

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4892

To provide for the interrogation and detention of enemy belligerents who commit hostile acts against the United States, to establish certain limitations on the prosecution of such belligerents for such acts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2010

Mr. MCKEON introduced the following bill; which was referred to the Select Committee on Intelligence (Permanent Select), and in addition to the Committees on Armed Services and the Judiciary, 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

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## A BILL

To provide for the interrogation and detention of enemy belligerents who commit hostile acts against the United States, to establish certain limitations on the prosecution of such belligerents for such acts, 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 “Enemy Belligerent In-  
5 terrogation, Detention, and Prosecution Act of 2010”.

1 **SEC. 2. PLACEMENT OF SUSPECTED UNPRIVILEGED ENEMY**  
2 **BELLIGERENTS IN MILITARY CUSTODY.**

3 (a) **MILITARY CUSTODY REQUIREMENT.**—Whenever  
4 within the United States, its territories, and possessions,  
5 or outside the territorial limits of the United States, an  
6 individual is captured or otherwise comes into the custody  
7 or under the effective control of the United States who  
8 is suspected of engaging in hostilities against the United  
9 States or its coalition partners through an act of ter-  
10 rorism, or by other means in violation of the laws of war,  
11 or of purposely and materially supporting such hostilities,  
12 and who may be an unprivileged enemy belligerent, the  
13 individual shall be placed in military custody for purposes  
14 of initial interrogation and determination of status in ac-  
15 cordance with the provisions of this Act.

16 (b) **DELAY FOR INTELLIGENCE ACTIVITIES.**—The  
17 Secretary of Defense and the Director of National Intel-  
18 ligence may, after giving due consideration to operational  
19 needs and requirements to avoid compromise or disclosure  
20 of an intelligence mission or intelligence sources or meth-  
21 ods, jointly authorize an element of the intelligence com-  
22 munity that has initially captured an individual who may  
23 be an unprivileged enemy belligerent or otherwise taken  
24 such individual into custody or placed such individual  
25 under the effective control of the United States to hold,  
26 interrogate, or transport such individual. Such individual,

1 if retained by the United States following that authoriza-  
2 tion, shall subsequently be placed into military custody in  
3 accordance with subsection (a).

4 **SEC. 3. INTERROGATION AND DETERMINATION OF STATUS**  
5 **OF SUSPECTED UNPRIVILEGED ENEMY BEL-**  
6 **LIGERENTS.**

7 (a) INTERROGATION OF HIGH-VALUE DETAINEES.—

8 (1) IN GENERAL.—The Director of National In-  
9 telligence shall, in consultation with the heads of de-  
10 partments and agencies of the United States Gov-  
11 ernment containing elements of the intelligence com-  
12 munity, the Director of the Central Intelligence  
13 Agency, and the Director of the Federal Bureau of  
14 Investigation—

15 (A) coordinate the interrogation of high-  
16 value detainees and individuals who are not in  
17 the custody or under the effective control of the  
18 United States, but otherwise meet the definition  
19 of a high-value detainee under subsection (c);

20 (B) coordinate the preliminary determina-  
21 tions with respect to whether or not high-value  
22 detainees are unprivileged enemy belligerents;

23 (C) be responsible for any interagency  
24 group—

1 (i) conducting an interrogation of a  
2 high-value detainee or individual who is  
3 not in the custody or under the effective  
4 control of the United States, but otherwise  
5 meets the definition of a high-value de-  
6 tainee under subsection (c); and

7 (ii) making a preliminary determina-  
8 tion with respect to whether or not the de-  
9 tainee is an unprivileged enemy belligerent;  
10 and

11 (D) before an officer or employee of the  
12 Federal Government provides the warnings of  
13 constitutional rights described in *Miranda vs.*  
14 *Arizona*, 384 U.S. 436 (U.S. 1966) to a high-  
15 value detainee who is suspected of terrorism,  
16 associated with terrorists, or believed to have  
17 knowledge of terrorists and who is captured,  
18 held, or questioned by a department or agency  
19 that is or contains an element of the intel-  
20 ligence community, approve the providing of  
21 such warnings to such high-value detainee.

22 (2) LIMITATION.—Paragraph (1) shall not  
23 apply with respect to a detainee who is captured on  
24 the battlefield by the Armed Forces of the United  
25 States, unless the Director of National Intelligence

1 determines that such detainee is a high-value de-  
2 tainee.

3 (3) CERTAIN DELEGATIONS PROHIBITED.—The  
4 Director of National Intelligence may not delegate  
5 the authority to approve the providing of warnings  
6 under paragraph (1)(D).

7 (4) PRELIMINARY DETERMINATION WITH RE-  
8 SPECT TO HIGH-VALUE DETAINEES.—A determina-  
9 tion under paragraph (1)(B) shall be based on all in-  
10 telligence information available. The Director of Na-  
11 tional Intelligence shall submit each such determina-  
12 tion to the Secretary of Defense and the Attorney  
13 General.

14 (5) PARAMOUNT PURPOSE OF INTERROGA-  
15 TIONS.—An interrogation conducted in accordance  
16 with this section shall be conducted in a manner to  
17 accomplish the paramount purpose of protecting  
18 United States civilians and United States civilian fa-  
19 cilities through thorough and professional interroga-  
20 tion for intelligence purposes.

21 (b) DETERMINATIONS OF STATUS.—

22 (1) FINAL DETERMINATION.—The Director of  
23 National Intelligence, the Secretary of Defense, and  
24 the Attorney General shall jointly submit to the  
25 President and to the appropriate committees of Con-

1       gress a final determination as to whether or not a  
2       high-value detainee for which a preliminary deter-  
3       mination of status has been made under subsection  
4       (a)(1)(B) or (a)(1)(C)(ii) is an unprivileged enemy  
5       belligerent for purposes of this Act. In the event of  
6       a disagreement between the Director of National In-  
7       telligence, the Secretary of Defense, and the Attor-  
8       ney General, the President shall make the final de-  
9       termination.

10           (2) DEADLINE FOR DETERMINATIONS.—All ac-  
11       tions required regarding a high-value detainee under  
12       this subsection shall be completed as soon as prac-  
13       ticable, consistent with intelligence collection require-  
14       ments, after the detainee is placed in military cus-  
15       tody under section 2.

16           (3) CRITERIA FOR DESIGNATION OF INDIVID-  
17       UALS AS HIGH-VALUE DETAINEES.—The criteria for  
18       designating an individual as a high-value detainee  
19       based on the following:

20           (A) The potential threat the individual  
21       poses for an attack on civilians or civilian facili-  
22       ties within the United States or upon United  
23       States citizens or United States civilian facili-  
24       ties abroad at the time of capture or when com-

1           ing under the custody or control of the United  
2           States.

3           (B) The potential threat the individual  
4           poses to United States military personnel or  
5           United States military facilities at the time of  
6           capture or when coming under the custody or  
7           control of the United States.

8           (C) The potential intelligence value of the  
9           individual.

10          (D) Membership in al Qaeda, a terrorist  
11          group affiliated with al Qaeda, or any other or-  
12          ganization designated by the Secretary of State  
13          as a foreign terrorist organization in accordance  
14          with section 219 of the Immigration and Na-  
15          tionality Act (8 U.S.C. 1189).

16          (E) Such other matters as the President  
17          considers appropriate.

18          (c) HIGH-VALUE DETAINEE DEFINED.—In this sec-  
19          tion, the term “high-value detainee” means an individual  
20          placed in military custody under section 2 that meets cri-  
21          teria for designating an individual as a high-value detainee  
22          based on the criteria referred to in subsection (b)(3), as  
23          determined by the Secretary of Defense.

1 **SEC. 4. LIMITATION ON PROSECUTION OF ALIEN**  
2 **UNPRIVILEGED ENEMY BELLIGERENTS.**

3 (a) **LIMITATION.**—No funds appropriated or other-  
4 wise made available to the Department of Justice may be  
5 used to prosecute in an Article III court in the United  
6 States, or in any territory or possession of the United  
7 States, any alien who has been determined to be an  
8 unprivileged enemy belligerent under section 3(b)(1).

9 (b) **APPLICABILITY PENDING FINAL DETERMINA-**  
10 **TION OF STATUS.**—While a final determination on the sta-  
11 tus of an alien high-value detainee is pending under sec-  
12 tion 3(b)(1), the alien shall be treated as an unprivileged  
13 enemy belligerent for purposes of subsection (a).

14 **SEC. 5. DETENTION WITHOUT TRIAL OF UNPRIVILEGED**  
15 **ENEMY BELLIGERENTS.**

16 An individual, including a citizen of the United  
17 States, determined to be an unprivileged enemy belligerent  
18 under section 3(b)(1) in a manner which satisfies Article  
19 5 of the Geneva Convention Relative to the Treatment of  
20 Prisoners of War may be detained without criminal  
21 charges and without trial for the duration of hostilities  
22 against the United States or its coalition partners in which  
23 the individual has engaged, or which the individual has  
24 purposely and materially supported, consistent with the  
25 law of war and any authorization for the use of military  
26 force provided by Congress pertaining to such hostilities.

1 **SEC. 6. DEFINITIONS.**

2 In this Act:

3 (1) ACT OF TERRORISM.—The term “act of ter-  
4 rorism” means an act of terrorism as that term is  
5 defined in section 101(16) of the Homeland Security  
6 Act of 2002 (6 U.S.C. 101(16)).

7 (2) ALIEN.—The term “alien” means an indi-  
8 vidual who is not a citizen of the United States.

9 (3) APPROPRIATE COMMITTEES OF CON-  
10 GRESS.—The term “appropriate committees of Con-  
11 gress” means—

12 (A) the Committee on Armed Services, the  
13 Committee on Homeland Security and Govern-  
14 mental Affairs, the Committee on the Judiciary,  
15 and the Select Committee on Intelligence of the  
16 Senate; and

17 (B) the Committee on Armed Services, the  
18 Committee on Homeland Security, the Com-  
19 mittee on the Judiciary, and the Permanent Se-  
20 lect Committee on Intelligence of the House of  
21 Representatives.

22 (4) ARTICLE III COURT.—The term “Article III  
23 court” means a court of the United States estab-  
24 lished under Article III of the Constitution of the  
25 United States.

1           (5) COALITION PARTNER.—The term “coalition  
2 partner”, with respect to hostilities engaged in by  
3 the United States, means any State or armed force  
4 directly engaged along with the United States in  
5 such hostilities or providing direct operational sup-  
6 port to the United States in connection with such  
7 hostilities.

8           (6) GENEVA CONVENTION RELATIVE TO THE  
9 TREATMENT OF PRISONERS OF WAR.—The term  
10 “Geneva Convention Relative to the Treatment of  
11 Prisoners of War” means the Geneva Convention  
12 Relative to the Treatment of Prisoners of War, done  
13 at Geneva August 12, 1949 (6 UST 3316).

14           (7) HOSTILITIES.—The term “hostilities”  
15 means any conflict subject to the laws of war, and  
16 includes a deliberate attack upon civilians and civil-  
17 ian targets protected by the laws of war.

18           (8) INTELLIGENCE COMMUNITY.—The term  
19 “intelligence community” has the meaning given  
20 such term under section 3(4) of the National Secu-  
21 rity Act of 1947 (50 U.S.C. 401a(4)).

22           (9) PRIVILEGED BELLIGERENT.—The term  
23 “privileged belligerent” means an individual belong-  
24 ing to one of the eight categories enumerated in Ar-

1       title 4 of the Geneva Convention Relative to the  
2       Treatment of Prisoners of War.

3               (10) UNPRIVILEGED ENEMY BELLIGERENT.—

4       The term “unprivileged enemy belligerent” means an  
5       individual (other than a privileged belligerent) who—

6               (A) has engaged in hostilities against the  
7       United States or its coalition partners;

8               (B) has purposely and materially sup-  
9       ported hostilities against the United States or  
10      its coalition partners; or

11              (C) was a part of al Qaeda at the time of  
12      capture.

13 **SEC. 7. EFFECTIVE DATE.**

14       This Act shall take effect on the date of the enact-  
15      ment of this Act, and shall apply with respect to individ-  
16      uals who are captured or otherwise come into the custody  
17      or under the effective control of the United States on or  
18      after that date.

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