

112TH CONGRESS
1ST SESSION

H. R. 968

To provide for certain processes and limitations relating to the detention of certain individuals by the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2011

Mr. McKEON (for himself, Mr. THORNBERRY, Mr. SCHILLING, Mr. WITTMAN, Mr. FORBES, Mr. GRIFFIN of Arkansas, Mr. ROONEY, Mr. SHUSTER, Mr. WILSON of South Carolina, Mr. AKIN, Mr. LAMBORN, Mr. ROGERS of Alabama, Mr. TURNER, Mr. WEST, Mr. FLEMING, Mr. LOBIONDO, Mr. CONAWAY, Mr. RIGELL, Mr. COFFMAN of Colorado, Mr. RUNYAN, Mr. MILLER of Florida, Mr. KLINE, Mr. HECK, Mr. PALAZZO, and Mr. BROOKS) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To provide for certain processes and limitations relating to the detention of certain individuals by 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Detainee Security Act of 2011”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Process for the review of eligibility for continued detention of individuals detained at Naval Station, Guantanamo Bay, Cuba.
- Sec. 4. Requirement for military custody for members of al Qaeda, the Taliban, and associated forces subject to the Authorization for Use of Military Force.
- Sec. 5. Prohibitions relating to the transfer and release of certain detainees.
- Sec. 6. Limitation on authority to implement Executive Order of March 7, 2011.
- Sec. 7. Affirmation of armed conflict with al-Qaeda, the Taliban, and associated forces.
- Sec. 8. Prohibition on family member visitation of individuals detained at Naval Station, Guantanamo Bay, Cuba.
- Sec. 9. Permanent prohibition on use of funds to construct or modify facilities in the United States to house detainees transferred from Naval Station Guantanamo Bay, Cuba.
- Sec. 10. Clarification of right to plead guilty in trial of capital offense by military commission.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) The term “individual detained at Guanta-
 4 namo” means any individual who is located at
 5 United States Naval Station, Guantanamo Bay,
 6 Cuba, on or after March 7, 2011, who—

7 (A) is not a citizen of the United States or
 8 a member of the Armed Forces of the United
 9 States; and

10 (B) is in the custody or under the effective
 11 control of the Department of Defense.

12 (2) The term “appropriate committees of Con-
 13 gress” means—

14 (A) the Committee on Armed Services and
 15 the Select Committee on Intelligence of the
 16 Senate; and

1 (B) the Committee on Armed Services and
2 the Permanent Select Committee on Intelligence
3 of the House of Representatives.

4 **SEC. 3. PROCESS FOR THE REVIEW OF ELIGIBILITY FOR**
5 **CONTINUED DETENTION OF INDIVIDUALS DE-**
6 **TAINED AT NAVAL STATION, GUANTANAMO**
7 **BAY, CUBA.**

8 (a) RESTRICTIONS ON REVIEW.—Any administrative
9 board or panel established by any department or agency
10 of the Federal Government for the purpose of conducting
11 reviews to determine the eligibility for continued detention
12 of an individual detained at Guantanamo shall be subject
13 to the following restrictions:

14 (1) Such an individual whose eligibility for con-
15 tinued detention is being reviewed shall not be rep-
16 resented by legal counsel in any proceeding of the
17 board or panel. Such an individual may be assisted
18 by a military personal representative with the appro-
19 priate security clearance.

20 (2) A review of an individual's eligibility for
21 continued detention may not take place sooner than
22 21 days after the individual first becomes an indi-
23 vidual detained at Guantanamo.

24 (3) Recommendations pursuant to any such re-
25 view shall be made by a panel consisting of military

1 experts in operations, intelligence, and counterter-
2 rorism matters.

3 (4) The Government's submission to the board
4 or panel regarding the threat posed by such an indi-
5 vidual and any mitigating information described in
6 subsection (b)(4) shall be provided to the military
7 personal representative for the individual. Where it
8 is necessary to protect national security, including
9 the protection of intelligence sources and methods,
10 the board or panel may determine that the military
11 personal representative must receive a sufficient sub-
12 stitute or summary of classified information, rather
13 than the underlying information.

14 (5) Such an individual shall not be subject to
15 any such review under circumstances as follows:

16 (A) In the case of such an individual upon
17 whom charges have been served in accordance
18 with section 948s of title 10, United States
19 Code, until after final judgment has been
20 reached on such charges.

21 (B) In the case of such an individual who
22 has been convicted by a military commission
23 under chapter 47A of such title of an offense
24 under subchapter VIII of that chapter, until
25 after the individual has completed his sentence.

1 (C) In the case of such an individual who
2 has been ordered released by a court of com-
3 petent jurisdiction.

4 (b) CONSIDERATIONS.—In determining the rec-
5 ommendation to make regarding an individual detained at
6 Guantanamo under any review process, a panel shall con-
7 sider—

8 (1) whether the individual represents a con-
9 tinuing threat to the United States or its allies; and

10 (2) whether there are other factors that form a
11 need for continued detention of the individual, in-
12 cluding—

13 (A) the likelihood the individual will re-
14 sume terrorist activity if transferred or re-
15 leased;

16 (B) the likelihood the individual will rees-
17 tablish ties with an organization engaged in
18 hostilities against the United States or its allies
19 if transferred or released;

20 (C) the intelligence value of information
21 known by the individual;

22 (D) the likelihood of family, tribal, or gov-
23 ernment rehabilitation or support for the indi-
24 vidual if transferred or released; and

1 (E) the likelihood the individual may be
2 subject to trial by military commission; and

3 (3) with respect to consideration of whether to
4 transfer an individual to the custody of a foreign
5 country, whether that country—

6 (A) is not a designated state sponsor of
7 terrorism or a designated foreign terrorist orga-
8 nization;

9 (B) maintains effective control over each
10 detention facility in which an individual is to be
11 detained if the individual is to be housed in a
12 detention facility;

13 (C) is not, as of the date of the certifi-
14 cation, facing a threat that is likely to substan-
15 tially affect its ability to exercise control over
16 the individual;

17 (D) has agreed to take effective steps to
18 ensure that the individual cannot take action to
19 threaten the United States, its citizens, or its
20 allies in the future;

21 (E) has taken such steps as the Secretary
22 determines are necessary to ensure that the in-
23 dividual cannot engage or re-engage in any ter-
24 rorist activity;

1 (F) has agreed to share any information
2 with the United States that—

3 (i) is related to the individual or any
4 associates of the individual; and

5 (ii) could affect the security of the
6 United States, its citizens, or its allies; and

7 (G) has agreed to allow appropriate agen-
8 cies of the United States to have access to the
9 individual, if requested; and

10 (4) any information reviewed by the officials
11 preparing the Government's submission to the board
12 or panel that tends to mitigate the threat posed by
13 the individual.

14 **SEC. 4. REQUIREMENT FOR MILITARY CUSTODY FOR MEM-**
15 **BERS OF AL QAEDA, THE TALIBAN, AND ASSO-**
16 **CIATED FORCES SUBJECT TO THE AUTHOR-**
17 **IZATION FOR USE OF MILITARY FORCE.**

18 (a) IN GENERAL.—Chapter 3 of title 10, United
19 States Code, is amended by adding at the end the fol-
20 lowing new section:

1 **“SEC. 130e. REQUIREMENT FOR MILITARY CUSTODY FOR**
2 **MEMBERS OF AL QAEDA, THE TALIBAN, AND**
3 **ASSOCIATED FORCES SUBJECT TO THE AU-**
4 **THORIZATION FOR USE OF MILITARY FORCE.**

5 “(a) CUSTODY PENDING DISPOSITION DETERMINA-
6 TION.—(1) Except as provided in paragraph (3), an indi-
7 vidual who is eligible for detention pursuant to the Author-
8 ization for Use of Military Force (Public Law 107–40; 50
9 U.S.C. 1541 note) (as such term is defined in section
10 130f(c)(1) of this title) shall be held in military custody
11 pending a decision by the President on the disposition of
12 the person.

13 “(2) The disposition of a person as described in para-
14 graph (1) may include the following:

15 “(A) Long-term detention without trial until
16 the end of hostilities against the nations, organiza-
17 tions, and persons subject to the Authorization for
18 Use of Military Force (Public Law 107–40; 50
19 U.S.C. 1541 note).

20 “(B) Trial under chapter 47A of title 10,
21 United States Code.

22 “(3) The Secretary of Defense, in consultation with
23 the Director of National Intelligence, may waive the re-
24 quirement under paragraph (1) if the Secretary submits
25 to the appropriate committees of Congress certification in

1 writing that such a waiver is in the national security inter-
2 ests of the United States.

3 “(b) DEFINITION.—In this section, The term ‘appro-
4 priate committees of Congress’ means—

5 “(1) the Committee on Armed Services and the
6 Select Committee on Intelligence of the Senate; and

7 “(2) the Committee on Armed Services and the
8 Permanent Select Committee on Intelligence of the
9 House of Representatives.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of such chapter is amended by adding
12 at the end the following new item:

“130e. Requirement for military custody for members of al Qaeda, the Taliban,
and associated forces subject to the Authorization for Use of
Military Force.”.

13 (c) EFFECTIVE DATE.—Section 130e of title 10,
14 United States Code, as added by subsection (a) shall take
15 effect on March 4, 2011, and shall apply with respect to
16 individuals eligible for detention pursuant to the Author-
17 ization for Use of Military Force (Public Law 107–40; 50
18 U.S.C. 1541 note) (as such term is defined in section
19 130f(c)(1) of such title, as so added) who are taken into
20 the custody or brought under the control of the United
21 States on or after that date.

1 **SEC. 5. PROHIBITIONS RELATING TO THE TRANSFER AND**
2 **RELEASE OF CERTAIN DETAINEES.**

3 (a) IN GENERAL.—Chapter 3 of title 10, United
4 States Code, as amended by section 4, is further amended
5 by adding at the end the following new section:

6 **“SEC. 130f. PROHIBITIONS RELATING TO THE TRANSFER**
7 **AND RELEASE OF CERTAIN DETAINEES.**

8 “(a) PROHIBITION ON TRANSFER OR RELEASE TO OR
9 WITHIN THE UNITED STATES.—No individual who is eli-
10 gible for detention pursuant to the Authorization for Use
11 of Military Force (Public Law 107–40; 50 U.S.C. 1541
12 note) may be transferred or released to or within the
13 United States, its territories, or possessions.

14 “(b) LIMITATION ON TRANSFER TO FOREIGN COUN-
15 TRIES.—(1) The Secretary of Defense may not transfer
16 any individual described in paragraph (5) to the custody
17 or effective control of the individual’s country of origin,
18 any other foreign country, or any other foreign entity un-
19 less the Secretary submits to Congress the certification de-
20 scribed in paragraph (2) by not later than 30 days before
21 the transfer of the individual.

22 “(2) The certification described in this paragraph is
23 a written certification made by the Secretary of Defense,
24 in consultation with the Secretary of State, that the gov-
25 ernment of the foreign country or the recognized leader-

1 ship of the foreign entity to which the individual described
2 in paragraph (5) is to be transferred—

3 “(A) is not a designated state sponsor of ter-
4 rorism or a designated foreign terrorist organization;

5 “(B) maintains effective control over each de-
6 tention facility in which an individual is to be de-
7 tained if the individual is to be housed in a detention
8 facility;

9 “(C) is not, as of the date of the certification,
10 facing a threat that is likely to substantially affect
11 its ability to exercise control over the individual;

12 “(D) has agreed to take effective steps to en-
13 sure that the individual cannot take action to threat-
14 en the United States, its citizens, or its allies in the
15 future;

16 “(E) has taken such steps as the Secretary de-
17 termines are necessary to ensure that the individual
18 cannot engage or reengage in any terrorist activity;

19 “(F) has agreed to share any information with
20 the United States that—

21 “(i) is related to the individual or any as-
22 sociates of the individual; and

23 “(ii) could affect the security of the United
24 States, its citizens, or its allies; and

1 “(G) has agreed to allow appropriate agencies
2 of the United States to have access to the individual,
3 if requested.

4 “(3)(A) The Secretary of Defense may not transfer
5 any individual described in paragraph (5) to the custody
6 or effective control of the individual’s country of origin,
7 any other foreign country, or any other foreign entity if
8 there is a confirmed case of any individual described in
9 paragraph (5) who was transferred to the foreign country
10 or entity and subsequently engaged in any terrorist activ-
11 ity.

12 “(B) The Secretary of Defense may waive the prohi-
13 bition in subparagraph (A) if the Secretary determines
14 that such a transfer is in the national security interests
15 of the United States and includes, as part of the certifi-
16 cation described in paragraph (2) relating to such trans-
17 fer, the determination of the Secretary under this para-
18 graph.

19 “(4) Paragraphs (1) and (3) shall not apply to any
20 action taken by the Secretary of Defense to transfer any
21 individual described in paragraph (5) to effectuate an
22 order affecting the disposition of the individual that is
23 issued by a court or competent tribunal of the United
24 States having lawful jurisdiction. The Secretary shall no-
25 tify Congress promptly upon issuance of any such order.

1 “(5) An individual described in this paragraph is an
2 individual who—

3 “(A) is not a citizen of the United States or a
4 member of the Armed Forces;

5 “(B) is in the custody or under the effective
6 control of the Department of Defense; and

7 “(C) is—

8 “(i) not a national of Afghanistan and is
9 under detention at Bagram Air Base, Afghani-
10 stan; or

11 “(ii) under detention at United States
12 Naval Station, Guantanamo Bay, Cuba, as of
13 January 21, 2011.

14 “(c) DEFINITIONS.—In this section:

15 “(1) The term ‘individual who is eligible for de-
16 tention pursuant to the Authorization for Use of
17 Military Force (Public Law 107–40; 50 U.S.C. 1541
18 note)’ includes—

19 “(A) any individual who is part of, or is
20 substantially supporting, al-Qaeda, the Taliban,
21 or associated forces that are engaged in hos-
22 tilities against the United States or cobelliger-
23 ents; and

24 “(B) any individual who has engaged in
25 hostilities or has substantially supported hos-

1 tilities against the United States or its co-
2 belligerents on behalf of or in aid of al-Qaeda,
3 the Taliban, or associated forces.

4 “(2) The term ‘foreign terrorist organization’
5 means any organization so designated by the Sec-
6 retary of State under section 219 of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1189).”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of such chapter, as amended by section
10 4, is further amended by adding at the end the following
11 new item:

 “130f. Prohibitions relating to the transfer and release of certain detainees.”.

12 **SEC. 6. LIMITATION ON AUTHORITY TO IMPLEMENT EXEC-**
13 **UTIVE ORDER OF MARCH 7, 2011.**

14 (a) LIMITATION.—No action may be taken to imple-
15 ment the Executive Order entitled “Periodic Review of In-
16 dividuals Detained at Guantanamo Bay Naval Station
17 Pursuant to the Authorization for Use of Military Force”
18 and dated March 7, 2011, until the Secretary of Defense
19 submits to the appropriate committees of Congress a na-
20 tional security protocol applicable to each individual who
21 is detained at United States Naval Station, Guantanamo
22 Bay, Cuba, as of the date of March 7, 2011. Each such
23 national security protocol shall include a description of
24 each of the following:

1 (1) The authority of an individual covered by
2 the protocol to have access to military or civilian
3 legal representation, or both, and any limitations on
4 such access.

5 (2) Any items that are considered contraband
6 for such an individual.

7 (3) Any category of information that such an
8 individual is not permitted to discuss or include in
9 any communications made to persons other than
10 Federal Government personnel and members of the
11 Armed Forces or materials the individual has or cre-
12 ates.

13 (4) Any types of materials to which such an in-
14 dividual is authorized to have access and the process
15 by which such materials, along with materials cre-
16 ated by the individual, are reviewed.

17 (5) The nature of any communication such an
18 individual is permitted to have with any persons
19 other than Federal Government personnel and mem-
20 bers of the Armed Forces, including mail, phone
21 calls, and video teleconferences, and the extent to
22 which any such communication is to be monitored.

23 (6) Any meetings the individual is permitted to
24 have with any persons other than Federal Govern-
25 ment personnel and members of the Armed Forces

1 and the extent to which such a meeting is to be
2 monitored.

3 (7) Any category of information or material
4 that may not be provided to such an individual by
5 persons other than Federal Government personnel
6 and members of the Armed Forces or by the individ-
7 ual's military or civilian legal counsel or military
8 personal representative.

9 (8) The manner in which any legal materials or
10 communications subject to review under the protocol
11 will be monitored for the protection of national secu-
12 rity while also ensuring that any applicable legal
13 privileges are maintained for purposes of litigation
14 related to trial under chapter 47A of title 10, United
15 States Code, or a petition for habeas corpus.

16 (9) The measures planned to be taken to imple-
17 ment and enforce the provisions of the security pro-
18 tocol.

19 (b) TREATMENT OF CLASSIFIED MATERIAL IN SECUR-
20 ITY PROTOCOLS.—A security protocol submitted under
21 subsection (a) shall be in unclassified form but may con-
22 tain a classified annex.

1 **SEC. 7. AFFIRMATION OF ARMED CONFLICT WITH AL-**
2 **QAEDA, THE TALIBAN, AND ASSOCIATED**
3 **FORCES.**

4 (a) IN GENERAL.—Chapter 3 of title 10, United
5 States Code, as amended by sections 4 and 5, is further
6 amended by adding at the end the following new section:

7 **“SEC. 130g. AFFIRMATION OF ARMED CONFLICT WITH AL-**
8 **QAEDA, THE TALIBAN, AND ASSOCIATED**
9 **FORCES.**

10 “(a) AFFIRMATION.—Congress affirms that—

11 “(1) the United States is engaged in an armed
12 conflict with al-Qaeda, the Taliban, and associated
13 forces and that those entities continue to pose a
14 threat to the United States and its citizens, both do-
15 mestically and abroad;

16 “(2) the armed conflict with al-Qaeda, the
17 Taliban, and associated forces includes nations, or-
18 ganizations, and persons who—

19 “(A) are part of, or are substantially sup-
20 porting, al-Qaeda, the Taliban, or associated
21 forces that are engaged in hostilities against the
22 United States or cobelligerents; or

23 “(B) have engaged in hostilities or have
24 substantially supported hostilities against the
25 United States or its cobelligerents on behalf of

1 or in aid of al-Qaeda, the Taliban, or associated
2 forces; and

3 “(3) the President’s authority includes the au-
4 thority to detain belligerents, including persons de-
5 scribed in paragraph (2) until the termination of
6 hostilities.

7 “(b) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
8 retary of Defense shall submit to Congress notification in
9 writing—

10 “(A) not later than 90 days after the date of
11 the enactment of this section, of any entity that is
12 considered an associated force for purposes of this
13 section as of such date; and

14 “(B) after such date, whenever any entity is
15 newly considered an associated force for purposes of
16 this section.

17 “(2) A notification under this subsection may be clas-
18 sified, as the Secretary determines is necessary.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of such chapter, as amended by sections
21 4 and 5, is further amended by adding at the end the fol-
22 lowing new item:

“130g. Affirmation of armed conflict with al-Qaeda, the Taliban, and associated
forces.”.

1 **SEC. 8. PROHIBITION ON FAMILY MEMBER VISITATION OF**
2 **INDIVIDUALS DETAINED AT NAVAL STATION,**
3 **GUANTANAMO BAY, CUBA.**

4 The Secretary of Defense shall prohibit any person
5 who is a family member of an individual detained at Guan-
6 tanamo from visiting the individual at United States
7 Naval Station, Guantanamo Bay, Cuba.

8 **SEC. 9. PERMANENT PROHIBITION ON USE OF FUNDS TO**
9 **CONSTRUCT OR MODIFY FACILITIES IN THE**
10 **UNITED STATES TO HOUSE DETAINEES**
11 **TRANSFERRED FROM NAVAL STATION GUAN-**
12 **TANAMO BAY, CUBA.**

13 (a) IN GENERAL.—No amounts authorized to be ap-
14 propriated or otherwise made available to the Department
15 of Defense may be used to construct or modify any facility
16 in the United States, its territories, or possessions to
17 house any individual detained at Guantanamo for the pur-
18 poses of detention or imprisonment in the custody or
19 under the control of the Department of Defense.

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

23 (c) CONFORMING REPEAL.—Section 1034 of the Ike
24 Skelton National Defense Authorization Act for Fiscal
25 Year 2011 (Public Law 111–383) is amended by striking
26 subsections (a) and (b).

1 **SEC. 10. CLARIFICATION OF RIGHT TO PLEAD GUILTY IN**
2 **TRIAL OF CAPITAL OFFENSE BY MILITARY**
3 **COMMISSION.**

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

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

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

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

16 “(c) PRE-TRIAL AGREEMENTS.—(1) A plea of guilty
17 made by the accused that is accepted by a military judge
18 under subsection (b) and not withdrawn prior to an-
19 nouncement of the sentence may form the basis for an
20 agreement reducing the maximum sentence approved by
21 the convening authority, including the reduction of a sen-
22 tence of death to a lesser punishment, or that the case
23 will be referred to a military commission under this chap-
24 ter without seeking the penalty of death. Such an agree-
25 ment may provide for terms and conditions in addition to
26 a guilty plea by the accused in order to be effective.

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

○