

AMENDMENT NO. _____ Calendar No. _____

Purpose: Relating to the review of the status of detainees
of the United States Government

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1042

To authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRAHAM

Viz:

- 1 At the end of subtitle G of title X, add the following:
- 2 **SEC. ____ . REVIEW OF STATUS OF DETAINEES.**
- 3 (a) SUBMITTAL OF PROCEDURES FOR STATUS RE-
- 4 VIEW OF DETAINEES AT GUANTANAMO BAY, CUBA.—Not
- 5 later than 180 days after the date of the enactment of
- 6 this Act, the Secretary of Defense shall submit to the con-
- 7 gressional defense committees, and to the Committees on
- 8 the Judiciary of the Senate and the House of Representa-

1 tives, a report setting forth the procedures of the Combat-
2 ant Status Review Tribunals and the noticed Administra-
3 tive Review Boards in operation at Guantanamo Bay,
4 Cuba, for determining the status of the detainees held at
5 Guantanamo Bay.

6 (b) PROCEDURES.—The procedures submitted to
7 Congress pursuant to subsection (a) shall, with respect to
8 proceedings beginning after the date of the submittal of
9 such procedures under that subsection, ensure that—

10 (1) in making a determination of status of any
11 detainee under such procedures, a Combatant Status
12 Review Tribunal or Administrative Review Board
13 may not consider statements derived from persons
14 that, as determined by such Tribunal or Board, by
15 the preponderance of the evidence, were obtained
16 with undue coercion; and

17 (2) the Designated Civilian Official shall be an
18 officer of the United States Government whose ap-
19 pointment to office was made by the President, by
20 and with the advice and consent of the Senate.

21 (c) REPORT ON MODIFICATION OF PROCEDURES.—
22 The Secretary of Defense shall submit to the committees
23 of Congress referred to in subsection (a) a report on any
24 modification of the procedures submitted under subsection

1 (a) not later than 30 days before the date on which such
2 modifications go into effect.

3 (d) JUDICIAL REVIEW OF DETENTION OF ENEMY
4 COMBATANTS.—

5 (1) IN GENERAL.—Section 2241 of title 28,
6 United States Code, is amended by adding at the
7 end the following:

8 “(e) No court, justice, or judge shall have jurisdiction
9 to hear or consider an application for a writ of habeas
10 corpus filed by or on behalf of an alien outside the United
11 States (as that term is defined in section 101(a)(38) of
12 the Immigration and Naturalization Act (8 U.S.C.
13 1101(a)(38)) who is detained by the Department of De-
14 fense at Guantanamo Bay, Cuba.”.

15 (2) CERTAIN DECISIONS.—

16 (A) IN GENERAL.—Subject to subpara-
17 graphs (B), (C), and (D), the United States
18 Court of Appeals for the District of Columbia
19 Circuit shall have exclusive jurisdiction to deter-
20 mine the validity of any decision of a Des-
21 ignated Civilian Official described in subsection
22 (b)(2) that an alien is properly detained as an
23 enemy combatant.

24 (B) LIMITATION ON CLAIMS.—The juris-
25 diction of the United States Court of Appeals

1 for the District of Columbia Circuit under this
2 paragraph shall be limited to claims brought by
3 or on behalf of an alien—

4 (i) who is, at the time a request for
5 review by such court is filed, detained by
6 the Department of Defense at Guanta-
7 namo Bay, Cuba; and

8 (ii) for whom a Combatant Status Re-
9 view Tribunal has been conducted, pursu-
10 ant to applicable procedures specified by
11 the Secretary of Defense.

12 (C) SCOPE OF REVIEW.—The jurisdiction
13 of the United States Court of Appeals for the
14 District of Columbia Circuit on any claims with
15 respect to an alien under this paragraph shall
16 be limited to the consideration of whether the
17 status determination of the Combatant Status
18 Review Tribunal with regard to such alien was
19 consistent with the procedures and standards
20 specified by the Secretary of Defense for Com-
21 batant Status Review Tribunals.

22 (D) TERMINATION ON RELEASE FROM
23 CUSTODY.—The jurisdiction of the United
24 States Court of Appeals for the District of Co-
25 lumbia Circuit with respect to the claims of an

1 alien under this paragraph shall cease upon the
2 release of such alien from the custody of the
3 Department of Defense.

4 (3) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) shall apply to any application or
6 other action that is pending on or after the date of
7 the enactment of this Act. Paragraph (2) shall apply
8 with respect to any claim regarding a decision cov-
9 ered by that paragraph that is pending on or after
10 such date.