

117TH CONGRESS
1ST SESSION

H. R. 4790

To amend titles 10 and 28, United States Code, to allow for certiorari review of certain cases denied relief or review by the United States Court of Appeals for the Armed Forces.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2021

Mr. GOHMERT (for himself and Mr. GOSAR) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend titles 10 and 28, United States Code, to allow for certiorari review of certain cases denied relief or review by the United States Court of Appeals for the Armed Forces.

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 “Service Member
5 SCOTUS Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Article III, section 1 of the Constitution of
2 the United States establishes the Supreme Court of
3 the United States. The Constitution states that the
4 Supreme Court has both original and appellate juris-
5 dictions.

6 (2) The best-known power of the Supreme
7 Court is judicial review, or the ability of the Court
8 to declare a legislative or executive act in violation
9 of the Constitution.

10 (3) Members of the Armed Forces are typically
11 denied certiorari review if the United States Court
12 of Appeals for the Armed Forces refuses to grant a
13 petition for review. Thus, the ability to seek justice
14 with respect to the rulings of courts-martial has
15 been stunted due to an arbitrary and capricious rule.

16 (4) Furthermore, detainees at United States
17 Naval Station, Guantanamo Bay, Cuba are granted
18 unfettered discretionary access to the Supreme
19 Court under writs of certiorari as displayed under
20 *Rasul v. Bush* and *Al Odah v. United States*.

21 (5) Considering the aforementioned cases and
22 in the interest of justice and accountability, this Act
23 modifies the Uniform Code of Military Justice and
24 section 1259 of title 28, United States Code, to
25 allow for certiorari review of certain cases denied re-

1 lief or review by the United States Court of Appeals
2 for the Armed Forces.

3 **SEC. 3. CERTIORARI TO THE UNITED STATES COURT OF AP-**
4 **PEALS FOR THE ARMED FORCES.**

5 (a) COURT OF APPEALS FOR THE ARMED FORCES;
6 CERTIORARI.—

7 (1) IN GENERAL.—Section 1259 of title 28,
8 United States Code, is amended—

9 (A) in paragraph (3), by inserting “or de-
10 nied” after “granted”; and

11 (B) in paragraph (4), by inserting “or de-
12 nied” after “granted”.

13 (2) TECHNICAL AND CONFORMING AMEND-
14 MENTS.—

15 (A) TITLE 10.—Section 867a(a) of title 10,
16 United States Code (article 67a of the Uniform
17 Code of Military Justice), is amended by strik-
18 ing “The Supreme Court may not review by a
19 writ of certiorari under this section any action
20 of the United States Court of Appeals for the
21 Armed Forces in refusing to grant a petition
22 for review.”.

23 (B) TIME FOR APPLICATION FOR WRIT OF
24 CERTIORARI.—Section 2101(g) of title 28,

1 United States Code, is amended to read as fol-
2 lows:

3 “(g) The time for application for a writ of certiorari
4 to review a decision of the United States Court of Appeals
5 for the Armed Forces, or the decision of a Court of Crimi-
6 nal Appeals that the United States Court of Appeals for
7 the Armed Forces refuses to grant a petition to review,
8 shall be as prescribed by rules of the Supreme Court.”.

9 (b) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Subject to paragraph (2),
11 the amendments made by this section shall take ef-
12 fect upon the expiration of the 180-day period begin-
13 ning on the date of the enactment of this Act and
14 shall apply to any petition granted or denied by the
15 United States Court of Appeals for the Armed
16 Forces on or after that effective date.

17 (2) AUTHORITY TO PRESCRIBE RULES.—The
18 authority of the Supreme Court to prescribe rules to
19 carry out section 2101(g) of title 28, United States
20 Code, as amended by subsection (a)(2)(B) of this
21 Act, shall take effect on the date of the enactment
22 of this Act.

○