

111TH CONGRESS  
2D SESSION

# H. R. 4975

To provide for habeas corpus review for unprivileged enemy belligerents.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2010

Mr. DANIEL E. LUNGREN of California (for himself, Mr. SMITH of Texas, Mr. SENSENBRENNER, Mr. CARTER, Mr. FRANKS of Arizona, Mrs. MILLER of Michigan, Mr. COBLE, and Mr. LINDER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide for habeas corpus review for unprivileged enemy belligerents.

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 referred to as the “Homeland Pro-  
5       tection Act”.

6       **SEC. 2. HABEAS CORPUS REVIEW FOR UNPRIVILEGED**  
7       **ENEMY BELLIGERENTS.**

8       Section 2241(e) of title 28, United States Code, is  
9       amended to read as follows:

1       “(e)(1) Except as provided in paragraph (2), no  
2 court, justice, or judge shall have jurisdiction to grant re-  
3 lief upon application for a writ of habeas corpus filed by,  
4 or on behalf of, an individual who is—

5               “(A) not a citizen of the United States or an  
6 alien admitted for permanent residence to the  
7 United States; and

8               “(B) detained by the United States after Sep-  
9 tember 11, 2001, pursuant to a determination that,  
10 or pending a determination of whether or not, the  
11 individual is an unprivileged enemy belligerent or  
12 unlawful enemy combatant.

13       “(2) The court, justice, or judge may grant relief oth-  
14 erwise prohibited by paragraph (1) if the court, justice,  
15 or judge determines that the applicant has rebutted the  
16 presumption in paragraph (3). In making that determina-  
17 tion, the court, justice, or judge shall take into account  
18 the totality of all evidence and information presented to  
19 it.

20       “(3) There shall be a rebuttable presumption that the  
21 United States has the authority to detain the individual  
22 under paragraph (1)(B). The applicant may only rebut the  
23 presumption by showing that any determination that the  
24 United States has such authority would be clearly erro-  
25 neous.

1       “(4) The court, justice, or judge shall not order dis-  
2 closure of classified evidence or information in enter-  
3 taining an application for a writ of habeas corpus to which  
4 this subsection applies unless the evidence or information  
5 is relevant, exculpatory, and there is some indication that  
6 the disclosure of that evidence or information would enable  
7 the applicant significantly to alter the quantum of proof  
8 in favor of the applicant.

9       “(5) The United States Court of Appeals for the Dis-  
10 trict of Columbia Circuit shall have exclusive jurisdiction  
11 over any appeal from a disposition of an application for  
12 a writ of habeas corpus to which this subsection applies.  
13 If a United States district court grants relief to the appli-  
14 cant, the appeal on behalf of the United States shall be  
15 considered to be automatic unless waived by the United  
16 States. If the district court orders the release of the de-  
17 tained individual pending that appeal, the order of release  
18 shall not take effect until the court of appeals has reviewed  
19 and upheld that order. The court of appeals shall hear  
20 and determine the appeal as expeditiously as possible.

21       “(6) A term used in this subsection that is defined  
22 for the purposes of chapter 47A of title 10 shall have the  
23 same meaning in this subsection that it has for those pur-  
24 poses.”.

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