92D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 92-116

PROHIBITING DETENTION CAMPS

APRIL 6, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 234]

The Committee on the Judiciary, to whom was referred the bill (H.R. 234) to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the United States Government except in conformity with the provisions of title 18, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

AMENDMENT No. 1

Page 1, strike out line 3 and all that follows down through page 2, line 8, and insert in lieu thereof the following:

That (a) section 4001 of title 18 of the United States Code is amended by designating the first and second paragraphs thereof as "(b)(1)" and "(2)," respectively, and by inserting at the beginning thereof the following:

"(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

"(b) The section heading of such section 4001 is amended to read as follows:

"§ 4001. Limitation on detention; control of prisons."

"(c) The chapter analysis of chapter 301 of such title 18 is amended by striking out the item relating to section 4001 and inserting in lieu thereof the following:

"4001. Limitation on detention; control of prisons."

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AMENDMENT NO. 2

Page 2, line 9, strike out "Sec. 3." and insert in lieu thereof "Sec. 2.". Amend title to read as follows:

To amend title 18, United States Code, to prohibit the establishment of detention camps, and for other purposes.

PURPOSE OF THE AMENDMENTS

Amendment No. 1 deletes sections 1 and 2 of H.R. 234 as introduced and inserts a single new provision in lieu thereof, making clear the intent of the measure to prohibit the imprisonment or detention of a citizen except pursuant to an Act of Congress.

Amendment No. 2 renumbers section 3 of H.R. 234 as section 2.

A further amendment conforms the title of the amended bill to its content.

PURPOSE OF THE AMENDED BILL

The twofold purpose of the amended bill is (1) to restrict the imprisonment or other detention of citizens by the United States to situations in which statutory authority for their incarceration exists and (2) to repeal the Emergency Detenton Act of 1950 (Title II of the Internal Security Act of 1950) which both authorizes the establishment of detention camps and imposes certain conditions on their use.

STATEMENT

H.R. 234 is one of 15 identical bills, sponsored or cosponsored by 157 Members of the House, whose salient purposes are two: First, to prohibit the establishment of detention camps and second, to repeal the existing Emergency Detention Act of 1950 which grants authority for the establishment of such camps.

The Emergency Detention Act was enacted as Title II of the Internal Security Act of 1950, the year in which the Korean War began. It established procedures for the apprehension and detention, during internal security emergencies, of individuals deemed likely to engage in espionage or sabotage.

Although no President has ever used or attempted to use these provisions, the mere continued existence of the Emergency Detention Act has aroused much concern among American citizens, lest the Detention Act become an instrumentality for apprehending and detaining citizens who hold unpopular beliefs and views. Also, groups of Japanese-American citizens regard the legislation as permitting a recurrence of the round ups which resulted in the detention of Americans of Japanese ancestry in 1941 and subsequently during World War II. They urge that the Act should be repealed.

The history of the measure before the Committee warrants brief review. In the 91st Congress, H.R. 11373, and a number of identical measures that would have prohibited detention camps and would have repealed the Emergency Detention Act, were referred to the Committee on the Judiciary. On the other hand, H.R. 1157 and a number of House bills which would have a comparable effect, were

referred to the Committee on Internal Security. In addition, S. 1872, a repealer, was passed by the Senate and thereupon was also referred to the House Committee on Internal Security.

In the interest of expeditious and conclusive action, the Senate bill, S. 1872, having been referred to the Committee on Internal Security, Chairman Celler indicated to the Chairman of the Internal Security Committee that if that Committee was planning early action on S. 1872, the Committee on the Judiciary would defer consideration of the legislation before it. Subsequently, hearings were held by the Internal Security Committee. Ultimately, on September 14, 1970, that Committee reported a clean bill, H.R. 19163, introduced by Chairman Ichord and Mr. Ashbrook.

Instead of repealing the Emergency Detention Act, this measure reported by the Committee on Internal Security would amend it by adding a number of procedural changes to it. A rule was requested, but the 91st Congress adjourned before a rule was granted, so that floor consideration of the Ichord-Ashbrook bill was not accomplished. In the present Congress, the Committee on Internal Security has reported favorably without amendment H.R. 820, identical to H.R. 19163 which had been reported in the 91st Congress.

As has been indicated, 157 Members of the House have, in the present 92d Congress, reiterated their support for measures repealing the Emergency Detention Act. They have done this by sponsoring identical measures which would be and have in fact been referred to this Committee.

In view of the large number of Members who, with full knowledge of the fact that in the 91st Congress the Internal Security Committee rejected the idea of repeal and substituted a bill merely amendatory of the Emergency Detention Act, have nevertheless introduced repeal bills that would be and were referred to this Committee. The Committee believes that respect for the wishes of these many Members requires action on the bills pending before us.

Justice Department Views

The Department of Justice has consistently recommended repeal of the Emergency Detention Act. This is of considerable significance in light of the Attorney General's responsibility to cope with subversion. Assistant Attorney General Mardian, at the hearings before Subcommittee No. 3, testified as follows:

> The Department of Justice is unequivocally in favor of repealing Title II of the Internal Security Act.
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> As Deputy Attorney General Kleindienst stated in his letter of December 17, 1969, to Chairman Celler of the House Judiciary Committee, "the continuation of the Emergency Detention Act is extremely offensive to many Americans. In the judgment of this Department, the repeal of this legislation will allay the fears and suspicions—unfounded as they may be—of many of our citizens. This benefit outweighs any potential advantage which the Act may provide in a time of internal security emergency."

The Committee agrees and in consequence the repeal of the Emergency Detention Act is found in Section 2 of H.R. 234 as herein reported. In its further testimony before the Subcommittee, though endorsing repeal, the Department of Justice witness criticized Sections 1 and 2 of the bill as introduced, whose purpose it was to prohibit detention camps. He testified:

> These sections would amend title 18 of the United States Code to provide that no citizen of the United States may be detained in any facility except in conformity with the procedures and the provisions of title 18. These amendments assume that all provisions for the detention of convicted persons are contained in title 18. The proposed amendments fail to take into account the provisions of title 21, dealing with crimes involving narcotics and dangerous drugs; title 50 involving Selective Service violations; title 26, involving Internal Revenue law violations; title 49, involving aircraft hijacking, carrying explosives aboard aircraft and related crimes: and other titles involving confinement of persons convicted of Federal crimes. * * *

Committee Conclusions

To alleviate these problems raised by the Department of Justice, the Committee recommends an amendment that would take the place of Sections 1 and 2. The amendment provides that no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

On the basis of testimony received at the public hearing held by Subcommittee No. 3 at which a representative of the Attorney General and a number of Members of the House appeared as witnesses, and after study of the issues, the Committee is of the view that the Emergency Detention Act serves no useful purpose, but, on the contrary, only engenders fears and resentment on the part of many of our fellow citizens.

What is more, the constitutional validity of the statute is subject to grave challenge. The Act permits detention of—

> each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage.

This criterion would seem to violate the Fifth Amendment by providing imprisonment not as a penalty for the commission of an offense, but on mere suspicion that an offense may occur in the future. The Act permits detention without bail even though no offense has been committed or is charged. In a number of ways the Act violates the First Amendment. In a number of ways, also, the provisions of the Act for judicial review are inadequate in that they permit the government to refuse to divulge information essential to a defense.

The concentration camp implications of the legislation render it abhorrent; there is no compensating advantage to be derived from permitting this law to remain on the books. Should drastic measures be

called for at some future time, it is inconceivable that this already dated statute would fill the needs of the moment. Almost certainly, new and different legislation would be called for, tailored to current needs. In the Committee's opinion the Emergency Detention Act is beyond salvaging, cannot be adequately amended, and should be repealed in toto.

But the Committee believes that it is not enough merely to repeal the Detention Act. The Act, concededly can be viewed as not merely as an authorization for but also in some respects as a restriction on detention. Repeal alone might leave citizens subject to arbitrary executive action, with no clear demarcation of the limits of executive authority. It has been suggested that repeal alone would leave us where we were prior to 1950. The Committee believes that imprisonment or other detention of citizens should be limited to situations in which a statutory authorization, an Act of Congress, exists. This will assure that no detention camps can be established without at least the acquiescence of the Congress.

Section-by-Section Analysis

First section.—Subsection (a) of the first section of the bill as amended amends section 4001 of title 18 of the United States Code by inserting at the beginning thereof the following: "(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." Existing paragraphs of section 4001 are denominated (b) (1) and (2).

Subsections (b) and (c) of the first Section change the section heading and the chapter analysis applicable to section 4001 from "Control by Attorney General." to "Limitation on detention; control of prisons."

Section 2(a) repeals *in toto* Title II of the Internal Security Act of 1950, popularly known as the "Emergency Detention Act" (50 U.S.C. 811–826).

Section 2(b) amends section 8312(c)(1)(C) of title 5, United States Code, by deleting those offenses which are referable to the Emergency Detention Act from a list of offenses for the conviction of which payment of Federal retirement benefits to an individual would be stopped.

Section 2(c) amends clause (4) of section 3505(b) of title 38, United States Code, by deleting those offenses which are referable to the Emergency Detention Act from a list of offenses for the conviction of which entitlement to so-called gratuitous benefits under laws administered by the Veterans' Administration shall be terminated, and by rewording such clause.

The Committee recommends enactment of H.R. 234 as herein amended.

Cost

The Committee estimates that no cost to the United States will be entailed by enactment of the amended bill. The Department of Justice has informally advised that it anticipates no cost from the repeal of the Emergency Detention Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

Chapter 301.—GENERAL PROVISIONS

Sec.
4001. [Control by Attorney General] *Limitation on detention; control of prisons.*
4002. Federal prisoners in State institutions; employment.
4003. Federal institutions in States without appropriate facilities.
4004. Oaths and acknowledgments.
4005. Medical relief; expenses.
4006. Subsistence for prisoners.
4007. Expenses of prisoners.
4008. Transportation expenses.
4009. Appropriations for sites and buildings.
4010. Acquisition of additional land.
4011. Disposition of cash collections for meals, laundry, etc.

§ 4001. [Control by Attorney General] *Limitation on detention; control of prisons.*

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b) (1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

TITLE II OF THE INTERNAL SECURITY ACT OF 1950

[TITLE II—EMERGENCY DETENTION

[SHORT TITLE

[SEC. 100. This title may be cited as the "Emergency Detention Act of 1950".

[FINDINGS OF FACT AND DECLARATION OF PURPOSE

[SEC. 101. As a result of evidence adduced before various committees of the Senate and the House of Representatives, the Congress hereby finds that—

[(1) There exists a world Communist movement which in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deem necessary, to establish a Communist totalitarian dictatorship in all the countries of the world through the medium of a world-wide Communist organization.

[(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the complete subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

[(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

[(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

[(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

[(6) The organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such Communist organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide movement and promote the objectives of such movement by conspiratorial and coercive tactics, and especially by the use of espionage and sabotage, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

[(7) [illegible] United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States and in effect transfer their allegiance to the foreign country in which is vested the direction and control of

the world Communist movement; and, in countries other than the United States, those individuals who knowingly and willfully participate in such Communist movement similarly repudiate their allegiance to the countries of which they are nationals in favor of such foreign Communist country.

[(8) In pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

[(9) The agents of communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law, and which in this country are directed against the safety and peace of the United States.

[(10) The experience of many countries in World War II and thereafter with so-called "fifth columns" which employed espionage and sabotage to weaken the internal security and defense of nations resisting totalitarian dictatorships demonstrated the grave dangers and fatal effectiveness of such internal espionage and sabotage.

[(11) The security and safety of the territory and Constitution of the United States, and the successful prosecution of the common defense, especially in time of invasion, war or insurrection in aid of a foreign enemy, require every resonable and lawful protection against espionage, and against sabotage to national-defense material, premises, forces and utilities, including related facilities for mining, manufacturing, transportation, research, training, military and civilian supply, and other activities essential to national defense.

[(12) Due to the wide distribution and complex interrelation of facilities which are essential to national defense and due to the increased effectiveness and technical development in espionage and sabotage activities, the free and unrestrained movement in such emergencies of member or agents of such organizations and of others associated in their espionage and sabotage operations would make adequate surveillance to prevent espionage and sabotage impossible and would therefore constitute a clear and present danger to the public peace and the safety of the United States.

[(13) The recent successes of Communist methods in other countries and the nature and control of the world Communist movement itself present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

[(14) The detention of persons who there is reasonable ground to believe probably will commit or conspire with others to commit espionage or sabotage is, in a time of internal security emergency, essential to the common defense and to the safety and security of the territory, the people and the Constitution of the United States.

[(15) It is also essential that such detention in an emergency involving the internal security of the Nation shall be so authorized, executed, restricted and reviewed as to prevent any interference with the constitutional rights and privileges of any persons, and at the same time shall be sufficiently effective to permit the performance by the Congress and the President of their constitutional duties to provide for the common defense, to wage war, and to preserve, protect and defend the Constitution, the Government and the people of the United States.

[DECLARATION OF "INTERNAL SECURITY EMERGENCY"

[SEC. 102. (a) In the event of any one of the following:

[(1) Invasion of the territory of the United States or its possessions,

[(2) Declaration of war by Congress, or

[(3) Insurrection within the United States in aid of a foreign enemy,

and if, upon the occurrence of one or more of the above, the President shall find that the proclamation of an emergency pursuant to this section is essential to the preservation, protection and defense of the Constitution, and to the common defense and safety of the territory and people of the United States, the President is authorized to make public proclamation of the existence of an "Internal Security Emergency."

[(b) A state of "Internal Security Emergency" (hereinafter referred to as the "emergency") so declared shall continue in existence until terminated by proclamation of the President or by concurrent resolution of the Congress.

[DETENTION DURING EMERGENCY

[SEC. 103. (a) Whenever there shall be in existence such an emergency, the President, acting through the Attorney General, is hereby authorized to apprehend and by order detain, pursuant to the provisions of this title, each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage.

[(b) Any person detained hereunder (hereinafter referred to as "the detainee") shall be released from such emergency detention upon—

[(1) the termination of such emergency by proclamation of the President or by concurrent resolution of the Congress;

[(2) an order of release issued by the Attorney General;

[(3) a final order of release after hearing by the Board of Detention Review, hereinafter established;

[(4) a final order of release by a United States court, after review of the action of the Board of Detention Review, or upon a writ of habeas corpus.

[PROCEDURE FOR APPREHENSION AND DETENTION

[SEC. 104. (a) The Attorney General, or such officer or officers of the Department of Justice as he may from time to time designate, are authorized during such emergency to execute in writing and to issue—

[(1) a warrant for the apprehension of each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage; and

[(2) an application for an order to be issued pursuant to subsection (d) of this section for the detention of such person for the duration of such emergency.

Each such warrant shall issue only upon probable cause, supported by oath or affirmation, and shall particularly describe the person to be apprehended or detained.

[(b) Warrants for the apprehension of persons under this title shall be served and apprehension of such persons shall be made only by such duly authorized officers of the Department of Justice as the Attorney General may designate. A copy of the warrant for apprehension shall be furnished to any person apprehended under this title.

[(c) Persons apprehended or detained under this title shall be confined in such places of detention as may be prescribed by the Attorney General. The Attorney General shall provide for all detainees such transportation, food, shelter, and other accommodation and supervision as in his judgment may be necessary to accomplish the purpose of this title.

[(d) Within forty-eight hours after apprehension, or as soon thereafter as provision for it may be made, each person apprehended pursuant to this section shall be taken before a preliminary hearing officer appointed pursuant to the provisions of this section. Such hearing officer shall inform such person (1) of the grounds upon which application was made for his detention, (2) of his right to retain counsel, (3) of his right to have a preliminary examination, (4) of his right to refrain from making any statement, and (5) of the fact that any statement made by him may be used against him. Such hearing officer shall allow such person reasonable time and opportunity to consult counsel. If such person waives preliminary examination, the hearing officer shall forthwith issue an order for the detention of such person, and furnish to him a copy of such order. If such person does not waive examination, the preliminary hearing officer shall hear evidence within a reasonable time. Such person may introduce evidence in his own behalf, and may cross-examine witnesses against him, except that the Attorney General or his representative shall not be required to furnish information the revelation of which would disclose the identity or evidence of Government agents of officers which he believes it would be dangerous to national safety and security to divulge. Such hearing officer shall record all evidence offered by or in behalf of such person and all objections made by such person to his detention. If from the evidence it appears to the preliminary hearing officer that there is probable cause for the detention of such person pursuant to this title, such hearing officers shall forthwith issue an order for the detention of such person, furnish to him a copy of such order, and advise such

person of his right to file with the Detention Review Board established by this title a petition for the review of such order. If from the evidence it appears to the preliminary hearing officer that probable cause for the detention of such person has not been shown, such officer shall issue an order discharging such person from detention, and shall furnish a copy of such order to such person. Upon the entry of such order, such person shall be released from custody by the Attorney General and by any subordinate officer or employee of the United States having custody of such person. Within seven days after the entry of any such order, the preliminary hearing officer shall prepare and transmit to the Attorney General, or such other officer as may be designated by him, (1) a report which shall set forth the result of such preliminary hearing, together with his recommendations with respect to the question whether any order issued for the detention of such person shall be continued in effect or revoked, and (2) any additional written representations or evidence which the detainee or his legal counsel may wish to file with the Attorney General. A copy of such report shall be served promptly upon the detainee or his legal counsel. Preliminary hearing officers may be appointed by the President, without regard to the civil service laws but subject to the Classification Act of 1949, in such numbers, and may serve at such places, as may be necessary for the expeditious consideration of cases involving persons apprehended pursuant to this section. No person who has, within the three years preceding the date of his appointment, served as an officer or employee of the Department of Justice shall be appointed as a preliminary hearing officer.

[(e) The Attorney General, or such other officers of the Department of Justice as he may designate, shall upon request of any detainee from time to time receive such additional information bearing upon the grounds for the detention as the detainee or any other person may present in writing. If on the basis of such additional information received by the Attorney General or transmitted to him by such officers, he shall find there is no longer reasonable ground to believe that the detainee probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage if released, the Attorney General is authorized to issue an order revoking the initial order or any final Board or court order of detention and to release such detainee. The Attorney General is also authorized to modify the order under which any detainee is detained and apply to such detainee such lesser restrictions in movement and activity as the Attorney General shall determine will serve the purposes of this title.

[(f) In case of Board or court review of any detention order, the Attorney General, or such review officers as he may designate, shall present to the Board, the court, and the detainee to the fullest extent possible consistent with national security, the evidence supporting a finding of reasonable ground for detention in respect to the detainee, but he shall not be required to offer or present evidence of any agents or officers of the Government the revelation of which in his judgment would be dangerous to the security and safety of the United States.

[(g) The Attorney General is authorized to prescribe such regulations, not inconsistent with the provisions of this title, as he shall deem necessary to promote the effective administration of this title.

No such regulation shall require or permit persons detained under the provisions of this title to perform forced labor, or any tasks not reasonably associated with their own comfort and well-being, or to be confined in company with persons who are confined pursuant to the criminal laws of the United States or of any State.

[(h) Whenever there shall be in existence an emergency within the meaning of this title, the Attorney General shall transmit bimonthly to the President and to the Congress a report of all action taken pursuant to the powers granted in this title.

[DETENTION REVIEW BOARD

[SEC. 105. (a) The President is hereby authorized to establish a Detention Review Board (referred to in this title as the "Board") which shall consist of nine members, not more than five of whom shall be members of the same political party, appointed by the President by and with the advice and consent of the Senate. Of the original members of the Board, three shall be appointed for terms of one year each, three for terms of two years each, and three for terms of three years each, but their successors shall be appointed for terms of three years each, subject to termination of the term upon expiration of this title, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or for malfeasance in office, but for no other cause.

[(b) The Board is authorized to establish divisions thereof, each of which shall consist of not less than three of the members of the Board. Each such division may be delegated any or all of the powers which the Board may exercise. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and five members of the Board shall at all times constitute a quorum of the Board, except that two members shall constitute a quorum of any division established pursuant to this subsection. The Board shall have an official seal which shall be judicially noticed.

[(c) At the close of each fiscal year the Board shall make a report in writing to the Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

[(d) In the event of a proclamation by the President or a concurrent resolution of the Congress terminating the existence of a state of emergency, and after the release of all detainees and the conclusion of all pending matters before the Board and of all pending appeals in the courts from orders of the Board, the President shall within a reasonable time dissolve and terminate the Board and all of its authority, powers, functions, and duties. Such termination shall not preclude the subsequent establishment by the President, pursuant to this title, of another Board with all of the rights, authority, and duties prescribed by this title, in the event that he shall proclaim another emergency or shall determine that the proclamation of such an emergency may soon be essential to the national security.

[SEC. 106. (a) Each member of the Board shall receive a salary of $12,500 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys and other employees as it may from time to time find necessary for the proper performance of its duties. The Board may establish or utilize such regional, local, or other agencies and utilize such voluntary and uncompensated services, as may from time to time be needed.

[(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be paid out of appropriations made therefor, and there are hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary for that purpose.

[SEC. 107. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may conduct any hearing necessary to its functions in any part of the United States.

[SEC. 108. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this title. All procedures of the Board shall be subject to the applicable provisions of the Administrative Procedure Act.

[SEC. 109. (a) Any Board created under this title is empowered—

[(1) to review upon petition of any detainee any order of detention issued pursuant to section 104(d) of this title;

[(2) to determine whether there is reasonable ground to believe that such detainee probably will engage in, or conspire with others to engage in, espionage or sabotage;

[(3) to issue orders confirming, modifying, or revoking any such order of detention; and

[(4) to hear and determine any claim made pursuant to this paragraph by any person who shall have been detained pursuant to this title and shall have been released from such detention, for loss of income by such person resulting from such detention if without reasonable grounds. Upon the issuance of any final order for indemnification pursuant to this paragraph, the Attorney General is authorized and directed to make payment of such indemnity to the person entitled thereto from such funds as may be appropriated to him for such purpose.

[(b) Whenever a petition for review of an order for detention issued pursuant to section 104(d) of this title or for indemnification pursuant to the preceding subsection shall have been filed with the Board in accordance with such regulations as may be prescribed by the Board, the Board shall provide for an appropriate hearing upon due notice to the petitioner and the Attorney General at a place therein fixed, not less than fifteen days after the serving of said notice and not more than forty-five days after the filing of such petition.

[(c) In any case arising from a petition for review of an order for detention issued pursuant to section 104(d) of this title, the Board shall require the Attorney General to inform such detainee of grounds

on which his detention was instituted, and to furnish to him as full particulars of the evidence as possible, including the identity of informants, subject to the limitation that the Attorney General may not be required to furnish information the revelation of which would disclose the identity or evidence of Government agents or officers which he believes it would be dangerous to national safety and security to divulge.

[(d)(1) Any member of the Board shall have the power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence relating to the matter under review before the Board or any hearing examiner conducting any hearing authorized by this title. Any hearing examiner of the Board may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

[(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board or its hearing examiner, there to produce evidence if so ordered, or there to give testimony touching the matter under review; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

[(e)(1) Notices, orders, and other process and papers of the Board, or any hearing examiner thereof, shall be served upon the detainee personally and upon his attorney or designated representative. Such process and papers may be served upon the Attorney General or such other officers as may be designated by him for such purpose, and upon any other interested persons either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, or any hearing examiner thereof, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

[(2) All process of any court to which application may be made under this title may be served in the judicial district wherein the person required to be served resides or may be found.

[(3) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

[(f) Every detainee shall be afforded full opportunity to be represented by counsel at the preliminary hearing prescribed by this title and in all stages of the detention review proceedings, including the hearing before the Board and any judicial review, and he shall have the right at hearings of the Board to testify, to have compulsory process for obtaining witnesses in his favor, and to cross-examine adverse witnesses.

[(g) In any proceeding before the Board under this title the Board and its hearing examiners are authorized to consider under regulations designed to protect the national security any evidence of Government agencies and officers the full text or content of which cannot be publicly revealed for reasons of national security, but which the Attorney General in his discretion offers to present. The testimony taken before the Board or its hearing examiners shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument.

[(h) In deciding the question of the existence of reasonable ground to believe a person probably will engage in or conspire with others to engage in espionage or sabotage, the Attorney General, any preliminary hearing officer, and the Board of Detention Review are authorized to consider evidence of the following:

[(1) Whether such person has knowledge of or has received or given instruction or assignment in the espionage, counterespionage, or sabotage service or procedures of a government or political party of a foreign country, or in the espionage, counterespionage, or sabotage service or procedures of the Communist Party of the United States or of any other organization or political party which seeks to overthrow or destroy by force and violence the Government of the United States or of any of its subdivisions and to substitute therefor a totalitarian dictatorship controlled by a foreign government, and whether such knowledge, instruction, or assignment has been acquired or given by reason of civilian, military, or police service with the United States Government, the governments of the several States, their political subdivisions, the District of Columbia, the Territories, the Canal Zone, or the insular possessions, or whether such knowledge has been acquired solely by reason of academic or personal interest not under the supervision of or in preparation for service with the government of a foreign country or a foreign political party, or whether, by reason of employment at any time by the Department of Justice or the Central Intelligence Agency, such person has made full written disclosure of such knowledge or instruction to officials within those agencies and such disclosure has been made a matter of record in the files of the agency concerned;

[(2) Any past act or acts of espionage or sabotage committed by such person, or any past participation by such person in any attempt or conspiracy to commit any act of espionage or sabotage, against the United States, any agency or instrumentality thereof, or any public or private national defense facility within the United States:

[(3) Activity in the espionage or sabotage operation of, or the holding at any time after January 1, 1949, of membership in, the

Communist Party of the United States or any other organization or political party which seeks to overthrow or destroy by force and violence the Government of the United States or of any of its political subdivisions and the substitution therefor of a totalitarian dictatorship controlled by a foreign government.

[(i) The authorization of the Attorney General and the Board of Detention Review to consider the evidence set forth in the previous subsection shall not be construed as a direction to detain any person as to whom such evidence exists, but in each case the Attorney General or the Board of Detention Review shall decide whether, on all the evidence, there is reasonable ground to believe the detainee or possible detainee probably will engage in, or conspire with others to engage in, espionage or sabotage.

[(j) In any proceeding involving a claim for the payment of any indemnity pursuant to the provisions of this title, the Board and its hearing examiners may receive evidence having probative value concerning the nature and extent of the income lost by the claimant as a result of his detention.

[ORDERS OF THE BOARD

[SEC. 110. (a) If upon all the testimony taken in any proceeding for the review of any order of detention issued pursuant to section 104(d) of this title, the Board shall determine that there is not reasonable ground to believe that the detainee in question probably will engage in, or conspire with others to engage in, espionage or sabotage, the Board shall state its findings of fact and shall issue and serve upon the Attorney General an order revoking the order for detention of the detainee concerned and requiring the Attorney General, and any officer designated by him for the supervision or control of the detention of such person, to release such detainee from custody; and shall forthwith serve a copy of such order upon the detainee.

[(b) If upon all the testimony taken in any proceeding for the review of any such order for detention involving a claim for indemnity pursuant to this title, or in any other proceeding brought before the Board for the assertion of a claim to such indemnity, the Board shall determine that the claimant is entitled to receive such indemnity, the Board shall state its findings of fact and shall issue and serve upon the Attorney General an order requiring him to pay to such claimant the amount of such indemnity; and shall forthwith serve a copy of such order upon such claimant. If upon all the testimony taken in any proceeding involving a claim for indemnity or for the ascertainment of any such claim, the Board shall determine that the claimant is not entitled to receive such indemnity, the Board shall state its finding of fact in sufficient detail to apprise the claimant of the grounds for its decision and shall issue and serve upon the claimant an order denying such claim and dismissing his petition so far as it pertains to such claim.

[(c) If upon all the testimony taken in any proceeding for the review of any such order for detention, the Board shall determine that there is reasonable ground to believe that the detainee probably will engage in, or conspire with others to engage in, espionage or sabotage, the Board shall state its findings of facts in sufficient detail to

apprise the detainee of the grounds for its decision and shall issue and serve upon the detainee an order dismissing the petition and confirming the order of detention.

[(d) In case the evidence is presented before a hearing examiner such examiner shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

[(e) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

[JUDICIAL REVIEW

[SEC. 111. (a) Any petitioner aggrieved by an order of the Board denying in whole or in part the relief sought by him, or by the failure or refusal of the Attorney General to obey such order, shall be entitled to the judicial review or judicial enforcement, provided hereinafter in this section.

[(b) In the case of any order of the Board granting any indemnity to any petitioner, the Attorney General shall be entitled to the judicial review of such order provided hereinafter in this section.

[(c) Any party entitled to judicial review or enforcement under subsection (a) or (b) of this section shall be entitled to receive such review or enforcement in any United States court of appeals for the circuit wherein the petitioner is detained or resides by filing in such court within sixty days from the date of service upon the aggrieved party of such order of the Board a written petition praying that such order be modified or set aside or enforced, except that in the case of a petition for the enforcement of a Board order, the petitioner shall have a further period of sixty days after the Board order has become final within which to file the petition herein required. A copy of such petition by any petitioner other than the Attorney General shall be forthwith served upon the Attorney General and upon the Board, and a copy of any such petition filed by the Attorney General shall be forthwith served upon the person with respect to whom relief is sought and upon the Board. The Board shall thereupon file in the court a duly certified transcript of the entire record of the proceedings before the Board with respect to the matter concerning which judicial review is sought, including all evidence upon which the order complained of was entered, the findings and order of the Board. In the case of a petition for enforcement, under subsection (a) of this section, the petitioner shall file with his petition a statement under oath setting forth in full the facts and circumstances upon which he relies to show the failure or refusal of the Attorney General to obey the order of the Board. Thereupon the court shall have jurisdiction of the proceeding and shall have power to affirm, modify, or set aside, or to enforce or enforce as modified the order

of the Board. The findings of the Board as to the facts, if supported by reliable, substantial, and probative evidence, shall be conclusive.

[(d) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board or its hearing examiner the court may order such additional evidence to be taken before the Board or its hearing examiner and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by reliable, substantial, and probative evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in title 28, United States Code, section 1254.

[(e) The commencement of proceedings by the Attorney General for judicial review under subsection (b) of this section shall, if he so requests, operate as a stay of the Board's order.

[(f) Any order of the Board shall become final—

[(1) upon the date of entry thereof by the Board, if such order is not subject to judicial review; or

[(2) upon the expiration of the time allowed for filing a petition for certiorari, if such order is subject to judicial review and no such petition has been duly filed within such time; or

[(3) upon the expiration of the time allowed for filing a petition for certiorari, if such order is subject to judicial review and the order of the Board has been affirmed or the petition for review or enforcement dismissed by a United States court of appeals, and no petition for certiorari has been duly filed; or

[(4) upon the denial of a petition for certiorari, if such order is subject to judicial review and the order of the Board has been affirmed or the petition for review or enforcement dismissed by a United States court of appeals; or

[(5) upon the expiration of ten days from the date of issuance of the mandate of the Supreme Court, if such order is subject to judicial review and such Court directs that the order of the Board be affirmed or that the petition for review or enforcement be dismissed.

[(g) Nothing contained in this section shall be construed to deprive any person of any relief to which he may be entitled under the Administrative Procedure Act.

[CRIMINAL PROVISIONS

[SEC. 112. Whoever, being named in a warrant for apprehension or order of detention as one as to whom there is reasonable ground to believe that he probably will engage in, or conspire with others to engage in, espionage or sabotage, or being under confinement or detention pursuant to this title, shall resist or knowingly disregard or

evade apprehension pursuant to this title or shall escape, attempt to escape or conspire with others to escape from confinement or detention ordered and instituted pursuant to this title, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

[SEC. 113. Whoever knowingly—

[(a) advises, aids, assists, or procures the resistance, disregard, or evasion of apprehension pursuant to this title by any person named in a warrant or order of detention as one as to whom there is reasonable ground to believe that such person probably will engage in, or conspire with others to engage in espionage or sabotage; or

[(b) advises, aids, assists, or procures the escape from confinement or detention pursuant to this title of any person so named; or

[(c) aids, relieves, transports, harbors, conceals, shelters, protects, or otherwise assists any person so named for the purpose of the evasion of such apprehension by such person or the escape of such person from such confinement or detention; or

[(d) attempts to commit or conspires with any other person to commit any act punishable under subsections (a), (b), or (c) of this section,

shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

[SEC. 114. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

[DEFINITION

[SEC. 115. For the purposes of this title, the term "espionage" means any violation of sections 791 through 797 of title 18 of the United States Code, as amended by this Act, and the term "sabotage" means any violation of sections 2151 through 2156 of title 18 of the United States Code, as amended by this Act.

[SEPARABILITY OF PROVISIONS

[SEC. 116. If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby. Nothing contained in this title shall be construed to suspend or to authorize the suspension of the privilege of the writ of habeas corpus.]

SECTION 8312 OF TITLE 5, UNITED STATES CODE

§ 8312. Conviction of certain offenses

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311 (2) and (3) of this title, if the individual—

(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; or

(2) was convicted, before, on, or after September 26, 1961, of an offense named by subsection (c) of this section, to the extent provided by that subsection.

The prohibition on payment of annuity or retired pay applies—

(A) with respect to the offenses named by subsection (b) of this section, to the period after the date of the conviction or after September 1, 1954, whichever is later; and

(B) with respect to the offenses named by subsection (c) of this section, to the period after the date of conviction or after September 26, 1961, whichever is later.

* * * * * * *

(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

(1) An offense within the purview of—

(A) section 2272 (violation of specific sections) or 2273 (violation of sections generally of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation;

(B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or

(C) section 783 (conspiracy and communication or receipt of classified information) [, 822 (conspiracy or evasion of apprehension during internal security emergency), or 823 (aiding evasion of apprehension during internal security emergency)] of title 50.

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SECTION 3505 OF TITLE 38, UNITED STATES CODE

§ 3505. Forfeiture for subversive activities.

(a) Any individual who is convicted after the date of enactment of this section of any offense listed in subsection (b) of this section shall, from and after the date of commission of such offense, have no right to gratuitous benefits under laws administered by the Veterans' Administration based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such individual. After receipt of notice of the return of an indictment for such an offense the Veterans' Administration shall suspend payment of such gratuitous benefits pending disposition of the criminal proceedings. If any individual whose right to benefits has been terminated pursuant to this section is granted a pardon of the offense by the

President of the United States, the right to such benefits shall be restored as of the date of such pardon.

(b) The offenses referred to in subsection (a) of this section are those offenses for which punishment is prescribed (1) in the following provisions of title 18, United States Code: sections 792, 793, 794, 798, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105; (2) in the Uniform Code of Military Justice, articles 94, 104, and 106; (3) in the following sections of the Atomic Energy Act of 1954: sections 222, 223, 224, 225 and 226; and (4) in [the following sections of the Internal Security Act of 1950: sections 4, 112, and 113] *section 4 of the Internal Security Act of 1950.*

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