

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

**S.** \_\_\_\_\_

To amend the Military Commissions Act of 2006 to improve and enhance due process and appellate procedures applicable to the Global War on Terrorism, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Military Commissions Act of 2006 to improve and enhance due process and appellate procedures applicable to the Global War on Terrorism, 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 “Military Commission  
5 Civil Liberties Restoration Act”.

1 **SEC. 2. DEFINITION OF UNLAWFUL ENEMY COMBATANT.**

2 Section 948a(1) of title 10, United States Code (as  
3 enacted by the Military Commissions Act of 2006 (Public  
4 Law 109–366)), is amended to read as follows:

5 “(1) UNLAWFUL ENEMY COMBATANT.—The  
6 term ‘unlawful enemy combatant’ means an indi-  
7 vidual engaged in hostilities as part of an armed  
8 conflict against the United States who is not a law-  
9 ful enemy combatant.”.

10 **SEC. 3. DETERMINATION OF UNLAWFUL ENEMY COMBAT-**  
11 **ANT STATUS BY COMBATANT STATUS REVIEW**  
12 **TRIBUNAL NOT DISPOSITIVE FOR PURPOSES**  
13 **OF JURISDICTION OF MILITARY COMMIS-**  
14 **SIONS.**

15 Section 948d of title 10, United States Code (as en-  
16 acted by the Military Commissions Act of 2006 (Public  
17 Law 109–366)), is amended—

18 (1) by striking subsection (c); and

19 (2) by redesignating subsection (d) as sub-  
20 section (c).

21 **SEC. 4. EXCLUSION FROM TRIAL BY MILITARY COMMIS-**  
22 **SION OF STATEMENTS OBTAINED BY COER-**  
23 **SION.**

24 Section 948r of title 10, United States Code (as en-  
25 acted by the Military Commissions Act of 2006 (Public

1 Law 109–366)), is amended by striking subsections (c)  
2 and (d) and inserting the following new subsection (e):

3 “(e) **EXCLUSION OF STATEMENTS OBTAINED BY CO-**  
4 **ERCION.**—A statement obtained by use of coercion shall  
5 not be admissible in a military commission under this  
6 chapter, except against a person accused of coercion as  
7 evidence that the statement was made.”.

8 **SEC. 5. DISCRETION OF MILITARY JUDGE TO EXCLUDE**  
9 **HEARSAY EVIDENCE DETERMINED TO BE UN-**  
10 **RELIABLE OR LACKING IN PROBATIVE**  
11 **VALUE.**

12 Section 949a(b)(2)(E)(ii) of title 10, United States  
13 Code (as enacted by the Military Commissions Act of 2006  
14 (Public Law 109–366)), is amended by striking “if the  
15 party opposing the admission of the evidence demonstrates  
16 that the evidence is unreliable or lacking in probative  
17 value” and inserting “if the military judge determines,  
18 upon motion by counsel, that the evidence is unreliable  
19 or lacking in probative value”.

1 **SEC. 6. DISCRETION OF MILITARY JUDGE TO TAKE CER-**  
2 **TAIN ACTIONS IN EVENT THAT A SUBSTITUTE**  
3 **FOR CLASSIFIED EXCULPATORY EVIDENCE IS**  
4 **INSUFFICIENT TO PROTECT THE RIGHT OF A**  
5 **DEFENDANT TO A FAIR TRIAL.**

6 Section 949j(d)(1) of title 10, United States Code (as  
7 enacted by the Military Commissions Act of 2006 (Public  
8 Law 109–366)), is amended by adding at the end the fol-  
9 lowing: “If the military judge determines that the sub-  
10 stitute is not sufficient to protect the right of the defend-  
11 ant to a fair trial, the military judge may—

12 “(A) dismiss the charges in their entirety;

13 “(B) dismiss the charges or specifications or  
14 both to which the information relates; or

15 “(C) take such other actions as may be re-  
16 quired in the interest of justice.”.

17 **SEC. 7. REVIEW OF MILITARY COMMISSION DECISIONS BY**  
18 **UNITED STATES COURT OF APPEALS FOR**  
19 **THE ARMED FORCES RATHER THAN COURT**  
20 **OF MILITARY COMMISSION REVIEW.**

21 (a) REVIEW.—

22 (1) IN GENERAL.—Section 950f of title 10,  
23 United States Code (as enacted by the Military  
24 Commissions Act of 2006 (Public Law 109–366)), is  
25 amended to read as follows:

1 **“§ 950f. Review by Court of Appeals for the Armed**  
2 **Forces**

3 “(a) CASES TO BE REVIEWED.—The United States  
4 Court of Appeals for the Armed Forces, in accordance  
5 with procedures prescribed under regulations of the Sec-  
6 retary, shall review the record in each case that is referred  
7 to the Court by the convening authority under section  
8 950c of this title with respect to any matter of law raised  
9 by the accused.

10 “(b) SCOPE OF REVIEW.—In a case reviewed by the  
11 United States Court of Appeals for the Armed Forces  
12 under this section, the Court may only act with respect  
13 to matters of law.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-  
15 tions at the beginning of subchapter VI of chapter  
16 47A of such title (as so enacted) is amended by  
17 striking the item relating to section 950f and insert-  
18 ing the following new item:

“950f. Review by Court of Appeals for the Armed Forces.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) IN GENERAL.—Chapter 47A of title 10,  
21 United States Code (as so enacted), is further  
22 amended as follows:

23 (A) In section 950c(a), by striking “the  
24 Court of Military Commission Review” and in-

1           serting “the United States Court of Appeals for  
2           the Armed Forces”.

3           (B) In section 950d, by striking “the  
4           Court of Military Commission Review” each  
5           place it appears and inserting “the United  
6           States Court of Appeals for the Armed Forces”.

7           (C) In section 950g(a)(2), by striking “the  
8           Court of Military Commission Review” each  
9           place it appears and inserting “the United  
10          States Court of Appeals for the Armed Forces”.

11          (D) In section 950h, by striking “the  
12          Court of Military Commission Review” each  
13          place it appears and inserting “the United  
14          States Court of Appeals for the Armed Forces”.

15          (2) UNIFORM CODE OF MILITARY JUSTICE.—  
16          Section 867a(a) of title 10, United States Code (ar-  
17          ticle 67a(a) of the Uniform Code of Military Jus-  
18          tice), is amended by striking “Decisions” and insert-  
19          ing “Except as provided in sections 950d and 950g  
20          of this title, decisions”.

21 **SEC. 8. IMPLEMENTATION OF TREATY OBLIGATIONS.**

22          Section 6(a) of the Military Commissions Act of 2006  
23 (Public Law 109–366) is amended—

24                 (1) in paragraph (2)—

1 (A) in the first sentence, by inserting after  
2 “international character” the following: “and  
3 preserve the capacity of the United States to  
4 prosecute nationals of enemy powers for engag-  
5 ing in acts against members of the United  
6 States Armed Forces and United States citizens  
7 that have been prosecuted by the United States  
8 as war crimes in the past”; and

9 (B) by striking the second sentence; and  
10 (2) in paragraph (3)—

11 (A) in subparagraph (A), by striking “the  
12 President has the authority for the United  
13 States to interpret the meaning and application  
14 of the Geneva Conventions and to promulgate”  
15 and inserting “the President has the authority,  
16 subject to congressional oversight and judicial  
17 review, to promulgate”;

18 (B) in subparagraph (B), by striking “in-  
19 terpretations” and inserting “standards”; and

20 (C) by amending subparagraph (D) to read  
21 as follows:

22 “(D) The President shall notify other par-  
23 ties to the Geneva Conventions that the United  
24 States expects members of the United States  
25 Armed Forces and other United States citizens

1           detained in a conflict not of an international  
2           character to be treated in a manner consistent  
3           with the standards described in subparagraph  
4           (A) and embodied in section 2441 of title 10,  
5           United States Code, as amended by subsection  
6           (b).”

7   **SEC. 9. RESTORATION OF HABEAS CORPUS FOR INDIVID-**  
8                           **UALS DETAINED BY THE UNITED STATES.**

9           (a) RESTORATION.—Subsection (e) of section 2241  
10          of title 28, United States Code, as amended by section  
11          7(a) of the Military Commissions Act of 2006 (Public Law  
12          109–366), is repealed.

13          (b) CONFORMING AMENDMENT.—Subsection (b) of  
14          section 7 of the Military Commissions Act of 2006 (Public  
15          Law 109–366) is repealed.

16   **SEC. 10. EXPEDITED JUDICIAL REVIEW OF MILITARY COM-**  
17                           **MISSIONS ACT OF 2006.**

18          Notwithstanding any other provision of law, the fol-  
19          lowing rules shall apply to any civil action, including an  
20          action for declaratory judgment, that challenges any provi-  
21          sion of the Military Commissions Act of 2006 (Public Law  
22          109–366), or any amendment made by that Act, on the  
23          ground that such provision or amendment violates the  
24          Constitution or the laws of the United States:



1           (1) The action shall be filed in the United  
2 States District Court for the District of Columbia  
3 and shall be heard in that Court by a court of three  
4 judges convened pursuant to section 2284 of title  
5 28, United States Code.

6           (2) An interlocutory or final judgment, decree,  
7 or order of the United States District Court for the  
8 District of Columbia in an action under paragraph  
9 (1) shall be reviewable as a matter of right by direct  
10 appeal to the Supreme Court of the United States.  
11 Any such appeal shall be taken by a notice of appeal  
12 filed within 10 days after the date on which such  
13 judgment, decree, or order is entered. The jurisdic-  
14 tional statement with respect to any such appeal  
15 shall be filed within 30 days after the date on which  
16 such judgment, decree, or order is entered.

17           (3) It shall be the duty of the United States  
18 District Court for the District of Columbia and the  
19 Supreme Court of the United States to advance on  
20 the docket and to expedite to the greatest possible  
21 extent the disposition of any action or appeal, re-  
22 spectively, brought under this section.

23 **SEC. 11. EFFECTIVE DATE.**

24           The amendments made by this Act shall take effect  
25 on October 17, 2006, the date of the enactment of the

1 Military Commissions Act of 2006 (Public Law 109–366),  
2 immediately after the enactment of that Act and shall  
3 apply to all cases, without exception, that are pending on  
4 or after such date.