

# **ENEMY COMBATANT DETENTION REVIEW ACT**

## **SENATORS GRAHAM AND LIEBERMAN**

“Guidance from Congress on these difficult subjects is, of course, always welcome. Because we are on a fast track, however, such guidance sooner, rather than later, would certainly be most helpful.” ~ Chief Judge Lamberth, July 21, 2008

The *Enemy Combatant Detention Review Act* seeks to provide Congressional input on the *habeas corpus* process provided to detainees at Guantanamo Bay, Cuba under the Supreme Court’s recent *Boumediene* decision.

Justice Kennedy suggested in his majority opinion that habeas corpus proceedings need not resemble a traditional criminal proceeding but must provide adequate process for detainees to challenge their detention.

The *Enemy Combatant Detention Review Act* is designed to comply with and complement the edicts of the Court. The legislation provides guidance on the procedures to follow by creating one clear set of rules which apply to all habeas petitions filed by detainees at Guantanamo Bay.

### **ONE COURT IS CHARGED TO HANDLE ALL HABEAS PETITIONS**

- The legislation consolidates all petitions from Guantanamo detainees to the U.S. District Court for the District of Columbia.

### **BRINGING CLARITY TO THE COURT’S HANDLING OF HABEAS PETITIONS FILED BY DETAINEES**

- In response to a habeas corpus action by a detainee, the government would have the burden of justifying their detention as an enemy combatant.
- The government will be required to provide the detainee with all the information that was relied upon to hold the detainee as an enemy combatant and any exculpatory information that may be available to the attorney for the government that would argue otherwise. The detainee is also provided with limited discovery rights.
- The government could withhold classified information from the detainee, but would have to either make the information available to the detainee’s lawyer -- who will be allowed to obtain the necessary security clearances to review the information -- or provide a summary of that information without compromising our nation’s intelligence sources and methods.
- The legislation ensures our troops will not be required to appear in court to testify at a habeas proceeding if military or intelligence efforts will be harmed or if the judge determines the testimony is not necessary. Secure video links from Guantanamo to the courtroom are authorized.

- Detainees will be restricted from raising frivolous claims related to the condition of their detention.
- Lawsuits seeking monetary damages from U.S. personnel, including members of the U.S. military, will not be allowed.

#### **PROCEDURES FOR DETAINEES ORDERED RELEASED FROM MILITARY CUSTODY**

- The legislation prohibits the release of detainees into the United States.
- Detainees ordered released by the Court would be transferred to the custody of Department of Homeland Security and be housed separately while the State Department secured release into their home country or other appropriate location in accordance with U.S. law prohibiting the return of individuals to a country where they may be mistreated.
- The legislation stays habeas corpus proceedings for detainees who have had charges sworn against them in a military commission proceeding and repeals the duplicative D.C. Circuit review of CSRT determinations provided under the *Detainee Treatment Act*.

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