

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

# S. 2943

To require the Attorney General to consult with appropriate officials within the executive branch prior to making the decision to try an unprivileged enemy belligerent in Federal civilian court.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 2010

Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. BENNETT, Mr. ENSIGN, and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To require the Attorney General to consult with appropriate officials within the executive branch prior to making the decision to try an unprivileged enemy belligerent in Federal civilian court.

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. CONSULTATION REQUIREMENT.**

4       (a) IN GENERAL.—Subject to subsection (b), no ac-  
5       tion shall be taken by the Attorney General, or any officer  
6       or employee of the Department of Justice, to—

7               (1) initiate a custodial interrogation of; or

1           (2) file a civilian criminal complaint, informa-  
2           tion, or indictment against;  
3 any foreign person detained by the United States Govern-  
4 ment because they may have engaged in conduct consti-  
5 tuting an act of war against the United States, terrorism,  
6 or material support to terrorists, or activities in prepara-  
7 tion therefor.

8           (b) CONSULTATION.—

9           (1) IN GENERAL.—Subject to paragraph (2),  
10 the Attorney General shall consult with the Director  
11 of National Intelligence, the Director of the National  
12 Counterterrorism Center, the Secretary of Homeland  
13 Security, and the Secretary of Defense prior to tak-  
14 ing any action identified in subsection (a).

15           (2) PRESIDENTIAL DIRECTION.—If, following  
16 consultation under paragraph (1), the Director of  
17 National Intelligence, the Director of the National  
18 Counterterrorism Center, the Secretary of Homeland  
19 Security, or the Secretary of Defense believe that  
20 any action identified in subsection (a) and proposed  
21 by the Attorney General may prevent the collection  
22 of intelligence related to terrorism or threats of vio-  
23 lence against the United States or its citizens, the  
24 Attorney General may not initiate such action with-  
25 out specific direction from the President.

1 (c) ANNUAL REPORT.—The Attorney General shall  
2 report annually to appropriate committees of jurisdiction  
3 regarding the number of occasions on which direction was  
4 sought from the President under subsection (b)(2) and the  
5 number of times, on those occasions, that the President  
6 directed actions identified in section (a) against such for-  
7 eign person.

8 (d) DEFINITIONS.—In this section:

9 (1) APPROPRIATE COMMITTEES OF JURISDIC-  
10 TION.—The term “appropriate committees of juris-  
11 diction” shall include—

12 (A) the Committee on Homeland Security  
13 and Governmental Affairs of the Senate;

14 (B) the Committee on Homeland Security  
15 of the House of Representatives;

16 (C) the Select Committee on Intelligence of  
17 the Senate;

18 (D) the Permanent Select Committee on  
19 Intelligence of the House of Representatives;  
20 and

21 (E) the Committees on Armed Services  
22 and Judiciary of the Senate and the Commit-  
23 tees on Armed Services and Judiciary of the  
24 House of Representatives.

1           (2) ACT OF WAR, TERRORISM, MATERIAL SUP-  
2           PORT TO TERRORISTS.—The terms “act of war”,  
3           “terrorism”, and “material support to terrorists”  
4           shall have the meanings given such terms in title 18,  
5           United States Code.

6           (e) SAVINGS CLAUSE.—Nothing in this section shall  
7           prevent the Attorney General, or any officer or employee  
8           of the Department of Justice, from apprehending or de-  
9           taining an individual as authorized by the Constitution or  
10          laws of the United States except to the extent that activi-  
11          ties incident to such apprehension or detention are specifi-  
12          cally identified in subsection (a).

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