16 access to classified information that is clas-
17 sified at the level Secret or higher, as re-
18 quired; and

19 (ii) has signed a written agreement to
20 comply with all applicable regulations or
21 instructions for attorneys in proceedings
22 under this section before the District
23 Court, including any rules of court for con-
24 duct during the proceedings.

1 (C) CLASSIFIED INFORMATION.—Any at-
2 torney for a covered individual shall protect any
3 classified information received during the course
4 of representation of the covered individual in
5 accordance with all applicable law governing the
6 protection of classified information.

7 (D) SECURITY CLEARANCE LIST.—The At-
8 torney General shall establish a list of attorneys
9 with appropriate security clearances who may
10 represent covered individuals in proceedings
11 under this section.

12 (E) PRIVATE ATTORNEYS.—If an attorney
13 retained by a covered individual for purposes of
14 a proceeding under this section does not have
15 the appropriate security clearances, the Govern-
16 ment may grant the attorney an appropriate
17 clearance at its discretion, or the District Court
18 shall assign an attorney on the list established
19 under subparagraph (D) as cocounsel to rep-
20 resent the covered individual in all proceeding
21 under this Act which require access to classified
22 information on the part of counsel for the cov-
23 ered individual.

24 (7) VIDEO HEARINGS.—The District Court
25 shall not require the presence of a covered individual

1 detained outside the United States for the purpose
2 of any proceeding under this section. However, the
3 District Court shall permit a covered individual to
4 participate in all proceedings under this section to
5 the extent consistent with the procedures for the
6 protection of classified information and national se-
7 curity under this section. If the covered individual is
8 detained outside the United States, the court shall
9 allow him to participate from the location at which
10 he is detained through available technological means.

11 (8) LANGUAGES.—Any information relating to
12 the District Court proceedings under this section, in-
13 cluding translation of any proceedings in which a
14 covered individual participates, shall be provided to
15 the covered individual in a language understood by
16 the covered individual.

17 (d) DETENTION.—If the District Court determines
18 that a covered individual meets the requirements under
19 section 202(b) for detention as an imperative threat to se-
20 curity, the District Court shall issue an order authorizing
21 the Government to detain the covered individual for not
22 more than 6 months. To the maximum extent practicable
23 and consistent with the protection of classified informa-
24 tion, the District Court shall explain in an opinion avail-
25 able to the public the factual and legal basis for the deten-

1 tion order. An order under this subsection may be renewed
2 for additional periods of not more than 6 months if the
3 District Court determines, after a hearing conducted in
4 accordance with this section, that the covered individual
5 continues to meet the requirements under section 202(b)
6 for detention as an imperative threat to security.

7 (e) JURISDICTION AND VENUE.—The District Court
8 shall have exclusive jurisdiction over any petition under
9 this Act. An action relating to a petition under this Act
10 may only be brought in the District Court.

11 **TITLE III—TRANSPARENCY AND**
12 **ACCOUNTABILITY OF AMER-**
13 **ICAN DETENTION FACILITIES**

14 **SEC. 301. NOTIFICATION AND ACCESS OF INTERNATIONAL**
15 **COMMITTEE OF THE RED CROSS WITH RE-**
16 **SPECT TO DETAINEES AT AMERICAN DETEN-**
17 **TION FACILITIES.**

18 (a) NOTIFICATION.—The head of a military service
19 or department, or of a Federal department or agency, that
20 has custody or effective control of the American military
21 detention facility, or of any detainee held at such facility,
22 shall, upon initial detention, notify the International Com-
23 mittee of the Red Cross (referred to in this section as the
24 “ICRC”) of the custody or effective control of the detainee
25 as soon as possible.

1 (b) ACCESS.—The head of a military service or de-
2 partment, or of a Federal department or agency, with ef-
3 fective control of the American detention facility, pursuant
4 to subsection (a), shall ensure ICRC access to any de-
5 tainee within 24 hours of the receipt of an ICRC request
6 to access the detainee. Access to the detainee shall con-
7 tinue pursuant to ICRC protocols and agreements reached
8 between the ICRC and the head of a military service or
9 department, or of a Federal department or agency, with
10 effective control over the American detention facility.

11 (c) SCOPE OF ACCESS.—The ICRC shall be provided
12 access, in accordance with this section, to any physical lo-
13 cality at the American military detention facility, deter-
14 mined by the ICRC as relevant to the treatment of the
15 detainee, including the detainee’s cell or room, interroga-
16 tion facilities or rooms, hospital or related health care fa-
17 cilities or rooms, or other locations not named in this sec-
18 tion.

19 (d) CONSTRUCTION.—Nothing in this section shall be
20 construed to—

21 (1) limit the authority of a military service or
22 department, a Federal law enforcement agency, or
23 the intelligence community to detain an individual;
24 or

1 (2) limit or otherwise affect any other rights or
2 obligations which may arise under the Geneva Con-
3 ventions, other international agreements, or other
4 laws, or to state all of the situations under which no-
5 tification to and access for the ICRC is required or
6 allowed.

7 **SEC. 302. REPORT BY THE DEPARTMENT OF DEFENSE.**

8 The Inspector General of the Department of Defense
9 shall submit to Congress an annual report on the condi-
10 tions of the facilities and detainees at the American deten-
11 tion facility. This report shall be in unclassified form but
12 may include a classified annex.

13 **TITLE IV—HABEAS-EXCEPTION**
14 **TREATMENT OF DETAINEES**

15 **SEC. 401. FINDINGS.**

16 Congress makes the following findings:

17 (1) International terrorists, including members
18 of Al Qaeda, have carried out attacks on United
19 States diplomatic and military personnel and facili-
20 ties abroad and on citizens and property within the
21 United States and constitute a grave and sustained
22 threat to the national security of the United States.

23 (2) The ability of the United States to detain,
24 prosecute, and convict individuals suspected of com-
25 mitting or supporting terrorism or of otherwise wag-

1 ing hostilities against the United States, and by the
2 nature of those hostilities violate the laws of armed
3 conflict, is vital to the efforts to combat terrorism
4 and to protect United States national security.

5 (3) Attempts to implement a military tribunal
6 system in accordance with Executive Order 13425,
7 the Military Commissions Act of 2006 (Public Law
8 109–366), or the President’s Military Order of No-
9 vember 13, 2001 (66 Fed. Reg. 57,833), have failed
10 to achieve their stated mission of bringing suspected
11 terrorists to justice. As of September 9, 2009, the
12 tribunals and commissions established in connection
13 with these efforts have yielded just three convictions,
14 the first following a guilty plea by the defendant,
15 and have failed to achieve the conviction of a single
16 individual in connection with the terrorist attacks on
17 the United States on September 11, 2001.

18 (4) The United States civilian justice system al-
19 lows for the fair and speedy trial of individuals who
20 engage in terrorist activities against the United
21 States, who are enemy combatants, terrorists, or
22 otherwise engaged in criminal acts, and there is an
23 extensive legal framework providing jurisdiction over
24 the offenses committed by such individuals.

1 (5) Since September 11, 2001, the United
2 States civilian justice system has accumulated an
3 impressive record of success in prosecuting and con-
4 victing individuals suspected of committing or sup-
5 porting terrorism, having convicted at least 145 such
6 individuals, and is an essential and effective tool in
7 combating international terrorism.

8 (6) Existing laws and regulations, including the
9 Classified Information Procedures Act (18 U.S.C.
10 App. 3; Public Law 96–456), provide a detailed
11 framework for protecting sensitive and classified in-
12 formation during the prosecution of cases involving
13 terrorism offenses and related crimes.

14 (7) In addition to the existing United States ci-
15 vilian and military justice systems, the Federal Gov-
16 ernment possesses other legal authorities that may
17 be useful as tools in detaining and prosecuting inter-
18 national terrorists, including the authority to detain
19 removable aliens under Federal immigration laws.

20 **SEC. 402. HABEAS-EXCEPTION TREATMENT OF DETAINEES.**

21 (a) DISPOSITION OF DETAINEES ENTITLED TO THE
22 RIGHT OF HABEAS CORPUS REVIEW.—Not later than one
23 year after the date of the enactment of this Act, covered
24 individuals entitled to habeas corpus protections may be
25 processed according to one of the following procedures:

1 (1) The detainee shall be charged with an of-
2 fense cognizable by a United States military or civil-
3 ian court and transferred to a military or Federal ci-
4 vilian detention facility in the United States for fur-
5 ther legal proceedings in the military or civilian jus-
6 tice system, provided that such a Federal military or
7 civilian facility or section thereof has received the
8 highest security rating available for such a facility.

9 (2) The detainee shall be transferred to an
10 international tribunal that has jurisdiction to hold a
11 trial of such individual.

12 (3) The detainee shall be transferred to the cus-
13 tody of the government of the individual's country of
14 citizenship or a different country, provided that such
15 transfer is consistent with—

16 (A) the Convention Against Torture and
17 Other Forms of Cruel, Inhuman or Degrading
18 Treatment or Punishment done at New York,
19 December 10, 1984;

20 (B) all relevant United States law; and

21 (C) any other international obligation of
22 the United States.

23 (4) CONTINUED DETENTION.—If, based on the
24 totality of circumstances, the President determines
25 by a preponderance of evidence that a detainee

1 meets any of the criteria in Section 202(b), the de-
2 tainee may be held in continued detention in accord-
3 ance with this section or the law of armed conflict.

4 (b) REPORTING REQUIREMENTS.—

5 (1) REQUIREMENT FOR REPORT.—Not later
6 than 90 days after the date of enactment of this
7 Act, the President shall submit to Congress a report
8 that describes the President’s plan to implement this
9 section.

10 (2) REQUIREMENT TO UPDATE.—Not later
11 than 30 days after the date on which the President
12 submits the report required under paragraph (1),
13 and every 30 days thereafter, the President shall
14 submit to Congress a follow-up report to ensure that
15 Congress is fully informed of the steps taken to im-
16 plement this section.

17 (c) CONSTRUCTION.—

18 (1) IMMIGRATION STATUS.—The transfer of an
19 individual under subsection (a) shall not be consid-
20 ered an entry into the United States for purposes of
21 immigration status.

22 (2) CUSTODY OF DETAINEE.—The Secretary of
23 Homeland Security shall take custody of detainee,
24 pending removal from the United States, if the de-
25 tainee is acquitted of all charges or, upon completion

1 of a detainee’s sentence, in accordance with section
2 202, does not pose a threat to the United States.

3 (3) NO ADDITIONAL DETENTION AUTHORITY.—
4 Nothing in this section may be construed as altering
5 or adding to existing authorities for, or restrictions
6 on, the detention, or transfer of individuals in
7 United States custody.

8 **SEC. 403. SENSE OF CONGRESS.**

9 It is the sense of Congress that the President—

10 (1) should vigorously investigate and prosecute,
11 to the full extent of the law, individuals and organi-
12 zations suspected of involvement with international
13 terrorism, using all available assets of the United
14 States civilian and military justice systems;

15 (2) should carry out a review of the capacity of
16 the United States criminal justice system to success-
17 fully investigate and prosecute individuals and orga-
18 nizations suspected of terrorism, including the ade-
19 quacy of existing Federal antiterrorism laws, and
20 should inform Congress of any gaps or obstacles lim-
21 iting the ability of the United States to bring terror-
22 ists to justice;

23 (3) should take immediate measures to enhance
24 international legal cooperation in the investigation
25 and prosecution of individuals and organizations sus-

1 pected of involvement in international terrorism, in-
2 cluding expanding international police cooperation;
3 and

4 (4) acknowledge the ongoing efforts of the
5 United States Government to ensure that any pro-
6 longed detention is carefully evaluated, justified, and
7 abides by the Constitution, Federal law, inter-
8 national human rights law, and the law of armed
9 conflict.

10 **SEC. 404. DETENTION.**

11 (a) IN GENERAL.—Any covered individual detained
12 under this Act shall be held in accordance with the condi-
13 tions of confinement guaranteed by Common Article 3 of
14 the Geneva Conventions.

15 (b) LOCATION.—Any covered individual detained
16 under this Act shall be held in a location accessible to the
17 International Committee of the Red Cross.

18 **SEC. 405. REPORTING.**

19 Not later than 6 months after the date of enactment
20 of this Act, and no less frequently than every 6 months
21 thereafter, the Director of National Intelligence, in con-
22 sultation with the Director of the Central Intelligence
23 Agency, the Secretary of Defense, the Secretary of Home-
24 land Security, the Secretary of the Treasury, and the Sec-
25 retary of State, shall submit to Congress a report identi-

1 fying the organizations which the Executive Branch con-
2 siders to be forces covered by the Authorization for Use
3 of Military Force (Public Law 107–40; 115 Stat. 224; 50
4 U.S.C. 1541 note) as “those nations, organizations, or
5 persons” who “planned, authorized, committed, or aided
6 the terrorist attacks that occurred on September 11, 2001,
7 or harbored such organizations or persons” or as co-bellig-
8 erents of such forces.

9 **SEC. 406. RULES OF CONSTRUCTION.**

10 Nothing in this Act may be construed to—

11 (1) preclude or impinge on the authority of the
12 Government to detain or intern individuals subject
13 to detention under the laws of war in a theater of
14 active military operation or under another legal au-
15 thority;

16 (2) confer any right upon an individual lawfully
17 detained in a theater of active military operation; or

18 (3) require or permit continued detention of an
19 individual after the Government determines the indi-
20 vidual is not an imperative threat to security.

21 **SEC. 407. SUNSET.**

22 The authority under this Act to detain a covered per-
23 son not already detained under section 203 or section 301
24 shall terminate 3 years after the date of enactment of this
25 Act. Authority to renew detention orders already in place

- 1 or to proceed with applications already filed under section
- 2 4 shall not terminate.

