

Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

#### SEC. 7. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109-148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109-163 (119 Stat. 3477) and inserting the following new subsection (e):

“(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

“(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

#### SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.

(a) COUNSEL AND INVESTIGATIONS.—Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-1(b)) is amended—

(1) by striking “may provide” and inserting “shall provide”;

(2) by inserting “or investigation” after “criminal prosecution”; and

(3) by inserting “whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,” after “described in that subsection”.

(b) PROTECTION OF PERSONNEL.—Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-1) shall apply with respect to any criminal prosecution that—

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

#### SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.

Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109-148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(1) in subparagraph (A), by striking “pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order)” and inserting “by a military commission under chapter 47A of title 10, United States Code”;

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

“(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.”;

(3) in subparagraph (C)—

(A) in clause (i)—

(i) by striking “pursuant to the military order” and inserting “by a military commission”; and

(ii) by striking “at Guantanamo Bay, Cuba”; and

(B) in clause (ii), by striking “pursuant to such military order” and inserting “by the military commission”; and

(4) in subparagraph (D)(i), by striking “specified in the military order” and inserting “specified for a military commission”.

#### SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109-148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking “the Department of Defense at Guantanamo Bay, Cuba” and inserting “the United States”. This shall become effective 2 days after the date of enactment.

**SA 5039.** Mr. FRIST proposed an amendment to amendment SA 5038 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; as follows:

At the end of the amendment in the instructions:

Strike “2 days” and insert “3 days”.

**SA 5040.** Mr. FRIST proposed an amendment to amendment SA 5039 proposed by Mr. FRIST to the amendment SA 5038 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; as follows:

In the amendment:

Strike “3 days” and insert “4 days”.

#### AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a business meeting, off-the-floor, on the nomination of Mary Peters to be Secretary of Transportation on Monday, September 25, 2006 after the first roll-call vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SECURE FENCE ACT OF 2006— Resumed

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate come out of morning business and return to the pending bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title. The assistant legislative clerk read as follows:

A bill (H.R. 6061) to establish operational control over the international land and maritime borders of the United States.

Pending:

Frist amendment No. 5031, to establish the effective date.

Frist amendment No. 5032 (to amendment No. 5031), to amend the effective date.

AMENDMENT NO. 5031, WITHDRAWN

Mr. FRIST. Mr. President, I ask unanimous consent to withdraw amendment No. 5031.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 5036

Mr. FRIST. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5036.

Mr. FRIST. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under “Text of Amendments.”)

Mr. FRIST. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 5037 TO AMENDMENT NO. 5036

Mr. FRIST. Mr. President, I send a second degree to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5037 to amendment No. 5036.

Mr. FRIST. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, add the following:

This Act shall become effective 1 day after the date of enactment.

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk on the pending first-degree amendment.

The PRESIDING OFFICER. The cloture motion having been presented under Rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending amendment No. 5036 to Calendar No. 615, H.R. 6061: a bill to establish operational control over the international land and maritime borders of the United States.

Bill Frist, Jim DeMint, Johnny Isakson, Craig Thomas, Jim Inhofe, Pat Roberts, Gordon Smith, Wayne Allard, John Ensign, Saxby Chambliss, Chris Bond, Conrad Burns, Norm Coleman, Mitch McConnell, Michael B. Enzi, Richard Shelby, John Thune.

CLOTURE MOTION

Mr. FRIST. I now send a cloture motion to the desk on the underlying bill.

The PRESIDING OFFICER. The cloture motion having been presented

under Rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 615, H.R. 6061, a bill to establish operational control over the international land and maritime borders of the United States.

Bill Frist, Lamar Alexander, Richard Burr, Gordon Smith, John Thune, Johnny Isakson, John Cornyn, Judd Gregg, Jim Inhofe, Saxby Chambliss, Sam Brownback, Tom Coburn, Jeff Sessions, Richard Shelby, Craig Thomas, Michael B. Enzi, Lisa Murkowski.

Mr. FRIST. I ask the mandatory quorum for both motions be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTION TO COMMIT

Mr. FRIST. I move to commit the bill to the Judiciary Committee, with instructions to report back forthwith, with an amendment, and I send the motion to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] moves to commit the bill, H.R. 6061, to the Committee on the Judiciary, with instructions to report back forthwith, with an amendment.

Mr. FRIST. I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 5039

Mr. FRIST. I send a first-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5039 to the instructions of the motion to commit.

Mr. FRIST. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment in the instructions:

Strike "2 days" and insert "3 days".

Mr. FRIST. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 5040 TO AMENDMENT NO. 5039

Mr. FRIST. Mr. President, I now send a second degree to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 5040 to amendment No. 5039.

Mr. FRIST. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In the amendment strike "3 days" and insert "4 days."

Mr. FRIST. Mr. President, we can come back and comment on this, but what I have just done is put an amendment on the legislation. The military commission or Hamdan legislation—I have put that as an amendment on the border security fence bill. I say that just so our colleagues will understand the Democratic leader and I are working very hard to reach an agreement, and we are just about there. We need to talk to some more colleagues about how we will address the Hamdan legislation.

Because things are tight in terms of being able to finish the amount of business we need to do in the next 4 to 5 days, what we just went through was to set up a structure whereby we know we are going to be able to finish that. Again, our intent is to work out a plan to be able to address that legislation in a way that is agreeable to both sides. I think we should be able to do that tomorrow morning.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, if I could just briefly respond, we would like to proceed as expeditiously as possible. We have been alerted by one of my Senators that the rule XIV legislation that was brought to the Senate late last week is different from the amendment that was filed tonight. So some of my folks are trying to figure out what has happened. We thought what was going to be filed as an amendment to this fence bill was the same piece of legislation that was rule XIVed. So we have now a rule XIV that has been sent up, and now we have this amendment. So that has created a little bit of confusion on our side.

But I also say this: I think we could work something out if we can get to the bill. When we start late in the session like this, any one Senator weighs about 1,000 pounds because any Senator can stop anything they want. So we have to make sure we can get to this. It takes all 100 Senators to agree that is the case. If we could proceed to it, it is my understanding the majority leader would allow a limited number of amendments. We could work on this tomorrow with some time agreements on it—agreements on both sides.

If this is not worked out, it is my understanding that what would happen is that on Wednesday there would be a cloture vote on this amendment dealing with Hamdan. That would occur on Wednesday, and then after that, amendments germane in nature would be in order if, in fact, the majority decided to allow any amendments to go forward.

So it appears to me the best chance for Senators on both sides to have an opportunity to offer amendments to Hamdan would be to move to it tomorrow. If we cannot do that, then we will

have to see what happens with cloture. But I believe that is where we find ourselves tonight.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, that is exactly where we are. I think the good news is both sides recognize this is a very important issue before this body and before the American people and that we have had a lot of work on this bill to where I think—speaking of the Hamdan legislation—there is going to be very broad support. There are areas people have expressed concern about, and our intent is to work out a unanimous consent agreement hopefully early in the morning whereby we can address those with amendments.

Mr. REID. Mr. President, I would further say just briefly that, yes, we do have this matter before us. Is it what we want? The answer is, probably we think we could do better. That is why we would agree on this side to have a limited number of amendments and have this body decide whether the bill can be improved. We hope that can occur. As I have indicated in my previous statement, it all depends on how the other 98 Senators feel as to whether we can move forward short of cloture on Wednesday.

UNANIMOUS CONSENT REQUEST—  
S. 3709

Mr. FRIST. Mr. President, on another issue, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the immediate consideration of Calendar No. 527, S. 3709, the U.S.-India nuclear bill.

I further ask consent that the managers' amendment at the desk be agreed to as original text for the purpose of further amendment and the only other amendments in order be FEINGOLD on Presidential certification, DORGAN on fissile material production, BOXER on Iran, REID on Yucca Mountain, CRAIG on Yucca Mountain, with no second-degree amendments in order, 1 hour of debate on each amendment, and 1 hour of general debate on the bill, all equally divided in the usual form.

I further ask consent that following disposition of amendments and the use or yielding back of time, the bill, as amended, be read a third time and the Senate proceed to the consideration of H.R. 5682, the House-passed companion, that all after the enacting clause be stricken and the text of S. 3709, as amended, be inserted in lieu thereof, and that the Senate then proceed to a vote on passage of H.R. 5682, as amended, with no intervening action or debate.

I further ask consent that following passage of the bill, the Senate insist upon its amendment and request a conference with the House, the Chair be authorized to appoint conferees, and S. 3709 be returned to the calendar.