

109TH CONGRESS
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H. R. 1076

To authorize the President to detain an enemy combatant who is a United States person or resident who is a member of al Qaeda or knowingly cooperated with members of al Qaeda, to guarantee timely access to judicial review to challenge the basis for a detention, to permit the detainee access to counsel, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2005

Mr. SCHIFF 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 President to detain an enemy combatant who is a United States person or resident who is a member of al Qaeda or knowingly cooperated with members of al Qaeda, to guarantee timely access to judicial review to challenge the basis for a detention, to permit the detainee access to counsel, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Detention of Enemy
3 Combatants Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

6 (1) The al Qaeda terrorist organization and its
7 leaders have committed unlawful attacks against the
8 United States, including the August 7, 1998, bomb-
9 ings of the United States Embassies in Nairobi,
10 Kenya, and Dar es Salaam, Tanzania, the October
11 12, 2000, attack on the U.S.S. COLE (DDG-67),
12 and the September 11, 2001, attacks on the United
13 States.

14 (2) The al Qaeda terrorist organization and its
15 leaders have threatened renewed attacks on the
16 United States and have threatened the use of weap-
17 ons of mass destruction.

18 (3) The United Nations Security Council, in
19 Resolutions 1368 and 1373, declared in September
20 2001 that the September 11 attacks against the
21 United States constitute a threat to international
22 peace and security.

23 (4) The United States is justified in exercising
24 its right of self-defense pursuant to international law
25 and the United Nations Charter.

1 (5) Congress authorized the President on Sep-
2 tember 18, 2001, to use all necessary and appro-
3 priate force against those nations, organizations, or
4 persons that he determines to have planned, author-
5 ized, committed, or aided the September 11 terrorist
6 attacks or harbored such organizations or persons,
7 in order to prevent any future acts of international
8 terrorism against the United States, within the
9 meaning of section 5(b) of the War Powers Resolu-
10 tion.

11 (6) The United States and its allies are en-
12 gaged in armed conflict with al Qaeda.

13 (7) Al Qaeda and its terrorist allies have a
14 presence in more than 60 nations around the world,
15 including the United States. United States citizens
16 and residents have been detained as enemy combat-
17 ants in the struggle against al Qaeda.

18 (8) The term “enemy combatant” has histori-
19 cally referred to all of the citizens of a state with
20 which the Nation is at war, and who are members
21 of the armed force of that enemy state. Enemy com-
22 batants in the present conflict, however, come from
23 many nations, wear no uniforms, and use unconven-
24 tional weapons. Enemy combatants in the war on
25 terrorism are not defined by simple, readily apparent

1 criteria, such as citizenship or military uniform. And
2 the power to name a citizen as an “enemy combat-
3 ant” is therefore extraordinarily broad.

4 (9) There is precedent for detaining American
5 citizens as enemy combatants. In *Ex Parte Quirin*,
6 317 U.S. 1 (1942), 2 of the 8 German soldiers who
7 planned acts of sabotage within the United States
8 claimed American citizenship. Detention of enemy
9 combatants who are United States citizens is appro-
10 priate to protect the safety of the public and those
11 involved in the investigation and prosecution of ter-
12 rorism, to facilitate the use of classified information
13 as evidence without compromising intelligence or
14 military efforts, to gather unimpeded vital informa-
15 tion from the detainee, and otherwise to protect na-
16 tional security interests.

17 (10) The Executive must be allowed broad lati-
18 tude to establish by regulation and Executive order
19 the process, standards, and conditions in which a
20 United States citizen or lawful resident may be de-
21 tained as an enemy combatant. Courts must give
22 broad deference to military judgment concerning the
23 determination of enemy combatant status, POW sta-
24 tus, and related questions.

1 (11) Section 4001(a) of title 18, United States
2 Code, provides that “no citizen shall be imprisoned
3 or otherwise detained by the United States except
4 pursuant to an Act of Congress”. Section 4001 was
5 designed to repeal the Emergency Detention Act of
6 1950, and ensure that there was a statutory basis
7 for any detention. As Chief Justice Burger wrote in
8 *Howe v. Smith*, 452 U.S. 473 (1981), “the plain
9 language of section 4001(a) proscribes detention of
10 any kind by the United States, absent a congress-
11 sional grant of authority to detain”.

12 (12) By this Act, the Congress authorizes the
13 President to detain enemy combatants who are
14 United States persons or residents who are members
15 of al Qaeda, or knowingly cooperated with members
16 of al Qaeda in the planning, authorizing, commit-
17 ting, aiding, or abetting of one or more terrorist acts
18 against the United States.

19 (13) During wartime, a nation must take ex-
20 traordinary steps to protect itself, including meas-
21 ures that would never be acceptable during peace-
22 time. Nonetheless, “the Constitution of the United
23 States is a law for rulers and people, equally in war
24 and in peace, and covers with the shield of its pro-

1 tection all classes of men, at all times, and under all
2 circumstances.” *Ex Parte Milligan*.

3 (14) Nothing in this Act permits the Govern-
4 ment, even in wartime, to detain American citizens
5 or other persons lawfully in the United States as
6 enemy combatants indefinitely without charges and
7 hold them incommunicado without a hearing and
8 without access to counsel on the basis of a unilateral
9 determination that the person may be connected
10 with an organization that intends harm to the
11 United States. The Supreme Court has held that a
12 citizen held in the United States as an enemy com-
13 batant must be given a meaningful opportunity to
14 challenge the factual basis for that detention before
15 a neutral decisionmaker. *Hamdi v. Rumsfeld*, 542
16 U.S. 1 (2004). The Supreme Court has held that
17 even enemy aliens within the United States are enti-
18 tled to habeas review of their conviction. *Ex Parte*
19 *Quirin*, 317 U.S. 1 (1942); *Johnson v. Eisentrager*,
20 339 U.S. 763 (1950).

21 (15) The validity of the detention of citizens as
22 enemy combatants may be challenged by a writ of
23 habeas corpus. As the right of habeas corpus may be
24 effectively nullified by denial of the assistance of

1 counsel, a citizen detained as an enemy combatant
2 may not be indefinitely denied access to counsel.

3 (16) The Congress has a responsibility for
4 maintaining vigorous oversight of detention of
5 United States citizens and lawful residents to assure
6 that such detentions are consistent with due process.

7 **SEC. 3. DETENTION OF ENEMY COMBATANTS.**

8 (a) **AUTHORITY.**—A United States person or resident
9 may be detained as an enemy combatant in accordance
10 with this Act if the United States person or resident is
11 a member of al Qaeda, or knowingly cooperated with a
12 member of al Qaeda in the planning, authorizing, commit-
13 ting, aiding, or abetting of one or more terrorist acts
14 against the United States. Nothing in this Act shall apply
15 to a United States person or resident who is a prisoner
16 of war within the meaning of the Geneva Convention Rel-
17 ative to the Treatment of Prisoners of War, signed at Ge-
18 neva on August 12, 1949 (6 UST 3316).

19 (b) **AUTHORITY TO ESTABLISH PROCEDURAL**
20 **RULES.**—The Secretary of Defense, in consultation with
21 the Secretary of State and the Attorney General, shall pre-
22 scribe and publish in the Federal Register, and report to
23 the Committees on the Judiciary of the Senate and the
24 House of Representatives, the standards, process, and cri-
25 teria to be used for the determination that an American

1 citizen or lawful resident is an enemy combatant under
2 subsection (a) and for the detention of such an enemy
3 combatant.

4 **SEC. 4. PROCEDURAL REQUIREMENTS.**

5 The rules prescribed for the detention of enemy com-
6 batants shall establish clear standards and procedures
7 governing detention of a United States person or resident
8 that preserve the Government's ability to detain those who
9 may threaten the United States, assist in the gathering
10 of vital intelligence, and protect the confidentiality of that
11 information or any other information which, if released,
12 could impede the Government's investigation of terrorism.
13 Such rules shall also guarantee timely access to judicial
14 review to challenge the basis for a detention, and permit
15 the detainee access to counsel.

16 **SEC. 5. DETENTION.**

17 (a) DURATION OF DETENTION.—

18 (1) LIMITATION.—A United States person or
19 resident may be detained under subsection (a) of
20 section 3 only while there is in effect for the pur-
21 poses of this section a certification by the President
22 that—

23 (A) the United States Armed Forces are
24 engaged in a state of armed conflict with al
25 Qaeda and an investigation with a view toward

1 prosecution, a prosecution, or a post-trial pro-
2 ceeding in the case of such person or resident
3 is ongoing; or

4 (B) detention is warranted in order to pre-
5 vent such person or resident from aiding per-
6 sons attempting to commit terrorist acts
7 against the United States.

8 (2) CERTIFICATION AND RECERTIFICATION.—A
9 certification referred to in paragraph (1) shall be ef-
10 fective for 180 days. The President may make suc-
11 cessive certifications under that paragraph.

12 (b) DETENTION REVIEW.—The United States Dis-
13 trict Court for the District of Columbia shall have exclu-
14 sive jurisdiction to review any detention under this Act
15 to ensure that the requirements of this Act for detaining
16 an accused are satisfied.

17 (c) CONDITIONS OF DETENTION.—A person detained
18 under this Act shall be—

19 (1) detained at an appropriate location des-
20 ignated by the Secretary of Defense;

21 (2) treated humanely, without any adverse dis-
22 tinction based on race, color, religion, gender, birth,
23 wealth, or any similar criteria;

24 (3) afforded adequate food, drinking water,
25 shelter, clothing, and medical treatment;

1 (4) sheltered under hygienic conditions and pro-
2 vided necessary means of personal hygiene; and

3 (5) allowed the free exercise of religion con-
4 sistent with the requirements of such detention.

5 **SEC. 6. REPORTS TO CONGRESS.**

6 Not less often than once every 12 months, the Presi-
7 dent shall submit to the Congress a report on the use of
8 the authority provided by this Act. Each such report shall
9 specify each individual subject to, or detained pursuant
10 to, the authority provided by this Act.

11 **SEC. 7. UNITED STATES PERSON OR RESIDENT DEFINED.**

12 In this Act, the term “United States person or resi-
13 dent” means—

14 (1) a United States person, as such term is de-
15 fined in section 101(i) of the Foreign Intelligence
16 Surveillance Act of 1978 (50 U.S.C. 1801(i)); or

17 (2) an alien lawfully admitted to the United
18 States for permanent residence.

19 **SEC. 8. TERMINATION OF AUTHORITY.**

20 The authority under this Act may not be exercised
21 after December 31, 2007.

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