111TH CONGRESS
2D Session

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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,
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4 This Act may be cited as the “Enemy Belligerent In-
5 terrogation, Detention, and Prosecution Act of 2010”.

March 4, 2010 (12:06 p.m.)
SEC. 2. PLACEMENT OF SUSPECTED UNPRIVILEGED ENEMY BELLIGERENTS IN MILITARY CUSTODY.

(a) Military Custody Requirement.—Whenever within the United States, its territories, and possessions, or outside the territorial limits of the United States, an individual is captured or otherwise comes into the custody or under the effective control of the United States who is suspected of engaging in hostilities against the United States or its coalition partners through an act of terrorism, or by other means in violation of the laws of war, or of purposely and materially supporting such hostilities, and who may be an unprivileged enemy belligerent, the individual shall be placed in military custody for purposes of initial interrogation and determination of status in accordance with the provisions of this Act.

(b) Reasonable Delay for Intelligence Activities.—An individual who may be an unprivileged enemy belligerent and who is initially captured or otherwise comes into the custody or under the effective control of the United States by an intelligence agency of the United States may be held, interrogated, or transported by the intelligence agency and placed into military custody for purposes of this Act if retained by the United States within a reasonable time after the capture or coming into the custody or effective control by the intelligence agency, giving due consideration to operational needs and require-
ments to avoid compromise or disclosure of an intelligence
mission or intelligence sources or methods.

SEC. 3. INTERROGATION AND DETERMINATION OF STATUS
OF SUSPECTED UNPRIVILEGED ENEMY BELLIGERENTS.

(a) Establishment of Interrogation Groups.—

(1) Establishment authorized.—The President is authorized to establish an interagency team for purposes as follows:

(A) To interrogate under subsection (b) individuals placed in military custody under section 2.

(B) To make under subsection (c)(1) a preliminary determination of the status of individuals described in section 2.

(2) Composition.—Each interagency team under this subsection shall be composed of such personnel of the Executive Branch having expertise in matters relating to national security, terrorism, intelligence, interrogation, or law enforcement as the President considers appropriate. The members of any particular interagency team may vary depending on the skills most relevant to a particular case.

(3) Designations.—
(A) HIGH-VALUE DETAINEE.—An individual placed in military custody under section 2 shall, while subject to interrogation and determination of status under this section, be referred to as a “high-value detainee” if the individual meets the criteria for treatment as such established in the regulations required by subsection (d).

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

(b) INTERROGATIONS.—

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

(2) UTILIZATION OF OTHER PERSONNEL.—A high-value detainee interrogation group may utilize military and intelligence personnel, and Federal, State, and local law enforcement personnel, in conducting interrogations of a high-value detainee. The utilization of such personnel for the interrogation of a detainee shall not alter the responsibility of the in-
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interrogation group for the coordination within the
Executive Branch of the interrogation of the de-
tainee or the determination of status and disposition
of the detainee under this Act.

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

(e) **DETERMINATIONS OF STATUS.—**

(1) **PRELIMINARY DETERMINATION BY HIGH-
VALUE DETAINEE INTERROGATION GROUP.—**The
high-value detainee interrogation group responsible
for interrogating a high-value detainee under sub-
section (b) shall make a preliminary determination
whether or not the detainee is an unprivileged enemy
belligerent. The interrogation group shall make such
determination based on the result of its interroga-
tion of the individual and on all intelligence informa-
tion available to the interrogation group. The inter-
rogation group shall, after consultation with the Di-
rector of National Intelligence, the Director of the
Federal Bureau of Investigation, and the Director of
the Central Intelligence Agency, submit such deter-
mination to the Secretary of Defense and the Attor-
ney General.

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

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

(d) **REGULATIONS.**—

(1) **IN GENERAL.**—The operations and activities
of high-value detainee interrogation groups under
this section shall be governed by such regulations
and guidance as the President shall establish for purposes of implementing this section. The regulations shall specify the officer or officers of the Executive Branch responsible for determining whether an individual placed in military custody under section 2 meets the criteria for treatment as a high-value detainee for purposes of interrogation and determination of status by a high-value interrogation group under this section.

(2) Criteria for designation of individuals as high-value detainees.—The regulations required by this subsection shall include criteria for designating an individual as a high-value detainee based on the following:

(A) The potential threat the individual poses for an attack on civilians or civilian facilities within the United States or upon United States citizens or United States civilian facilities abroad at the time of capture or when coming under the custody or control of the United States.

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

(C) The potential intelligence value of the individual.

(D) Membership in al Qaeda or in a terrorist group affiliated with al Qaeda.

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

(3) PARAMOUNT PURPOSE OF INTERROGATIONS.—The regulations required by this subsection shall provide that the paramount purpose of the interrogation of high-value detainees under this Act shall be the protection of United States civilians and United States civilian facilities through thorough and professional interrogation for intelligence purposes.

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

SEC. 4. LIMITATION ON PROSECUTION OF ALIEN UNPRIVILEGED ENEMY BELLIGERENTS.

(a) LIMITATION.—No funds appropriated or otherwise made available to the Department of Justice may be
used to prosecute in an Article III court in the United States, or in any territory or possession of the United States, any alien who has been determined to be an unprivileged enemy belligerent under section 3(c)(2).

(b) Applicability Pending Final Determination of Status.—While a final determination on the status of an alien high-value detainee is pending under section 3(c)(2), the alien shall be treated as an unprivileged enemy belligerent for purposes of subsection (a).

SEC. 5. DETENTION WITHOUT TRIAL OF UNPRIVILEGED ENEMY BELLIGERENTS.

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

SEC. 6. DEFINITIONS.

In this Act:
(1) Act of Terrorism.—The term “act of terrorism” means an act of terrorism as that term is defined in section 101(16) of the Homeland Security Act of 2002 (6 U.S.C. 101(16)).

(2) Alien.—The term “alien” means an individual who is not a citizen of the United States.

(3) Appropriate Committees of Congress.—The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Homeland Security, the Committee on the Judiciary, and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) Article III Court.—The term “Article III court” means a court of the United States established under Article III of the Constitution of the United States.

(5) Coalition Partner.—The term “coalition partner”, with respect to hostilities engaged in by
the United States, means any State or armed force
directly engaged along with the United States in
such hostilities or providing direct operational sup-
port to the United States in connection with such
hostilities.

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

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

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

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

(A) has engaged in hostilities against the
United States or its coalition partners;
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(B) has purposely and materially sup- 
ported hostilities against the United States or  
its coalition partners; or  
(C) was a part of al Qaeda at the time of 
capture.

SEC. 7. EFFECTIVE DATE.

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