

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1315

To prohibit the detention of enemy combatants at Naval Station, Guantanamo Bay, Cuba, to provide for de novo combatant status reviews by military judges, to repeal the Military Commissions Act of 2006, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 2009

Mr. SCHIFF introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To prohibit the detention of enemy combatants at Naval Station, Guantanamo Bay, Cuba, to provide for de novo combatant status reviews by military judges, to repeal the Military Commissions Act of 2006, 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 “Terrorist Detainees  
5 Procedures Act of 2009”.

1 **SEC. 2. PROHIBITION OF DETENTION OF UNLAWFUL**  
2 **ENEMY COMBATANTS AT NAVAL STATION,**  
3 **GUANTANAMO BAY, CUBA.**

4 As soon as practicable, but by not later than Decem-  
5 ber 31, 2009, the President shall ensure that no person  
6 alleged to be an unlawful enemy combatant is detained  
7 at Naval Station, Guantanamo Bay, Cuba.

8 **SEC. 3. STATUS REVIEWS FOR INDIVIDUALS DETAINED AT**  
9 **GUANTANAMO BAY, CUBA.**

10 (a) **STATUS REVIEWS REQUIRED.**—In the case of a  
11 person described in subsection (b), the status of the person  
12 shall be determined by a panel of three military judges  
13 in accordance with this section.

14 (b) **PERSON DESCRIBED.**—A person described in this  
15 subsection is a person who, as of the date of the enactment  
16 of this Act, is detained by the United States at Naval Sta-  
17 tion, Guantanamo Bay, Cuba, and who is suspected of  
18 being an unlawful enemy combatant.

19 (c) **JURISDICTION.**—The panel of military judges  
20 convened to conduct a status review under this section  
21 shall have exclusive jurisdiction to determine the status  
22 of the person suspected of being an unlawful enemy com-  
23 batant.

24 (d) **PROCEDURE.**—A review under this section shall  
25 be conducted under the same procedures as are applicable  
26 to an investigation under section 832 (article 32) of title

1 10, United States Code, except that a person whose status  
2 is reviewed under subsection (a) shall also be entitled to  
3 an interpreter with appropriate security clearance.

4 (e) MILITARY JUDGES.—To serve as a military judge  
5 for purposes of a status review under this section, a mili-  
6 tary judge shall be a commissioned officer of the armed  
7 forces who is a member of the bar of a Federal court or  
8 a member of the bar of the highest court of a State and  
9 who is certified to be qualified for duty as a military judge  
10 by the Judge Advocate General of the armed force of  
11 which such military judge is a member.

12 (f) DEADLINE FOR REVIEW.—Each person described  
13 in subsection (b) shall receive a status review under this  
14 section by no later than the date that is 120 days after  
15 the date of the enactment of this Act, unless a military  
16 judge determines that such date should be extended for  
17 good cause.

18 (g) CONFORMING REPEAL.—The Detainee Treat-  
19 ment Act of 2005 (title X of Public Law 109–148; 119  
20 Stat. 2742) is amended by striking section 1005 and the  
21 Detainee Treatment Act of 2005 (title XIV of Public Law  
22 109–163; 119 Stat. 3474) is amended by striking section  
23 1405.

24 (h) TREATMENT OF COMBATANT STATUS REVIEW  
25 TRIBUNALS.—A review conducted pursuant to section

1 1005 of the Detainee Treatment Act of 2005 (title X of  
2 Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801  
3 note), as in effect before the date of the enactment of this  
4 Act, shall not satisfy the requirement of subsection (a).

5 **SEC. 4. DISPOSITION OF DETAINEES AFTER STATUS RE-**  
6 **VIEWS.**

7 (a) UNLAWFUL ENEMY COMBATANTS.—

8 (1) IN GENERAL.—Any person who is deter-  
9 mined, pursuant to a review under section 3, to be  
10 an unlawful enemy combatant shall be—

11 (A) transferred to a military or civilian de-  
12 tention facility in the United States, charged  
13 with a violation of United States or inter-  
14 national law, and tried—

15 (i) by courts-martial under chapter 47  
16 of title 10, United States Code (the Uni-  
17 form Code of Military Justice); or

18 (ii) in a district court of the United  
19 States;

20 (B) transferred to an international tri-  
21 bunal operating under the authority of the  
22 United Nations with jurisdiction to hold trials  
23 of such person;

24 (C) transferred to a NATO-run detention  
25 facility, or to a different country, provided that

1           there are adequate assurances that the person  
2           will not be subject to torture in that country,  
3           consistent with the obligations of the United  
4           States under international law; or

5           (D) held in accordance with the law of  
6           armed conflict until the earlier of—

7                   (i) the cessation of the hostilities that  
8                   are directly related to the person's initial  
9                   detention; or

10                   (ii) such time as the person is deter-  
11                   mined to no longer be a threat.

12           (2) CHARGES.—If charges are brought under  
13           subsection (a)(1)(A) against a person determined to  
14           be an unlawful enemy combatant pursuant to a re-  
15           view under section 3, such charges shall be brought  
16           before the end of the 120-day period that begins on  
17           the date on which such review is concluded, unless  
18           a military judge determines that relevant evidence  
19           has become available after the end of such period  
20           and that such period should be extended.

21           (b) OTHER DETAINEES.—Any person who is deter-  
22           mined, pursuant to a review under section 3, not to be  
23           an unlawful enemy combatant and who is not suspected  
24           of violating any law of the United States or any inter-  
25           national law shall be—

1           (1) transferred to the person’s country of citi-  
2           zenship, place of capture, or a different country, as  
3           long as that country provides adequate assurances  
4           that the person will not be subject to torture, con-  
5           sistent with the obligations of the United States  
6           under international law; or

7           (2) released.

8           (c) CONSTRUCTION.—The transfer of a person under  
9           subsection (a) shall not be considered an entry into the  
10          United States for purposes of immigration status.

11       **SEC. 5. HABEAS CORPUS FOR DETAINEES AT GUANTANAMO**  
12                               **BAY, CUBA.**

13          (a) REPEAL OF PROHIBITION ON HABEAS COR-  
14          PUS.—Section 2241 of title 28, United States Code, is  
15          amended by striking subsection (e).

16          (b) JURISDICTION.—An application for a writ of ha-  
17          beas corpus brought by a person described in section 3(b)  
18          may only be heard in the United States District Court  
19          for the District of Columbia.

20          (c) SENSE OF CONGRESS.—It is the sense of Con-  
21          gress that the judicial review of all applications for writs  
22          of habeas corpus brought by persons described in section  
23          3(b) that are pending as of the date of the enactment of  
24          this Act should be suspended until the completion of the  
25          status reviews required under section 3.

1 **SEC. 6. REPEAL OF MILITARY COMMISSIONS ACT OF 2006.**

2 (a) REPEAL.—Title 10, United States Code, is  
3 amended by striking chapter 47A.

4 (b) CONFORMING AMENDMENTS.—Title 10, United  
5 States Code, as amended by subsection (a), is further  
6 amended—

7 (1) in tables of chapters at the beginning of  
8 subtitle A, and at the beginning of part II of subtitle  
9 A, by striking the item relating to chapter 47A;

10 (2) in section 802(a) (article 2) by striking  
11 paragraph (13);

12 (3) in each of sections 821, 828, 848, 850(a),  
13 904, and 906 (articles 21, 28, 48, 50(a), 104, and  
14 106) by striking the following: “This section does  
15 not apply to a military commission established under  
16 chapter 47A of this title.”; and

17 (4) in section 836 (article 36)—

18 (A) in subsection (a), by striking “, except  
19 as provided in chapter 47A of this title,”; and

20 (B) in subsection (b), by striking “, except  
21 insofar as applicable to military commissions  
22 established under chapter 47A of this title”.

23 **SEC. 7. REPORT ON COMPREHENSIVE DETAINEE POLICY.**

24 Not later than 120 days after the date of the enact-  
25 ment of this Act, the President shall submit to Congress  
26 a report containing the President’s recommendations with

1 respect to any statutory changes necessary to implement  
2 a comprehensive Federal policy governing the apprehen-  
3 sion, detention, trial, transfer, release, or other disposition  
4 of individuals captured or apprehended in connection with  
5 armed conflicts and counterterrorism operations.

6 **SEC. 8. DEFINITIONS.**

7 In this Act:

8 (1) The term “unlawful enemy combatant”  
9 means a person who has engaged in hostilities or  
10 who has purposefully and materially supported hos-  
11 tilities against the United States or its co-belliger-  
12 ents who is not a lawful enemy combatant (including  
13 a person who is part of the Taliban, al Qaeda, or as-  
14 sociated forces).

15 (2) The term “co-belligerent”, with respect to  
16 the United States, means any State or armed force  
17 joining and directly engaged with the United States  
18 in hostilities or directly supporting hostilities against  
19 a common enemy.

20 (3) The term “lawful enemy combatant” means  
21 a person who is—

22 (A) a member of the regular forces of a  
23 State party engaged in hostilities against the  
24 United States;



1           (B) a member of a militia, volunteer corps,  
2           or organized resistance movement belonging to  
3           a State party engaged in such hostilities, which  
4           are under responsible command, wear a fixed  
5           distinctive sign recognizable at a distance, carry  
6           their arms openly, and abide by the law of war;  
7           or

8           (C) a member of a regular armed force  
9           who professes allegiance to a government en-  
10          gaged in such hostilities, but not recognized by  
11          the United States.

12 **SEC. 9. EFFECTIVE DATE.**

13          The amendments made by this Act shall take effect  
14          on the date of the enactment of this Act, and shall apply  
15          to all cases, without exception, pending on or after the  
16          date of the enactment of this Act which relate to any as-  
17          pect of the detention, transfer, treatment, trial, or condi-  
18          tions of detention of an alien detained by the United  
19          States since September 11, 2001.

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