

111TH CONGRESS
2^D SESSION

S. _____

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.

IN THE SENATE OF THE UNITED STATES

Mr. McCAIN introduced the following bill; which was read twice and referred to the Committee on _____

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) **REASONABLE DELAY FOR INTELLIGENCE AC-**
17 **TIVITIES.**—An individual who may be an unprivileged
18 enemy belligerent and who is initially captured or other-
19 wise comes into the custody or under the effective control
20 of the United States by an intelligence agency of the
21 United States may be held, interrogated, or transported
22 by the intelligence agency and placed into military custody
23 for purposes of this Act if retained by the United States
24 within a reasonable time after the capture or coming into
25 the custody or effective control by the intelligence agency,
26 giving due consideration to operational needs and require-

1 ments to avoid compromise or disclosure of an intelligence
2 mission or intelligence sources or methods.

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

6 (a) ESTABLISHMENT OF INTERROGATION GROUPS.—

7 (1) ESTABLISHMENT AUTHORIZED.—The Presi-
8 dent is authorized to establish an interagency team
9 for purposes as follows:

10 (A) To interrogate under subsection (b) in-
11 dividuals placed in military custody under sec-
12 tion 2.

13 (B) To make under subsection (c)(1) a
14 preliminary determination of the status of indi-
15 viduals described in section 2.

16 (2) COMPOSITION.—Each interagency team
17 under this subsection shall be composed of such per-
18 sonnel of the Executive Branch having expertise in
19 matters relating to national security, terrorism, in-
20 telligence, interrogation, or law enforcement as the
21 President considers appropriate. The members of
22 any particular interagency team may vary depending
23 on the skills most relevant to a particular case.

24 (3) DESIGNATIONS.—

1 (A) HIGH-VALUE DETAINEE.—An indi-
2 vidual placed in military custody under section
3 2 shall, while subject to interrogation and de-
4 termination of status under this section, be re-
5 ferred to as a “high-value detainee” if the indi-
6 vidual meets the criteria for treatment as such
7 established in the regulations required by sub-
8 section (d).

9 (B) HIGH-VALUE DETAINEE INTERROGA-
10 TION GROUP.—An interagency team established
11 under this subsection shall be known as a
12 “high-value detainee interrogation group”.

13 (b) INTERROGATIONS.—

14 (1) INTERROGATIONS TO BE CONDUCTED BY
15 HIGH-VALUE DETAINEE INTERROGATION GROUP.—A
16 high-value detainee interrogation group established
17 under this section shall conduct the interrogations of
18 each high-value detainee.

19 (2) UTILIZATION OF OTHER PERSONNEL.—A
20 high-value detainee interrogation group may utilize
21 military and intelligence personnel, and Federal,
22 State, and local law enforcement personnel, in con-
23 ducting interrogations of a high-value detainee. The
24 utilization of such personnel for the interrogation of
25 a detainee shall not alter the responsibility of the in-

1 terrogation group for the coordination within the
2 Executive Branch of the interrogation of the de-
3 tainee or the determination of status and disposition
4 of the detainee under this Act.

5 (3) INAPPLICABILITY OF CERTAIN STATEMENT
6 AND RIGHTS.—A individual who is suspected of
7 being an unprivileged enemy belligerent shall not,
8 during interrogation under this subsection, be pro-
9 vided the statement required by *Miranda v. Arizona*
10 (384 U.S. 436 (1966)) or otherwise be informed of
11 any rights that the individual may or may not have
12 to counsel or to remain silent consistent with *Mi-*
13 *randa v. Arizona*.

14 (c) DETERMINATIONS OF STATUS.—

15 (1) PRELIMINARY DETERMINATION BY HIGH-
16 VALUE DETAINEE INTERROGATION GROUP.—The
17 high-value detainee interrogation group responsible
18 for interrogating a high-value detainee under sub-
19 section (b) shall make a preliminary determination
20 whether or not the detainee is an unprivileged enemy
21 belligerent. The interrogation group shall make such
22 determination based on the result of its interroga-
23 tion of the individual and on all intelligence informa-
24 tion available to the interrogation group. The inter-
25 rogation group shall, after consultation with the Di-

1 rector of National Intelligence, the Director of the
2 Federal Bureau of Investigation, and the Director of
3 the Central Intelligence Agency, submit such deter-
4 mination to the Secretary of Defense and the Attor-
5 ney General.

6 (2) FINAL DETERMINATION.—As soon as pos-
7 sible after receipt of a preliminary determination of
8 status with respect to a high-value detainee under
9 paragraph (1), the Secretary of Defense and the At-
10 torney General shall jointly submit to the President
11 and to the appropriate committees of Congress a
12 final determination whether or not the detainee is an
13 unprivileged enemy belligerent for purposes of this
14 Act. In the event of a disagreement between the Sec-
15 retary of Defense and the Attorney General, the
16 President shall make the final determination.

17 (3) DEADLINE FOR DETERMINATIONS.—All ac-
18 tions required regarding a high-value detainee under
19 this subsection shall, to the extent practicable, be
20 completed not later than 48 hours after the detainee
21 is placed in military custody under section 2.

22 (d) REGULATIONS.—

23 (1) IN GENERAL.—The operations and activities
24 of high-value detainee interrogation groups under
25 this section shall be governed by such regulations

1 and guidance as the President shall establish for
2 purposes of implementing this section. The regula-
3 tions shall specify the officer or officers of the Exec-
4 utive Branch responsible for determining whether an
5 individual placed in military custody under section 2
6 meets the criteria for treatment as a high-value de-
7 tainee for purposes of interrogation and determina-
8 tion of status by a high-value interrogation group
9 under this section.

10 (2) CRITERIA FOR DESIGNATION OF INDIVID-
11 UALS AS HIGH-VALUE DETAINEES.—The regulations
12 required by this subsection shall include criteria for
13 designating an individual as a high-value detainee
14 based on the following:

15 (A) The potential threat the individual
16 poses for an attack on civilians or civilian facili-
17 ties within the United States or upon United
18 States citizens or United States civilian facili-
19 ties abroad at the time of capture or when com-
20 ing under the custody or control of the United
21 States.

22 (B) The potential threat the individual
23 poses to United States military personnel or
24 United States military facilities at the time of

1 capture or when coming under the custody or
2 control of the United States.

3 (C) The potential intelligence value of the
4 individual.

5 (D) Membership in al Qaeda or in a ter-
6 rorist group affiliated with al Qaeda.

7 (E) Such other matters as the President
8 considers appropriate.

9 (3) PARAMOUNT PURPOSE OF INTERROGA-
10 TIONS.—The regulations required by this subsection
11 shall provide that the paramount purpose of the in-
12 terrogation of high-value detainees under this Act
13 shall be the protection of United States civilians and
14 United States civilian facilities through thorough
15 and professional interrogation for intelligence pur-
16 poses.

17 (4) SUBMITTAL TO CONGRESS.—The President
18 shall submit the regulations and guidance required
19 by this subsection to the appropriate committees of
20 Congress not later than 60 days after the date of
21 the enactment of this Act.

22 **SEC. 4. LIMITATION ON PROSECUTION OF ALIEN**
23 **UNPRIVILEGED ENEMY BELLIGERENTS.**

24 (a) LIMITATION.—No funds appropriated or other-
25 wise made available to the Department of Justice may be

1 used to prosecute in an Article III court in the United
2 States, or in any territory or possession of the United
3 States, any alien who has been determined to be an
4 unprivileged enemy belligerent under section 3(c)(2).

5 (b) APPLICABILITY PENDING FINAL DETERMINA-
6 TION OF STATUS.—While a final determination on the sta-
7 tus of an alien high-value detainee is pending under sec-
8 tion 3(c)(2), the alien shall be treated as an unprivileged
9 enemy belligerent for purposes of subsection (a).

10 **SEC. 5. DETENTION WITHOUT TRIAL OF UNPRIVILEGED**
11 **ENEMY BELLIGERENTS.**

12 An individual, including a citizen of the United
13 States, determined to be an unprivileged enemy belligerent
14 under section 3(c)(2) in a manner which satisfies Article
15 5 of the Geneva Convention Relative to the Treatment of
16 Prisoners of War may be detained without criminal
17 charges and without trial for the duration of hostilities
18 against the United States or its coalition partners in which
19 the individual has engaged, or which the individual has
20 purposely and materially supported, consistent with the
21 law of war and any authorization for the use of military
22 force provided by Congress pertaining to such hostilities.

23 **SEC. 6. DEFINITIONS.**

24 In this Act:

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

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

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

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

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

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

24 (5) COALITION PARTNER.—The term “coalition
25 partner”, with respect to hostilities engaged in by

1 the United States, means any State or armed force
2 directly engaged along with the United States in
3 such hostilities or providing direct operational sup-
4 port to the United States in connection with such
5 hostilities.

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

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

16 (8) PRIVILEGED BELLIGERENT.—The term
17 “privileged belligerent” means an individual belong-
18 ing to one of the eight categories enumerated in Ar-
19 ticle 4 of the Geneva Convention Relative to the
20 Treatment of Prisoners of War.

21 (9) UNPRIVILEGED ENEMY BELLIGERENT.—
22 The term “unprivileged enemy belligerent” means an
23 individual (other than a privileged belligerent) who—

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

1 (B) has purposely and materially sup-
2 ported hostilities against the United States or
3 its coalition partners; or

4 (C) was a part of al Qaeda at the time of
5 capture.

6 **SEC. 7. EFFECTIVE DATE.**

7 This Act shall take effect on the date of the enact-
8 ment of this Act, and shall apply with respect to individ-
9 uals who are captured or otherwise come into the custody
10 or under the effective control of the United States on or
11 after that date.