

S.576

Restoring the Constitution Act of 2007 (Introduced in Senate)

SECTION 1. SHORT TITLE.

This Act may be cited as the `Restoring the Constitution Act of 2007'.

SEC. 2. DEFINITION OF UNLAWFUL ENEMY COMBATANT.

Paragraph (1) of section 948a of title 10, United States Code, is amended to read as follows:

- `(1) UNLAWFUL ENEMY COMBATANT- The term `unlawful enemy combatant' means an individual who is not a lawful enemy combatant and--
 - `(A) who directly participates in hostilities in a zone of active combat against the United States; or
 - `(B) who--
 - `(i) planned, authorized, committed, or intentionally aided the terrorist acts on the United States of September 11, 2001; or
 - `(ii) intentionally harbored any individual described in clause (i).

The term is used solely to designate individuals triable by military commission under this chapter.'

SEC. 3. CONSTRUCTION WITH GENEVA CONVENTIONS.

Subsection (g) of section 948b of title 10, United States Code, is amended to read as follows:

- `(g) Construction With Geneva Conventions- To the extent that any provision of this chapter is determined to be inconsistent with the obligations of the United States under the Geneva Conventions, the Geneva Conventions shall prevail, and such provision shall be deemed to have no further force or effect.'

SEC. 4. DETERMINATION OF UNLAWFUL ENEMY COMBATANT STATUS BY COMBATANT STATUS REVIEW TRIBUNAL NOT DISPOSITIVE FOR PURPOSES OF JURISDICTION OF MILITARY COMMISSIONS.

- Section 948d of title 10, United States Code, is amended--
- (1) by striking subsection (c); and
 - (2) by redesignating subsection (d) as subsection (c).

SEC. 5. TRIAL COUNSEL AND DEFENSE COUNSEL.

(a) Repeal of Authority for Civilian Trial Counsel- Subsection (b) of section 948k of title 10, United States Code, is amended to read as follows:

`(b) Military Trial Counsel- Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is--

- `(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and
- `(2) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.'

(b) Authority for Civilian Defense Counsel- Subsection (c) of such section is amended to read as follows:

`(c) Defense Counsel- Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be--

- `(1) a judge advocate (as so defined) who is--
 - `(A) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and
 - `(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or
- `(2) a civilian who is--
 - `(A) a member of the bar of a Federal court or of the highest court of a State; and
 - `(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.'

(c) Conforming Amendment- Subsection (d)(1) of such section is amended by striking `subsection (b)(1)' and inserting `subsection (b)'.

SEC. 6. EXCLUSION FROM TRIAL BY MILITARY COMMISSION OF STATEMENTS OBTAINED BY COERCION.

Section 948r of title 10, United States Code, is amended by striking subsections (c) and (d) and inserting the following new subsection (c):

`(c) Exclusion of Statements Obtained by Coercion- A statement obtained by use of coercion shall not be admissible in a military commission under this chapter, except against a person accused of coercion as evidence that the statement was made.'

SEC. 7. MODIFICATION OF AUTHORITIES ON RULES FOR MILITARY COMMISSIONS.

(a) Rules Generally- Subsection (a) of section 949a of title 10, United States Code, is amended to read as follows:

` (a) Procedures and Rules of Evidence- (1) Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial shall apply in trials by military commission under this chapter.

` (2) The Secretary of Defense may, in consultation with the Attorney General, make such exceptions in the applicability in trials by military commission under this chapter from the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military or intelligence operations during hostilities. Such exceptions may not be contrary to or inconsistent with this chapter.'

(b) Exclusion of Evidence Seized Inside the United States Without Warrant- Subsection (b)(2)(B) of such section is amended by inserting `seized outside the United States' after `Evidence'.

(c) Discretion of Military Judge To Exclude Hearsay Evidence Determined To Be Unreliable or Lacking in Probative Value- Subsection (b)(2)(E)(ii) of such section is amended by striking `if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value' and inserting `if the military judge determines, upon motion by counsel, that the evidence is unreliable or lacking in probative value'.

SEC. 8. SELF-REPRESENTATION OF ACCUSED BEFORE MILITARY COMMISSIONS.

Section 949c of title 10, United States Code, is amended by adding at the end the following new subsection:

` (c) Self-Representation by Accused- (1) Notwithstanding any provision of subsection (b), the accused may represent himself in his defense before a military commission under this chapter.

` (2) The accused's representation of himself in his defense shall be governed by such rules as the Secretary of Defense shall prescribe. Such rules, and any rights, privileges, or limitations under such rules, shall be consistent with rules applicable to self-representation by an accused in a criminal trial under the laws of the United States and international law.

` (3) If the accused represents himself under this subsection, the accused--

- ` (A) shall be assisted in his defense by military defense counsel detailed in accordance with subsection (b)(2); or
- ` (B) may be assisted in his defense by civilian defense counsel meeting the requirements of subsection (b)(3), together with military defense counsel so detailed.
- ` (4) Any civilian counsel assisting in the defense of an accused under this subsection shall comply with the provisions of subsection (b)(4).
- ` (5) Subsection (b)(7) shall not apply with respect to any defense counsel assisting in the defense of an accused under this subsection, except to the extent the accused is unable to carry out his defense.'

SEC. 9. ENHANCEMENT OF AUTHORITIES ON DISCOVERY OF WITNESSES AND OTHER EVIDENCE.

(a) Discovery of Sources, Methods, and Activities Relating to Certain Government Actions- Subsection (c) of section 949j of title 10, United States Code, is amended--

(1) in paragraph (2), by striking 'The military judge' and inserting 'Except as provided in paragraph (3), the military judge'; and

(2) by adding at the end the following new paragraph:

` (3) Notwithstanding any other provision of this chapter, the military judge may, upon motion of defense counsel and at the discretion of the military judge, order trial counsel to disclose to defense counsel the sources, methods, or activities (including classified sources, methods, or activities) by which the United States obtained any out of court statement the United States intends to introduce at trial if the military judge determines, after ex parte review, in camera review, or both, that evidence of such sources, methods, or activities, as the case may be, might reasonably tend to affect the weight given to the out of court statement by the members of the military commission. The military judge shall revoke such an order in the event the United States elects not to introduce the out of court statement concerned at trial.'

(b) Discretion of Military Judge To Take Certain Actions if Substitute for Classified Exculpatory Evidence Is Insufficient To Protect Right of Defendant to Fair Trial- Subsection (d)(1) of such section is amended by adding at the end the following: 'If the military judge determines that the substitute is not sufficient to protect the right of the defendant to a fair trial, the military judge may--

` (A) dismiss the charges in their entirety;

` (B) dismiss the charges or specifications or both to which the information relates; or

` (C) take such other actions as may be required in the interest of justice.'

SEC. 10. REVIEW OF MILITARY COMMISSION DECISIONS BY UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES RATHER THAN COURT OF MILITARY COMMISSION REVIEW.

(a) Review-

(1) IN GENERAL- Section 950f of title 10, United States Code, is amended to read as follows:

`Sec. 950f. Review by Court of Appeals for the Armed Forces

`The United States Court of Appeals for the Armed Forces, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.'.

(2) CLERICAL AMENDMENT- The table of sections at the beginning of subchapter VI of chapter 47A of such title is amended by striking the item relating to section 950f and inserting the following new item:

`950f. Review by Court of Appeals for the Armed Forces.'.

(b) Conforming Amendments-

(1) IN GENERAL- Chapter 47A of title 10, United States Code, is further amended as follows:

(A) In section 950c(a), by striking `the Court of Military Commission Review' and inserting `the United States Court of Appeals for the Armed Forces'.

(B) In section 950d, by striking `the Court of Military Commission Review' each place it appears and inserting `the United States Court of Appeals for the Armed Forces'.

(C) In section 950g(a)(2), by striking `the Court of Military Commission Review' each place it appears and inserting `the United States Court of Appeals for the Armed Forces'.

(D) In section 950h, by striking `the Court of Military Commission Review' each place it appears and inserting `the United States Court of Appeals for the Armed Forces'.

(2) UNIFORM CODE OF MILITARY JUSTICE- Section 867a(a) of title 10, United States Code (article 67a(a) of the Uniform Code of Military Justice), is amended by striking `Decisions' and inserting `Except as provided in sections 950d and 950g of this title, decisions'.

SEC. 11. SCOPE OF REVIEW OF DETENTION-RELATED DECISIONS.

(a) Scope of Review of United States Court of Appeals for the District of Columbia Circuit- Section 950g of title 10, United States Code, is amended--

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(b) Scope of Authority for Review of Military Commission Procedures and Actions- Subsection (b) of section 950j of such title is amended to read as follows:

`(b) Limited Review of Military Commission Procedures and Actions- Except as otherwise provided in this chapter, section 2241 of title 28, and any other **habeas** corpus provision, no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after October 17, 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.'

(c) Termination of Superseded Authority for Review of CSRTS- Section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note) is amended by striking paragraphs (2) through (4).

SEC. 12. REPEAL OF PROHIBITION ON TREATY OBLIGATIONS AS ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

Section 5 of the Military Commissions Act of 2006 (Public Law 109-366; 120 Stat. 2631; 28 U.S.C. 2241 note) is repealed.

SEC. 13. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) In General- Section 6(a) of the Military Commissions Act of 2006 (Public Law 109-366; 120 Stat. 2632; 18 U.S.C. 2441 note) is amended--

(1) in paragraph (2)--

(A) in the first sentence, by inserting after 'international character' the following: 'and preserve the capacity of the United States to prosecute nationals of enemy powers for engaging in acts against members of the United States Armed Forces and United States citizens that have been prosecuted by the United States as war crimes in the past'; and

(B) by striking the second sentence; and

(2) in paragraph (3)--

(A) in subparagraph (A)--

(i) by striking `the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate' and inserting `the President has the authority, subject to congressional oversight and judicial review, to promulgate'; and

(ii) by striking `higher standards and';

(B) in subparagraph (B), by striking `interpretations' and inserting `rules'; and

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

`(D) The President shall notify other parties to the Geneva Conventions that the United States expects members of the United States Armed Forces and other United States citizens detained in a conflict not of an international character to be treated in a manner consistent with the standards described in subparagraph (A) and embodied in section 2441 of title 18, United States Code, as amended by subsection (b).'

(b) Modification of War Crimes Offenses-

(1) INCLUSION OF DENIAL OF TRIAL RIGHTS AMONG OFFENSES- Paragraph (1) of section 2441(d) of title 18, United States Code, is amended by adding at the end the following new subparagraph:

`(J) DENIAL OF TRIAL RIGHTS- The act of a person who intentionally denies one or more persons the right to be tried before a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples as prescribed by common Article 3.'

(2) INCLUSION OF IMPOSITION OF CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT AMONG OFFENSES- Such section is further amended--

(A) in paragraph (1), by adding at the end the following new subparagraph:

`(K) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT- The act of a person who subjects, or conspires or attempts to subject, an individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, to cruel, inhuman, or degrading treatment or punishment.'; and

(B) in paragraph (2)--

(i) in subparagraph (D), by striking `and' at the end;

(ii) in subparagraph (E), by striking the period at the end and inserting `; and'; and

(iii) by adding at the end the following new subparagraph:

`(F) the term `cruel, inhuman, or degrading treatment or punishment' shall be applied for purposes of paragraph (1)(K) in accordance with the meaning given that term in section 6(c)(2) of the Military Commissions Act of 2006 (42 U.S.C. 2000dd-0).'

(3) INCLUSION OF CERTAIN OTHER VIOLATIONS OF COMMON ARTICLE 3 AMONG OFFENSES- Paragraph (1) of such section is further amended by adding at the end the following new subparagraph:

`(L) CERTAIN OTHER VIOLATIONS OF COMMON ARTICLE 3- The act of a person not subject to chapter 47 of title 10 (the Uniform Code of Military Justice) who commits, or conspires or attempts to commit, an act not otherwise enumerated under this paragraph that constitutes a violation of common Article 3 and is an act which, if committed by a person subject to chapter 47 of title 10, would be punishable under that chapter by the penalty of death or confinement for one year or more.'

(4) ADDITIONAL DEFINITIONAL MATTERS- Paragraph (2) of such section is further amended--

(A) in subparagraph (D)--

(i) by striking clause (ii) and inserting the following new clause (ii):

`(ii) serious physical pain;'; and

(ii) in clause (iii), by striking `(other than cuts, abrasions, or bruises)'; and

(B) in subparagraph (E)(ii), by striking `and non-transitory'.

SEC. 14. RESTORATION OF **HABEAS CORPUS FOR INDIVIDUALS DETAINED BY THE UNITED STATES.**

(a) Restoration- Subsection (e) of section 2241 of title 28, United States Code, is repealed.

(b) Conforming Amendment- Subsection (b) of section 7 of the Military Commissions Act of 2006 (Public Law 109-366; 120 Stat. 2636; 28 U.S.C. 2441 note) is repealed.

SEC. 15. EXPEDITED JUDICIAL REVIEW OF MILITARY COMMISSIONS ACT OF 2006.

Notwithstanding any other provision of law, the following rules shall apply to any civil action, including an action for declaratory judgment, that challenges any provision of the Military Commissions Act of 2006 (Public Law 109-366), or any amendment made by that Act, on the ground that such provision or amendment violates the Constitution or the laws of the United States:

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

(2) An interlocutory or final judgment, decree, or order of the United States District Court for the District of Columbia in an action under paragraph (1) shall be reviewable as a matter of right by direct appeal to the Supreme Court of the United States.