

In the
United States Court of Appeals for the Fourth Circuit

**Jose Padilla,
Petitioner-Appellee**

v.

**Commander C.T. Hanft,
USN Commander, Consolidated Naval Brig,
Respondent-Appellant**

On Appeal from the United States District Court
for the District of South Carolina

**Brief of *Amici Curiae*
People for the American Way Foundation and
The Rutherford Institute In Support of Appellee**

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INTEREST OF *AMICI CURIAE*

Amici are two organizations with diverse viewpoints that have joined to address the profoundly important constitutional issues this case raises.¹

People For the American Way Foundation (“People For”) is a non-partisan citizens’ organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of civic, religious, and educational leaders devoted to our nation’s heritage of tolerance, pluralism, and liberty, including Norman Lear, Father Theodore Hesburgh, and Barbara Jordan, People For now has over 600,000 members and supporters nationwide. One of People For’s primary missions is to educate the public on the vital importance of our tradition of liberty and freedom, and to defend that tradition against efforts to limit fundamental rights and freedoms, including the fundamental rights of American citizens at issue in this case.

The Rutherford Institute (“Institute”) is a non-profit civil liberties organization with offices in Charlottesville, Virginia, and internationally. The Institute, founded in 1982 by its President, John W. Whitehead, educates and litigates on behalf of constitutional and civil liberties. Attorneys affiliated with the Institute have appeared as counsel before many courts in significant civil liberties cases and have frequently filed briefs as *amicus curiae* in criminal procedure cases.

¹ Counsel for the parties have consented to the filing of this brief.

The Institute currently handles several hundred civil rights cases nationally at all levels of federal and state courts and has published articles and educational materials in this area. The present case raises important criminal justice and civil liberties concerns of significance to the Institute.

SUMMARY OF ARGUMENT

Our nation has repeatedly faced perilous threats to its security and even its survival. These threats have come not only from aliens, but from citizens who, through espionage, treason, bombings, and other overt and covert acts of violence, have taken the lives of fellow citizens. We therefore have a substantial historical record – from the founding of the nation to the Civil War, the Palmer raids of the 1920s, and the internment of Japanese-Americans during the Second World War – that reveals the consistent understanding that the framing generation, the courts, Congress, and prior administrations have had of the President’s power to detain civilians during national emergencies. The historical record demonstrates that the current threat, though undeniably grave, is not unprecedented. What is unprecedented is the executive’s claim of a unilateral power to extra-judicially detain United States citizens on United States soil that it deems to be “enemy combatants.”

In structuring the Constitution, the Framers denied the executive unchecked power over matters of war and military authority. From the early days

of the Republic to the Civil War and through armed conflicts in the last century, courts have repeatedly and jealously protected the bedrock principle that, even when the survival of the nation itself is at stake, American citizens may not be detained except according to duly-enacted law. And prior administrations have respected that the President's Commander-in-Chief power does not include the power to detain American citizens without statutory authorization.

Our history also reveals that when providing such authorization, Congress must be clear. Because the most fundamental of freedoms are at stake, courts have refused to read Congressional authorizations to use military force expansively to include the authority to detain American citizens in the United States when civil courts remain open. Instead, express authorization of extra-judicial detention is required. This "clear statement" rule not only ensures that the most broadly representative branch of our government participates in the process of weighing the pressing concerns of security against our most precious liberties, it also provides Congress the opportunity, in the first instance, to cabin the scope of any expressly authorized detention power by defining the fundamental procedural safeguards that the President must observe. Our history, once again, shows that when Congress acts, it has been more attentive to principles of due process than what we can expect from the executive, given the claims of the present administration.

The Authorization for Use of Military Force, Pub. L. No. 107-40, 115

Stat. 224 (2001) (“AUMF”), fails this clear statement test. While the Supreme Court’s recent decision in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004), held the AUMF to authorize the traditional detention of citizens captured on foreign battlefields, the AUMF – which is silent on the issue of detention – cannot be expanded to the unprecedented extremes proposed here. At least until Congress acts specifically to authorize the extra-judicial detention of United States citizens within the United States,² Padilla must be brought before a court before he may be deprived of his liberty.

ARGUMENT

I. THE COMMANDER-IN-CHIEF POWER DOES NOT GIVE THE PRESIDENT INHERENT AUTHORITY TO DETAIN WITHOUT TRIAL AMERICAN CITIZENS ARRESTED WITHIN THE UNITED STATES.

Throughout our nation’s history, the suggestion that the President’s power as Commander-in-Chief includes unilateral authority to determine whether a citizen’s liberty should be restrained has been consistently rejected. The Founders purposefully divided the war powers between the President and Congress to ensure that the President would not have unchecked military authority. Prior administrations facing grave emergencies understood and respected the line this

² Whether any such statute would survive a constitutional challenge would, of course, fall to the courts to decide.

administration now proposes to cross: the executive may not detain citizens in the United States without Congressional authorization. Finally, courts have consistently understood that the President's power, even in times of dire conflict, does not include the unchecked power to detain citizens when the courts are available.

1. *The Framers.* The Framers' fears of unchecked military power "are derived in a great measure from the principles and examples of our English ancestors." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1182 (1833). Having experienced first-hand the dangers of unchecked executive power under the King of England, the Framers denied it to the executive in the constitutional system that they created. See James Madison, *Notes of Debates in the Federal Convention of 1787*, at 46 (Adrienne Koch ed., 1987) (the "Prerogatives of the British Monarch [were not] a proper guide in defining the Executive powers") (James Wilson). To limit executive power, the Framers divided military power between the executive and legislative branches. While the President was named Commander-in-Chief of the army and navy, Congress was authorized to "declare War," "make Rules for the Government and Regulation of the land and naval Forces," "raise and support Armies," and "define and punish ... Offences against the Law of Nations." U.S. Const. art. I, § 8.

These provisions reflect an intent to create a substantial and independent role for Congress in military affairs. During the Constitutional Convention, it was repeatedly recognized that the new Constitution would substantially limit the potential for tyranny inherent in an armed nation. *See* Madison, *supra*, at 475-77, 481-83. The Framers were conscious that liberty would be threatened were the President, as Commander-in-Chief, left with unchecked authority to employ military power, especially domestically. *See* 3 Story, *supra*, § 1177. Ensuring that Congress, the branch of government most responsive to the people, had a substantial role in controlling military power was understood as a vital structural protection against threats to liberty. *Id.* § 1182 (explaining that the Constitution eliminated the “danger of an undue exercise of the [military] power” by ensuring that “[i]t can never be exerted, but by the representatives of the people”). Having taken such care to pair the President’s military powers with Congressional control, the phrase “Commander-in-Chief” should not be understood to provide the President with an inherent military power to detain citizens in the United States when civilian authorities remain available to enforce the rule of law.

Indeed, the founding generation’s narrow conception of the President’s Commander-in-Chief power is reflected in its response to the “undeclared war” with France, the first major threat to the national security.

France, then a world superpower, had large “numbers of enemy agents operating in th[is] country” and had for years enjoyed the ardent support of many United States citizens. David McCullough, *John Adams* 505 (2001). Amidst rumors that French agents were plotting to burn down Philadelphia (the nation’s capital and largest city), *id.* at 501, Congress enacted a series of war measures in 1798. Notably, however, while the Alien Act gave the President broad authority to expel foreigners he deemed dangerous, the infamous Sedition Act authorized only *criminal* prosecutions against citizens who conspired against the United States. An Act respecting Alien Enemies, ch. 66, § 1, 1 Stat. 577, 577 (1798); An act for the punishment of certain crimes against the United States, ch. 74, 1 Stat. 596 (1798). Thus, the founding generation’s attitudes and actions, even at a time of grave peril to a still weak nation, belie any suggestion that they understood the President to have a sweeping unilateral authority to arrest and detain United States citizens.

2. *The War of 1812.* Two administrations later, the nation found itself at war with Britain, then the world’s greatest naval power. Given our nation’s present military prowess, it is easy to forget what peril the nation faced at the time. British forces invaded the United States, sacked Washington, and, in much the same way as today’s enemies, destroyed national symbols, burning and gutting the White House and the Capitol. Due to the deep political divisions of the day, many Federalists in New England obstructed war efforts, and President

Madison feared extremists were plotting to secede. Jack N. Rakove, *James Madison and the Creation of the American Republic* 196, 200-01 (2002).

Despite citizen-led obstructions of the war effort, Congress did not authorize military detentions of citizens. And, in several decisions that the Supreme Court later deemed notable, “not only for the principles they determine, but on account of the distinguished jurists” involved, *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 129 (1866), courts deemed several such detentions unlawful. In *Smith v. Shaw*, 12 Johns. 257 (N.Y. Sup. Ct. 1815), New York’s highest court held that an American citizen believed to be a British spy was falsely imprisoned by a military commander who detained him for two weeks. Because no act of Congress authorized the plaintiff’s trial, “the defendant could certainly have no legal right to detain him.” *Id.* at 266. To the defendant’s assertion that the plaintiff’s detention was “essential to the public safety,” *id.* at 260, the court responded that “[i]f the [commander] was justifiable in doing what he did, every citizen of the United States would, in time of war, be equally exposed to a like exercise of military power and authority.” *Id.* at 266; see also *In re Stacy*, 10 Johns. 328, 333 (N.Y. Sup. Ct. 1813) (holding that detention of citizen by military official was without “color of authority”); *McConnell v. Hampton*, 12 Johns. 234, 238-39 (N.Y. Sup. Ct. 1815) (upholding false imprisonment verdict against military officer who detained citizen suspected of espionage).

3. *The Civil War.* In the midst of the gravest threat to the survival of the Union our nation has ever faced, the Supreme Court flatly rejected the broad interpretation of the Commander-in-Chief power that the administration presses in this case.

During the Civil War, Lamdin P. Milligan was a member of “a secret society known as the Order of American Knights or Sons of Liberty, for the purpose of overthrowing the Government; ... [held] communication with the enemy; conspir[ed] to seize munitions of war stored in the arsenals; [and] to liberate prisoners of war.” *Milligan*, 71 U.S. (4 Wall.) at 6-7. In October 1864, Milligan was arrested by military personnel, tried by military commission, and sentenced to death. *Id.* He filed a petition for writ of habeas corpus, claiming that the military lacked authority to detain a citizen arrested in Indiana. *Id.* at 108.

The government asserted that military jurisdiction over Milligan was “complete under the ‘laws and usages of war.’” *Id.* at 121. Specifically, the government argued that because Indiana was under threat of invasion by the Confederacy, the military had authority to seize citizens who were aiding the enemy. *Id.* at 126. The Court flatly rejected the argument, and instead drew a clear line: “Martial rule can never exist where the courts are open.” *Id.* at 127; *see also id.* at 121 (rejecting application of laws of war “in states which have upheld the authority of the government, and where the courts are open and their process

unobstructed”). The Court did not question the authority of the President or his military commander to impose rules “on states in rebellion to cripple their resources and quell [an] insurrection.” *Id.* at 126. But the Court rejected the idea that the President possesses the power to deprive citizens of their liberty that the present administration claims here. The Framers “knew … the nation they were founding … would be involved in war … and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen.” *Id.* at 125.

The nature of the war with al-Qaeda does not require military authority to detain American citizens despite the fact that civil courts remain open. During the Civil War, the very survival of the nation was at stake, and the organization to which Milligan belonged had stockpiled weapons, conspired with rebel agents to plot insurrections, and “coordinated an invasion of Missouri with guerrilla attacks.” James M. McPherson, *Battle Cry of Freedom: The Civil War Era* 783-84 (1988). Other saboteurs received \$5 million from the Confederate government to destroy or damage military installations in Missouri and Illinois and hotels in New York City. *Id.* at 764. Yet, despite these terrorist-like activities, the courts refused to acquiesce in the President’s assertion of an inherent power to deprive citizens of their liberty within the United States.

4. *Twentieth Century Responses to National Crises.* No doubt influenced by Civil War-era precedents, the executive responded to several

national emergencies during the twentieth century by seeking *statutory* authority to detain American citizens.

A. The Palmer Raids. In April 1919, mail bombs were sent to nearly 20 government officials and business leaders. On May 1, 1919, riots broke out during May Day celebrations in Cleveland, Boston, and New York. On June 2, 1919, bombs exploded in eight different cities within an hour, apparently targeting government officials including Attorney General A. Mitchell Palmer.³ The Justice Department concluded that the bombings were the work of Communists and launched a series of raids that detained over 3000 radical aliens and deported many of them based on their membership, or suspected membership, in Communist organizations. *See Espionage Act of Oct. 16, 1918, ch. 186, 40 Stat. 1012 (repealed 1952)* (authorizing deportation on such grounds).

The Attorney General believed that some citizens might also threaten our national security. *See Sedition: Hearing Before the House Comm. on the Judiciary, 66th Cong. 6 (1920)* (statement of Attorney General Palmer) (“There is a condition of revolutionary intent in this country, on the part of both aliens and citizens ... to injure, destroy or overthrow the Government by physical force of violence.”). He recognized, however, that no law authorized him to detain citizens

³ A more complete description of these facts may be found in David Cole, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism* 117-19 (2003).

for the same offenses for which aliens were being deported pursuant to the Espionage Act. *Charges Against the Dep't of Justice: Hearings Before the House Comm. on Rules*, 66th Cong. 29, 33 (1920) (“1920 Hearings”). Notably, the Wilson Administration did not order the military to detain dangerous citizens, but instead requested that Congress “arm the Federal Government with power to deal in its criminal courts with those persons who by violent methods would abrogate our time-tested institutions.” Woodrow Wilson, Seventh Annual Message to Congress (Dec. 2, 1919), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=29560> (last visited June 7, 2005); *see also* 1920 Hearings at 33 (requesting statute that would authorize detention of citizens).

B. The Japanese Internment. Likewise, during the infamous Japanese internment, the Roosevelt Administration recognized that it did not possess a unilateral detention power. On February 19, 1942, President Roosevelt issued Executive Order 9066, which authorized military commanders to create zones from which any individual could be excluded. 7 Fed. Reg. 1407; *see also* Civilian Exclusion Order No. 57, 7 Fed. Reg. 3725, 3725 (May 10, 1942) (excluding those of Japanese ancestry from certain areas). After Pearl Harbor, the West Coast was widely perceived as under threat of imminent attack. Yet, despite these dangers, the military did not assert that anyone refusing to comply with orders issued to protect the homeland was subject to detention. Indeed, the War Department

explained to Congress that, “[a]s things now stand orders can be issued but there is no penalty provided for violation of orders and restrictions so issued....

[P]assage of this bill was necessary ... to properly carry out the provisions of the Executive order.” 88 Cong. Rec. 2724 (1942). Rather than assert unilateral authority to detain citizens, the military asked Congress to provide for *criminal* punishment of those violating exclusion orders, *see id.* at 2722, which Congress quickly provided. *See* Act of Mar. 21, 1942, ch. 191, 56 Stat. 173 (repealed 1948).

C. The Steel Seizures. Although President Truman’s seizure of the nation’s steel mills during the Korean War did not involve the detention of citizens, the core separation of powers principles at issue there are instructive. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952), the Supreme Court expressly rejected the assertion that the Commander-in-Chief can arrogate to himself authority otherwise residing with Congress on the basis of military exigencies.

Believing that a threatened strike against the nation’s steel mills would “immediately jeopardize and imperil our national defense,” President Truman, acting “as President of the United States and *Commander in Chief of the armed forces*,” ordered the mills seized and new labor agreements enacted. Exec. Order No. 10340, 17 Fed. Reg. 3139, 3141 (Apr. 10, 1952) (emphasis added). The

Court held that such actions could not be squared with our constitutional system, for seizing private property “is a job for the Nation’s lawmakers, not for its military authorities.” *Youngstown*, 343 U.S. at 587. “The Constitution d[oes] not subject this law-making power of Congress to presidential or military supervision or control,” because “[t]he Founders of this Nation entrusted the law-making power to the Congress alone in both good and bad times.” *Id.* at 588-89. Because continued production of steel could have been ensured through legislative means, the Commander-in-Chief power did not authorize the President to obtain identical results by fiat. *Id.* at 588.

The lessons of this history are clear. The Constitution requires that Congress, acting with the President, determine how to deal with citizens accused of plotting war-like acts on American soil. The President, even acting as Commander-in-Chief, cannot detain citizens without Congressional approval.

II. CONGRESS MUST CLEARLY AUTHORIZE ANY DETENTION OF AMERICAN CITIZENS ARRESTED WITHIN THE UNITED STATES.

The administration asserts that Congress has authorized the President to detain, indefinitely, any citizen in the United States he deems an “enemy combatant.” Gov’t Br. 16. The administration asserts that Congress provided such extraordinary discretion with the following words:

[T]he President is authorized to use all necessary and appropriate force against those nations, organizations or

persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

AUMF, § 2, 115 Stat. at 224. This language cannot bear the heavy weight placed upon it. The Supreme Court has consistently refused to read broadly-worded, non-specific grants of authorization to use military force as including a general detention power like that asserted here. And even on those occasions where Congress has specifically authorized extra-judicial detention, it has provided limits on his discretion by providing procedural protections that appear nowhere in the vaguely worded AUMF. Congress has never presented the President with the kind of procedural *carte blanche* to detain citizens in the United States that the administration now claims to possess.

1. *The Limited Reading of Prior Authorizations to Use Force.* In declaring war against Great Britain in 1812, Congress provided that “the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed vessels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper … against the vessels, goods, and effects of [Great Britain] and the subjects thereof.” Ch. 102, 2 Stat. 755, 755 (1812). In *Brown v. United States*, 12 U.S. (8 Cranch) 110 (1814), the government contended that this

declaration authorized the seizure of 550 tons of timber transported by a British ship.

The Supreme Court rejected that contention, highlighting the fact that after declaring war, Congress enacted separate legislation empowering the President to deal with alien enemies and to keep prisoners of war. *Id.* at 125-26; *see also* An Act for the safekeeping and accomodation of prisoners of war, ch. 128, 2 Stat. 777, 777 (1812). Because “[w]ar gives an equal right over persons and property,” that the declaration of war did not authorize the President to detain enemy citizens meant that it did not authorize the President to detain enemy property either. *Brown*, 12 U.S. (8 Cranch) at 126.

Similarly, during World War II Congress provided that “the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.” Declaration of War with Japan, Dec. 8, 1941, ch. 561, 55 Stat. 795. During the war, the government asserted a detention power in two distinct contexts: martial law in Hawaii and the internment of Japanese-Americans. Yet despite the Congressional authorization to use *all* available

resources to defeat Japan, extra-judicial detention was not authorized in either context.

Section 67 of the Organic Act, passed by Congress to create a territorial government for Hawaii, allowed the governor to, “when the public safety requires it, *suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law.*” Act of Apr. 30, 1900, ch. 339, § 67, 31 Stat. 141, 153 (repealed 1959) (emphasis added). Within hours of the attack on Pearl Harbor, the Hawaiian governor declared martial law and suspended the writ of habeas corpus. At least 1,500 individuals, including 617 American citizens, were detained indefinitely on suspicion of disloyalty. See Harry N. Scheiber & Jane L. Scheiber, *Bayonets in Paradise: A Half-Century Retrospect on Martial Law in Hawaii*, 19 U. Haw. L. Rev. 477, 491 (1997); Memorandum from Office of Internal Security (Honolulu) to War Department No. R73740 (Nov. 30, 1945) (on file in the Hawaii Military Government Records, Record Group 338, National Archives).

Although none of the detainees filed habeas petitions, in *Duncan v. Kahanamoku*, 327 U.S. 304 (1946), the Court considered two habeas petitions from individuals convicted by military courts. The Court concluded that even the Organic Act’s specific authorization to impose martial law “certainly did not explicitly declare that the Governor in conjunction with the military could for days,

months or years close all the courts and supplant them with military tribunals.” *Id.* at 315. The Court determined that the historic usage of “martial law” typically contemplated coexistence with civilian courts. *Id.* at 319-24. By reading a specific authorization to impose “martial law” *not* to include the extra-judicial detention of citizens, the Court demonstrated the importance and potency of the “clear statement” rule’s protection against efforts to detain citizens without judicial safeguards.

The military internment orders applied against Japanese-Americans in World War II provide yet another example of the high degree of clarity required before statutes will be understood to authorize detention. As noted above, Congress, by the Act of March 21, 1942, ch. 191, 56 Stat. 173 (repealed 1948), provided legislative backing for Executive Order 9066. *Ex parte Endo*, 323 U.S. 283 (1944), however, held that that legislation did not clearly enough authorize the detention of Endo, a Japanese-American citizen. The Court examined the Act of March 21, 1942, in light of the Constitution’s strong protections of liberty, and concluded that even wartime measures are intended “to allow for the greatest possible accommodation between … libert[y] and the exigencies of war.” 323 U.S. at 300. The Court then noted that neither the Act nor its legislative history “use[s] the language of detention.” *Id.* In the absence of any express authority to detain, the Court refused to imply it. *Id.* at 300-04.

It does not matter that Endo's custodian was a civilian agency, whereas Padilla is in military custody. (Gov't Br. 55-56.) The War Relocation Authority established by President Roosevelt was specifically empowered to carry out military orders and thus performed a military function. *Endo*, 323 U.S. at 287. Were the President to create a civilian "Enemy Combatant Detention Authority" to detain Padilla, his power of detention could hardly expand as a result.

In the end, the AUMF is simply too vague to meet the standards of *Brown*, *Duncan*, and *Endo*. The authorization to use "all necessary and appropriate force" is silent on whether it authorizes detention of American citizens within our borders. It is, if anything, less sweeping than the authorization "to use the whole land and naval force of the United States to carry the [War of 1812] into effect," ch. 102, 2 Stat. at 755, or "to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination," ch. 561, 55 Stat. 795. These declarations of war were insufficient to authorize detention of American citizens in the United States. So is the AUMF.

2. *Congress's Express Authorizations of Detention.* The AUMF is not only substantially similar to statutes that have been held *not* to delegate a detention power over citizens to the executive, it also stands in noticeable contrast to statutes that *have* clearly purported to delegate such a power to the President. In

those statutes, Congress not only expressly purported to authorize such detentions, it also expressly prescribed the procedural rights of the citizen to challenge that detention as erroneous or abusive.

First, in 1863 Congress passed a law authorizing the President to suspend the writ of habeas corpus. 1863 Act, § 1, 12 Stat. 755. And while suspension of the writ effectively authorizes detention outside the judicial process, Congress provided specific procedural protections for those citizens so detained. The Secretaries of State and War were to provide a list of detained citizens to courts in states where they remained open. *Id.* § 2, 12 Stat. at 755-56. Thereafter, any citizen so detained was to be released if the appropriate grand jury terminated its session without indicting the detainee, *id.*, conditioned upon an oath of loyalty to the United States and, if necessary, the posting of a bond to ensure good behavior. *Id.* § 3, 12 Stat. at 756. But even if the detainee were indicted, he was entitled to be released upon posting any bail generally applicable to the charge. *Id.*

Although the 1863 Act allowed the President to detain citizens, the limits on that authority preserved our basic constitutional values. As *Milligan* noted, Congress had not “contemplated that such person should be detained in custody beyond a certain fixed period, *unless certain judicial proceedings, known to the common law, were commenced against him.*” 71 U.S. (4 Wall.) at 115 (emphasis added). The 1863 Act is thus evidence that Congressional approval of

extra-judicial detention is more than a formality. It creates the opportunity to restrain potential executive overreach and to provide “the greatest possible accommodation between … liberties and the exigencies of war.” *Endo*, 323 U.S. at 300.⁴

The second example of Congressional authorization to detain American citizens likewise included procedural protections. In 1950, amid increasing Communist fears, Congress passed the Emergency Detention Act (“EDA”), ch. 1024, tit. II, 64 Stat. 1019 (1950) (codified at 50 U.S.C. §§ 811-826 (1970)) (repealed 1971).⁵ In passing the EDA, Congress saw fit to “provide

⁴ As *Milligan* made clear, the rule of law applies even in wartime:

If it was dangerous, in the distracted condition of affairs, to leave Milligan unrestrained of his liberty, because he “conspired against the government, and afforded aid and comfort to rebels, and incited the people to insurrection,” the *law* said arrest him, confine him closely, render him powerless to do further mischief; and then present his case to the grand jury of the district, with proofs of his guilt, and, if indicted, try him according to the course of the common law. If this had been done, the Constitution would have been vindicated, the law … enforced, and the securities for personal liberty preserved and defended.

71 U.S. (4 Wall.) at 122 (emphasis in original).

⁵ The Emergency Detention Act was repealed by 18 U.S.C. § 4001(a), which provides that “[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.” The full implications of § 4001(a) for this case are not discussed by *amici*.

protections and safeguards to persons apprehended or detained under this title which are markedly greater than those accorded to persons whose relocation was ordered during World War II pursuant to legislation then in effect.” H.R. Conf. Rep. No. 81-3112, at 65 (1950).

The EDA’s powers were to be triggered by presidential proclamation during times of emergency and would last until terminated by either the President or Congress. 50 U.S.C. § 812(a)-(b) (1970) (repealed 1971). During a declared emergency, the Attorney General could “apprehend and by order detain … each person as to whom there is reasonable ground to believe … probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage.” *Id.* § 813(a). Within 48 hours, a detainee was to be informed of the grounds for his detention, his right to remain silent, his right to counsel, and his right to a preliminary hearing. *Id.* § 814(d). At the preliminary hearing, the detainee could introduce evidence and cross-examine witnesses; the hearing officer would then order continued detention or release. *Id.* Were detention ordered, the detainee could appeal to a review board required to act within 45 days. *Id.* § 819(b). Judicial review was available either through appeal from decisions of the review board or through habeas corpus. *Id.* §§ 813(b)(4), 821.

Indeed, even in the present environment, Congress has provided more procedural protections to aliens suspected of terrorist activity than the

administration would provide citizens like Padilla. Though the administration initially requested the power to detain such aliens indefinitely, 147 Cong. Rec. S11,004 (daily ed. Oct. 25, 2001) (statement of Sen. Leahy), Congress refused. Instead, under the Patriot Act, the Attorney General may detain aliens “engaged in any ... activity that endangers the national security of the United States,” but must either begin removal proceedings or charge the alien criminally within *seven days*. 8 U.S.C. § 1226a(a)(3)-(5). Congress provided that even when detention is allowed, the Attorney General must review its necessity every six months, and the detainee is permitted to present evidence on his behalf. *Id.* § 1226a(a)(6)-(7). Judicial review of the detention remains available at all times. *Id.* § 1226a(b). Padilla, who has been detained for *three years*, has received none of these protections.⁶

Throughout our history, when Congress believed that national security was sufficiently endangered to authorize the President to detain citizens in the United States without trial, Congress also saw fit to provide those citizens meaningful procedural protections. Today, there is no comparable Congressional

⁶ Padilla was originally detained under a material witness warrant. The statute authorizing such detentions without charge also provides substantial procedural protections, including a hearing in which the government must show that detention is necessary to ensure future court appearances. 18 U.S.C. § 3142(f). The hearing must be held no later than five days after the detainee’s first court appearance, and the detainee is entitled to counsel, to testify, and to present and cross-examine witnesses. *Id.*

authorization. Instead, the President has unilaterally declared that circumstances warrant the indefinite detention of citizens that he believes are enemy combatants. Congress has thus been deprived of its constitutional role in the detention process – a role in which it has acted to protect the rights of detainees – in contravention of our long-standing tradition that our liberty is most secure when the power to make the law is placed in separate hands from the power to enforce it.

III. *QUIRIN AND HAMDI IN NO WAY AUTHORIZE THE DETENTION WITHOUT TRIAL OF AMERICAN CITIZENS ARRESTED IN THE UNITED STATES.*

The administration relies principally on two cases, *Ex parte Quirin*, 317 U.S. 1 (1942), and *Hamdi*, to set aside the historical practices of the nation when confronted with citizens who, acting within the United States, allegedly threaten our security. Neither case warrants the dramatic departure with history the administration seeks.

1. Quirin. *Ex parte Quirin* is not, as the administration claims, a case in which a citizen was detained on presidential authority. To the contrary, Congress specifically authorized the military *trial* at issue under Article 12 of the Articles of War, which provided the military with broad authority to try ““any ... person who by the law of war is subject to trial by military tribunal[.]”” *Id.* at 27 (emphasis added). The emphasized language was passed in 1916 to expand courts-martial authority over citizens. Maj. Jan E. Aldykiewicz & Maj. Geoffrey S. Corn,

Authority to Court-Martial Non-U.S. Military Personnel for Serious Violations of International Humanitarian Law Committed During Internal Armed Conflicts, 167

Mil. L. Rev. 74, 92-96 (2001). At the same time, Congress passed Article 15, Articles of War, ch. 418, sec. 3, § 1342, art. 15, 39 Stat. 650, 653 (1916), which made clear that the creation of courts-martial jurisdiction did not affect the jurisdiction of military commissions. S. Rep. No. 64-130, at 40 n.20 (1916).

Just as important, the Articles of War authorizing military authority over citizens believed to be enemy combatants allowed these citizens procedural protections, including the right to a trial at which they could mount a defense.

Application of Yamashita, 327 U.S. 1, 9 (1946).⁷ And Congress made clear that such a trial, when “practicable,” should follow “the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States.” Articles of War, ch. 227, ch. II, art. 38, 41 Stat. 787, 794 (1920).

The *Quirin* petitioners thus had what Padilla has been denied: the opportunity to prove that they had not engaged in specifically alleged acts in violation of the laws of war. In any event, the power to detain Padilla indefinitely is not included within the power to try him. See 1 William Blackstone,

⁷ The government has never asserted that Padilla’s detention is authorized by the current Articles of War (now the Uniform Code of Military Justice), 10 U.S.C. § 821. Today’s provisions, like those in place when *Quirin* was decided, contemplate a military trial, something the administration has not stated it intends to provide Padilla.

Commentaries *132 (noting that “confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten; is a less public, a less striking, and therefore a more dangerous engine of arbitrary government” than even the power to deprive a citizen of his life). Indeed, the Supreme Court has recognized that detention of an accused prior to trial is an extreme departure from our societal norms of liberty. *See United States v. Salerno*, 481 U.S. 739, 755 (1987).

2. *Hamdi*. The government repeatedly contends that *Hamdi* controls this case. But *Hamdi* merely reaffirms the limited proposition that anyone, citizen or not, captured on a foreign battlefield is subject to detention. Nothing in *Hamdi* supports the vast authority claimed by the administration to detain without trial American citizens arrested on American soil.

Despite the fact that the present case was also before the Court, *Hamdi* expressly confined its holding to “the narrow circumstances” of “a United States citizen captured in a *foreign* combat zone.” 124 S. Ct. at 2641, 2643 (emphasis in original). And not only was *Hamdi* thus limited, but Justice Breyer, while in the *Hamdi* plurality, also joined Justice Stevens’s dissent in *Padilla*, including his statement that the AUMF does not authorize “detention of American citizens arrested in the United States.” *Rumsfeld v. Padilla*, 124 S. Ct. 2711, 2735

n.8 (2004) (Stevens, J. dissenting). Including Justice Scalia, who dissented in *Hamdi*, five justices are thus on record as rejecting *Hamdi*'s reasoning here.

Hamdi merely applied the long-standing rule that American citizens captured on foreign battlefields may be detained like other enemy soldiers. The *Hamdi* plurality relied upon *In re Territo*, 156 F.2d 142 (9th Cir. 1946), which upheld the detention of an American citizen fighting for the Italian army, to emphasize the importance of foreign battlefield capture. *Hamdi*, 124 S. Ct. at 2643. As the Court noted, there is “no case or other authority for the proposition that those captured *on a foreign battlefield* … cannot be detained outside the criminal process.” *Id.* (emphasis added). *Hamdi*’s repeated references to foreign “battlefield capture” emphasize the limits of its holding.

Hamdi’s discussion of *Milligan* further illustrates its limits. The Court recognized that “[h]ad Milligan been captured while he was assisting Confederate soldiers by carrying a rifle against Union troops on a Confederate battlefield, the holding of the Court might well have been different.” *Id.* at 2642. Only then could Milligan “have been detained under military authority for the duration of the conflict.” *Id.* This explanation of *Milligan* makes clear that citizens, even those allegedly working for an enemy of the United States, may not be extra-judicially detained (at least without specific Congressional authorization) if found in the United States.

To the extent *Hamdi* limits *Milligan*, it does so only insofar as *Quirin* “dismissed the language of *Milligan* that the petitioners had suggested prevented them from being subject to *military process*.” *Id.* (emphasis added). The *Quirin* petitioners challenged their *military trial*, something Padilla has never received. As such, that nothing in *Quirin* foreclosed detention, *id.* at 2640, is unsurprising, for detention was not at issue in that case. Rather, trying the *Quirin* petitioners for violating the laws of war, like detaining Hamdi on the battlefield, is a “fundamental and accepted … incident to war,” *id.*, not the sharp break with constitutional precedent and historical tradition the administration proposes here.

In light of historical tradition and the cases applying a “clear statement” rule to Congressional authorizations to extra-judicially detain citizens within the United States, it makes no sense to read *Hamdi*, which understood the AUMF to authorize foreign battlefield detention of a United States citizen engaged in combat against the United States, to also authorize Padilla’s detention after his arrest in Chicago. Padilla is a citizen the government apparently believes was plotting to commit terrorist acts within the United States. If true, he is surely subject to arrest and prosecution, certainly in a civilian criminal court, and perhaps in a military tribunal. The administration is, therefore, not without options in dealing with a supposedly threatening individual like Mr. Padilla. It has simply

chosen an option for which there is neither historical precedent nor specific legal authorization.

The administration claims that requiring a trial would “create[] truly perverse incentives by rewarding al-Qaeda combatants for attempting to enter the United States to attack our citizens at home.” (Gov’t Br. 24-25.) It says much that the administration perceives the legal constraints on the awesome power of the executive as “rewards” that can be withheld from undeserving citizens. The structural limits on executive power are not doled out to citizens in the United States according to good or bad behavior. They are an ever-present fact of our Constitution. And for that reason, these reliable constraints on executive power are maximally effective to preserve the liberties of American citizens. This Court should act both to preserve those limits on executive power and to protect the liberties of American citizens in the United States.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the District Court judgment be affirmed.

Respectfully submitted,



Counsel for *Amici Curiae*

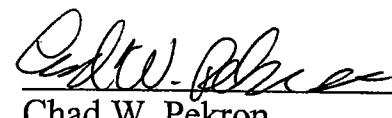
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and 29(b) because it contains 6,812 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.



Chad W. Pekron

ADDENDUM

**Pursuant to FRAP 28(f) and Fourth Circuit Local Rule 28(b),
Amici includes the relevant statutes and regulations in
the following Addendum**

sum not exceeding four hundred thousand dollars, to be paid out of any money in the treasury not otherwise appropriated.

APPROVED, July 6, 1798.

CHAP. LXVI.—*An Act respecting Alien Enemies.* (a)

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, that aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

SEC. 2. *And be it further enacted,* That after any proclamation shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each state, having criminal jurisdiction, and of the several judges and justices of the courts of the United States, and they shall be, and are hereby respectively, authorized upon complaint, against any alien or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President of the United States shall and may establish in the premises, to cause such alien or aliens to be duly apprehended and convened before such court, judge or justice; and after a full examination and hearing on such complaint, and suffi-

STATUTE II.

July 6, 1798.

[Expired.]
In case of
war, or actual
threatened in-
vasion, the Pre-
sident shall
make a procla-
mation.

Act of July
6, 1812, ch. 130.

Alien enemies
how to be treat-
ed.

If not charge-
able with crimes
against the pub-
lic safety, time
shall be allowed
for their depart-
ure.

All courts of
criminal juris-
diction—and
also the judges
of the courts of
the U. States
may receive and
hear complaints
against alien
enemies, and
make an order
thereon.

(a) Alien enemy. The fact that the commander of a private armed vessel was an alien enemy at the time of the capture, does not invalidate such capture. *The Mary and Susan*, 1 Wheat. 46; 3 Cond. Rep. 480.

Admitting it to have any operation, all that could result from it would be the condemnation of his interest to the government, as a droit of the admiralty; but his national character can in no case affect the rights of the owners and crew of the privateer. *Ibid.*

An alien enemy cannot be permitted to make the declaration required by law, preparatory to the naturalization of aliens. *Ex parte Newman*, 2 Gallis' C. C. R. 11.

An alien enemy cannot sustain a suit in a prize court, nor can a citizen claim the property of an alien enemy in a prize court, upon an alleged sale since the war. *The Emulous*, 1 Gallis. C. C. R. 563.

cient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States, or to give securities of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall and may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed.

Marshals of the district to provide for their removal, for which he shall have a warrant.

SEC. 3. *And be it further enacted*, That it shall be the duty of the marshal of the district in which any alien enemy shall be apprehended, who by the President of the United States, or by order of any court, judge or justice, as aforesaid, shall be required to depart, and to be removed, as aforesaid, to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President of the United States, or of the court, judge or justice ordering the same, as the case may be.

APPROVED, July 6, 1798.

STATUTE II.

July 7, 1798.

CHAP. LXVII.—*An Act to declare the treaties heretofore concluded with France, no longer obligatory on the United States.*

Ante, p. 561,
565, 578.

WHEREAS the treaties concluded between the United States and France have been repeatedly violated on the part of the French government; and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations, have been repelled with indignity: And whereas, under authority of the French government, there is yet pursued against the United States, a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States are of right freed and exonerated from the stipulations of the treaties, and of the consular convention, heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States.

APPROVED, July 7, 1798.

STATUTE II.

July 9, 1798.

CHAP. LXVIII.—*An Act further to protect the Commerce of the United States. (a)*

[Expired.]
The President may instruct the commanders of public armed vessels to capture any French armed vessels.
Ante, p. 561,
565.

They shall be condemned and distributed.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States shall be, and he is hereby authorized to instruct the commanders of the public armed vessels which are, or which shall be employed in the service of the United States, to subdue, seize and take any armed French vessel, which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas, and such captured vessel, with her apparel, guns and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against and condemned as forfeited; and shall accrue and be distributed, as by law is or shall be provided respecting

(a) The commander of an armed vessel of the United States, has a right to stop vessels on the high seas, for examination. *Maley v. Shattuck*, 3 Cranch, 458; 1 Cond. Rep. 597.

The right of capture is entirely derived from the law; it is a limited right which is subject to all the restraints which the legislature has imposed, and is to be exercised in the manner its wisdom has prescribed. *The Thomas Gibbons*, 8 Cranch 421; 3 Cond. Rep. 193.

Exemption from arrest for debts and contracts.

What duty they shall be subject to do.

ficers, musicians, seamen and marines, who are or shall be enlisted into the service of the United States; and the non-commissioned officers and musicians, who are or shall be enlisted into the army of the United States, shall be, and they are hereby exempted, during their term of service, from all personal arrests for any debt or contract.

SEC. 6. *And be it further enacted,* That the marine corps, established by this act, shall, at any time, be liable to do duty in the forts and garrisons of the United States, on the sea-coast, or any other duty on shore, as the President, at his discretion, shall direct.

APPROVED, July 11, 1798.

STATUTE II.

July 14, 1798.

[Obsolete.]

CHAP. LXXXIII.—*An Act establishing an annual salary for the Surveyor of the port of Gloucester.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be allowed to the surveyor of the port of Gloucester, in the state of Massachusetts, the yearly salary of two hundred and fifty dollars; to commence from the last day of March, in the year of our Lord one thousand seven hundred and ninety-seven.

APPROVED, July 14, 1798.

STATUTE II.

July 14, 1798.

[Expired.]

Penalty on unlawful combinations to oppose the measures of government, &c.

Ante, p. 112.

And with such intent counselling &c. insurrections, riots, &c.

Penalty on libelling the government.

CHAP. LXXXIV.—*An Act in addition to the act, entitled "An act for the punishment of certain crimes against the United States."*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. *And be it further enacted,* That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by

the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. And be it further enacted and declared, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. And be it further enacted, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, July 14, 1798.

Truth of the
matter may be
given in evi-
dence.

The jury shall
determine the
law and the fact,
under the
court's direc-
tion.

Limitation.

STATUTE II.

CHAP. LXXV.—*An Act to lay and collect a direct tax within the United States.*

July 14, 1798.

**SECTION 1. Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,** That a
direct tax of two millions of dollars shall be, and hereby is laid upon the
United States, and apportioned to the states respectively, in the manner
following:—

[Obsolete.]
Act of July 9,
1798, ch. 70.

A direct tax
of two millions
laid.
1802, ch. 12.
Apportionment.

To the state of New Hampshire, seventy-seven thousand seven hundred and five dollars, thirty-six cents and two mills.

To the state of Massachusetts, two hundred and sixty thousand four hundred and thirty-five dollars, thirty-one cents and two mills.

To the state of Rhode Island, thirty-seven thousand five hundred and two dollars and eight cents.

To the state of Connecticut, one hundred and twenty-nine thousand seven hundred and sixty-seven dollars, and two mills.

To the state of Vermont, forty-six thousand eight hundred and sixty-four dollars eighteen cents and seven mills.

To the state of New York, one hundred and eighty-one thousand six hundred and eighty dollars, seventy cents and seven mills.

To the state of New Jersey, ninety-eight thousand three hundred and eighty-seven dollars, twenty-five cents, and three mills.

To the state of Pennsylvania, two hundred and thirty-seven thousand one hundred and seventy-seven dollars, seventy-two cents and seven mills.

To the state of Delaware, thirty thousand four hundred and thirty dollars, seventy-nine cents, and two mills.

To the state of Maryland, one hundred and fifty-two thousand five hundred and ninety-nine dollars, ninety-five cents, and four mills.

To the state of Virginia, three hundred and forty-five thousand four hundred and eighty-eight dollars, sixty-six cents, and five mills.

To the state of Kentucky, thirty-seven thousand six hundred and forty-three dollars, ninety-nine cents, and seven mills.

To the state of North Carolina, one hundred and ninety-three thousand six hundred and ninety-seven dollars, ninety-six cents, and five mills.

To the state of Tennessee, eighteen thousand eight hundred and six dollars, thirty-eight cents, and three mills.

taken from the bed of the said canal, shall not be deposited to the injury of the owners of the lands through which the said canal may pass.

APPROVED, June 17, 1812.

Owners of land
not to be injur-
ed, &c.

CHAP. CII.—An Act declaring War between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories; and that the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed vessels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper, and under the seal of the United States, against the vessels, goods, and effects of the government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof.

APPROVED, June 18, 1812.

STATUTE I.

June 18, 1812.

[Obsolete.]
War declared.

President au-
thorized to em-
ploy the land
and naval forces
to carry on the
war.

CHAP. CVI.—An Act to amend the laws within the District of Columbia.(a)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all promissory notes for the payment of money hereafter drawn and endorsed or transferred within the county of Alexandria, in the district of Columbia, shall be governed by, and subject to, the same laws as are now in force and applicable to such notes, drawn, endorsed or transferred within the county of Washington, in the said district; and the rights, remedies and responsibility of the person or persons hereafter holding, drawing, endorsing or transferring any such promissory note, as aforesaid, shall be the same within the county of Alexandria as they now are within the said county of Washington; and all laws now in force within the said county of Alexandria, contrary to this provision, are hereby repealed.

STATUTE I.

June 24, 1812.

Promissory
notes subject to
same laws in
Alexandria and
Washington,
&c.

SEC. 2. *And be it further enacted,* That it shall be lawful for any creditor of any insolvent debtor, who shall hereafter apply for relief under the act of Congress, passed on the third day of March, one thousand eight hundred and three, entitled "An act for the relief of insolvent debtors within the District of Columbia," to make the same allegations in writing, at any time before the oath of insolvency shall be administered, as are now permitted by the seventh section of said act, which allegation shall be made before the judge by whom the oath of insolvency is proposed to be administered, and a copy of the same, together with a notification from such judge of the time and place at which the truth of such allegation is to be tried, shall be forthwith served on such insolvent, and any one judge of the said district shall have the same power and authority to examine the debtor or any other person, on oath, touching the substance of the said allegation, or to direct an issue or issues to be tried before him, in a summary way, to determine the truth of the same, as are now vested in the court of the said district by the seventh section of the said act; and if upon the answer to the said interrogatories, or upon the trial of the issue or issues, such debtor shall be found guilty of any fraud or deceit towards his creditors, or of having lost by gaming within twelve months next preceding his application for

Creditors of
insolvent debt-
ors may make
allegations be-
fore oath of in-
solvency.

Act of March
3, 1803, ch. 31.

One judge may
examine the
debtor.

(a) See notes to an act concerning the District of Columbia, February 27, 1801, chap. 15, vol. ii. 103.

public service, four hundred and twenty-eight thousand seven hundred and fifty dollars.

Specific ap-
propriations.

SEC. 3. *And be it further enacted*, That no part of the several sums hereby appropriated shall be applied to any other purpose than those above specified, any thing contained in any act of Congress to the contrary notwithstanding.

SEC. 4. *And be it further enacted*, That the several sums hereby appropriated shall be paid out of any monies in the treasury not otherwise appropriated.

APPROVED, July 5, 1812.

STATUTE L.

July 6, 1812.

CHAP. CXXVI.—*An Act authorizing the Secretary of the Treasury to suspend the payment of certain bills drawn by John Armstrong, late minister of the United States at the Court of France, upon the Treasury of the United States.*

Secretary of
the Treasury
may suspend
the payment of
certain bills un-
der Louisiana
convention
drawn by John
Armstrong.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and required to cause to be suspended the payment at the treasury of the United States, of certain bills drawn by John Armstrong, late minister of the United States at the court of France, in favour of the cashier of the French treasury, amounting to one hundred and fifteen thousand five hundred and thirty-four francs and forty-one hundredths of a franc, for certain claims arising under the Louisiana convention in favour of citizens of the United States, which the French government, by virtue of an agreement entered into with said minister, had assumed to pay, until satisfactory proof shall have been exhibited to the accounting officers of the treasury, that the said bills or a sum equal thereto, have been applied for the purpose of discharging the claims of citizens of the United States against the government of France, which have been liquidated and awarded to them under the provisions of the convention of the thirtieth day of April, in the year of our Lord one thousand eight hundred and three, between the United States and the French republic.

APPROVED, July 6, 1812.

STATUTE L.

July 6, 1812.

CHAP. CXXVII.—*An Act to compensate for his services the President pro tempore of the Senate, acting as such when the office of Vice President of the United States shall be vacant.*

President pro
tempore of the
Senate to have
the same comp-
ensation as the
speaker of the
House of Repre-
sentatives dur-
ing the period
of his services.

STATUTE L.

July 6, 1812.

CHAP. CXXVIII.—*An Act for the safe keeping and accommodation of prisoners of war.*

Repealed by
act of March 3,
1817, ch. 34.

Specific ap-
propriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby authorized to make such regulations and arrangements for the safe keeping, support and exchange of prisoners of war as he may deem expedient, until the same shall be otherwise provided for by law; and to carry this act into effect, one hundred thousand dollars be, and the same are hereby appropriated, to be paid out of any monies in the treasury not otherwise appropriated.

APPROVED, July 6, 1812.

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to be held subject to sale at private entry according to such regulations as the Secretary of the Interior may prescribe: *Provided*, That no lot shall be disposed of at public sale or private entry for less than the appraised value thereof: *And provided, further*, That said sales shall be conducted by the register and receiver of the land-office in the district in which said reservations may be situated, in accordance with the laws and rules and instructions of the department regulating the sales of public lands.

Lots to be sold
at public sale or
private entry.
Proviso.

APPROVED, March 3, 1863.

CHAP. LXXXI.—An Act relating to Habeas Corpus, and regulating Judicial Proceedings in Certain Cases. March 3, 1863.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any person or persons detained by him by authority of the President; but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the said writ, so long as said suspension by the President shall remain in force, and said rebellion continue.

The President
may suspend the
writ of habeas
corpus during the
rebellion.

Effect of the
suspension.

SEC. 2. *And be it further enacted*, That the Secretary of State and the Secretary of War be, and they are hereby, directed, as soon as may be practicable, to furnish to the judges of the circuit and district courts of the United States and of the District of Columbia a list of the names of all persons, citizens of states in which the administration of the laws has continued unimpaired in the said Federal courts, who are now, or may hereafter be, held as prisoners of the United States, by order or authority of the President of the United States or either of said Secretaries, in any fort, arsenal, or other place, as state or political prisoners, or otherwise than as prisoners of war; the said list to contain the names of all those who reside in the respective jurisdictions of said judges, or who may be deemed by the said Secretaries, or either of them, to have violated any law of the United States in any of said jurisdictions, and also the date of each arrest; the Secretary of State to furnish a list of such persons as are imprisoned by the order or authority of the President, acting through the State Department, and the Secretary of War a list of such as are imprisoned by the order or authority of the President, acting through the Department of War. And in all cases where a grand jury, having attended any of said courts having jurisdiction in the premises, after the passage of this act, and after the furnishing of said list, as aforesaid, has terminated its session without finding an indictment or presentment, or other proceeding against any such person, it shall be the duty of the judge of said court forthwith to make an order that any such prisoner desiring a discharge from said imprisonment be brought before him to be discharged; and every officer of the United States having custody of such prisoner is hereby directed immediately to obey and execute said judge's order; and in case he shall delay or refuse so to do, he shall be subject to indictment for a misdemeanor, and be punished by a fine of not less than five hundred dollars and imprisonment in the common jail for a period not less than six months, in the discretion of the court: *Provided*, however, That no person shall be discharged by virtue of the provisions of this act until after he or she shall have taken an oath of allegiance before discharge.

List of state or
political prisoners
to be furnished to
the judges of the
United States
courts.

When such
prisoners are to
be discharged.

Penalty for re-
fusing to obey
order of the
court.

Oath of alle-
giance to be taken
before discharge.

to the Government of the United States, and to support the Constitution thereof; and that he or she will not hereafter in any way encourage or give aid and comfort to the present rebellion, or the supporters thereof:

Sureties of the peace may be required by the judge. *And provided, also,* That the judge or court before whom such person may be brought, before discharging him or her from imprisonment, shall have power, on examination of the case, and, if the public safety shall require it, shall be required to cause him or her to enter into recognizance, with or without surety, in a sum to be fixed by said judge or court, to keep the peace and be of good behavior towards the United States and its citizens, and from time to time, and at such times as such judge or court may direct, appear before said judge or court to be further dealt

Duty of district attorney. with, according to law, as the circumstances may require. And it shall be the duty of the district attorney of the United States to attend such examination before the judge.

Prisoners under indictment, &c., to be discharged on bail. SEC. 3. *And be it further enacted,* That in case any of such prisoners shall be under indictment or presentment for any offence against the laws of the United States, and by existing laws bail or a recognizance may be taken for the appearance for trial of such person, it shall be the duty of said judge at once to discharge such person upon bail or recognizance for trial as aforesaid. And in case the said Secretaries of State

If list of prisoners is not furnished, &c., what remedy. and War shall for any reason refuse or omit to furnish the said list of persons held as prisoners as aforesaid at the time of the passage of this act within twenty days thereafter, and of such persons as hereafter may be arrested within twenty days from the time of the arrest, any citizen may, after a grand jury shall have terminated its session without finding an indictment or presentment, as provided in the second section of this act, by a petition alleging the facts aforesaid touching any of the persons so as aforesaid imprisoned, supported by the oath of such petitioner or any other credible person, obtain and be entitled to have the said judge's order to discharge such prisoner on the same terms and conditions prescribed in the second section of this act: *Provided, however,* That the said judge shall be satisfied such allegations are true.

Any order of the President to be a defence to any action for false arrest, &c. SEC. 4. *And be it further enacted,* That any order of the President, or under his authority, made at any time during the existence of the present rebellion, shall be a defence in all courts to any action or prosecution, civil or criminal, pending, or to be commenced, for any search, seizure, arrest, or imprisonment, made, done, or committed, or acts omitted to be done, under and by virtue of such order, or under color of any law of Congress, and such defence may be made by special plea, or under the general issue.

Actions against officers and others for torts in arrests, may be removed to circuit court. SEC. 5. *And be it further enacted,* That if any suit or prosecution, civil or criminal, has been or shall be commenced in any state court against any officer, civil or military, or against any other person, for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or any act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or any act of Congress, and the defendant shall, at the time of entering his appearance in such court, or if such appearance shall have been entered before the passage of this act, then at the next session of the court in which such suit or prosecution is pending, file a petition, stating the facts and verified by affidavit, for the

Proceedings for removal of the cause for trial at the next circuit court of the United States. to be held in the district where the suit is pending, and offer good and sufficient surety for his filing in such court, on the first day of its session, copies of such process and other proceedings against him, and also for his appearing in such court and entering special bail in the cause, if special bail was originally required therein. It shall then be the duty

State court to go no further. of the state court to accept the surety and proceed no further in the cause or prosecution, and the bail that shall have been originally taken

shall be discharged. And such copies being filed as aforesaid in such court of the United States, the cause shall proceed therein in the same manner as if it had been brought in said court by original process, whatever may be the amount in dispute or the damages claimed, or whatever the citizenship of the parties, any former law to the contrary notwithstanding. And any attachment of the goods or estate of the defendant by the original process shall hold the goods or estate so attached to answer the final judgment in the same manner as by the laws of such state they would have been helden to answer final judgment had it been rendered in the court in which the suit or prosecution was commenced. And it shall be lawful in any such action or prosecution which may be now pending, or hereafter commenced, before any state court whatever, for any cause aforesaid, after final judgment, for either party to remove and transfer, by appeal, such case during the session or term of said court at which the same shall have taken place, from such court to the next circuit court of the United States to be held in the district in which such appeal shall be taken, in manner aforesaid. And it shall be the duty of the person taking such appeal to produce and file in the said circuit court attested copies of the process, proceedings, and judgments in such cause; and it shall also be competent for either party, within six months after the rendition of a judgment in any such cause, by writ of error or other process, to remove the same to the circuit court of the United States of that district in which such judgment shall have been rendered; and the said circuit court shall thereupon proceed to try and determine the facts and the law in such action, in the same manner as if the same had been there originally commenced, the judgment in such case notwithstanding. And any bail which may have been taken, or property attached, shall be helden on the final judgment of the said circuit court in such action, in the same manner as if no such removal and transfer had been made, as aforesaid. And the state court, from which any such action, civil or criminal, may be removed and transferred as aforesaid, upon the parties giving good and sufficient security for the prosecution thereof, shall allow the same to be removed and transferred, and proceed no further in the case: *Provided, however,* That if the party aforesaid shall fail duly to enter the removal and transfer, as aforesaid, in the circuit court of the United States, agreeably to this act, the state court, by which judgment shall have been rendered; and from which the transfer and removal shall have been made, as aforesaid, shall be authorized, on motion for that purpose, to issue execution, and to carry into effect any such judgment, the same as if no such removal and transfer had been made. *And provided also,* That no such appeal or writ of error shall be allowed in any criminal action or prosecution where final judgment shall have been rendered in favor of the defendant or respondent by the state court. And if in any suit hereafter commenced the plaintiff is nonsuited or judgment pass against him, the defendant shall recover double costs.

SEC. 6. *And be it further enacted,* That any suit or prosecution described in this act, in which final judgment may be rendered in the circuit court, may be carried by writ of error to the supreme court, whatever may be the amount of said judgment.

SEC. 7. *And be it further enacted,* That no suit or prosecution, civil or criminal, shall be maintained for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or by or under any act of Congress, unless the same shall have been commenced within two years next after such arrest, imprisonment, trespass, or wrong may have been done or committed or act may have been omitted to be done: *Provided,* That in no case shall the limitation herein provided commence to run until the passage of this act, so

Original attachment to hold.
After final judgment in state court, action may be removed to circuit court by appeal.

Proceedings.

Circuit court to try the case, as though originally commenced therein.

Bail and attachments.

State court to proceed no further.

If removal is not perfected, state court may issue execution.

Appeal not allowable in a criminal case, when, &c.

Double costs.

Suits and prosecutions to be commenced within two years.

Limitation not to commence until passage of this act.

that no party shall, by virtue of this act, be debarred of his remedy by suit or prosecution until two years from and after the passage of this act.

APPROVED, March 3, 1863.

March 3, 1863.

CHAP. LXXXII. — *An Act to authorize the Brevetting of Volunteer and other Officers in the United States Service.*

Brevet rank of
volunteer and
other officers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he hereby is, authorized, by and with the advice and consent of the Senate, to confer brevet rank upon such commissioned officers of the volunteer and other forces in the United States service as have been, or may hereafter be, distinguished by gallant actions or meritorious conduct; which rank shall not entitle them to any increase of pay or emoluments.

Pay, &c., not
increased.

APPROVED, March 3, 1863.

March 3, 1863.

CHAP. LXXXIII. — *An Act for the Relief of certain Persons who have performed the Duties of Assistant Surgeons in Regiments of Cavalry.*

Pay of those
acting as assist-
ant surgeons of
cavalry.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That physicians and surgeons who have since the second day of July last been duly appointed and commissioned as second assistant surgeons in volunteer regiments of cavalry, and as such have been duly mustered into the military service of the United States, and actually performed the duties appertaining to that office, shall be paid therefor in like manner and upon like proof as other assistant surgeons of cavalry: Provided, That not more than two assistant surgeons to each regiment shall be allowed and paid for services performed at one and the same time.

Proviso.

APPROVED, March 3, 1863.

March 3, 1863.

1861, ch. 9.
Ante, p. 268.

CHAP. LXXXIV. — *An Act to amend an Act entitled "An Act to authorize the Employment of Volunteers to aid in enforcing the Laws, and protecting Public Property," approved July twenty-two, eighteen hundred and sixty-one.*

Persons dis-
charged within
two years of
enlistment, by
reason of wounds,
&c., entitled to
bounty.

Repealing
clause.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every non-commissioned officer, private, or other person who has been or shall hereafter be discharged from the army of the United States, within two years from the date of their enlistment, by reason of wounds received in battle, shall be entitled to receive the same bounty as is granted or may be granted to the same classes of persons who are discharged after a service of two years; and all acts and parts of acts inconsistent with this, are hereby repealed.

APPROVED, March 3, 1863.

March 3, 1863.

CHAP. LXXXV. — *An Act concerning Letters of Marque, Prizes, and Prize Goods.*

President may
issue letters of
marque, &c.

Rules for adju-
dication, &c., of
prizes.

Authority,
when to cease.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all domestic and foreign wars the President of the United States is authorized to issue to private armed vessels of the United States, commissions, or letters of marque and general reprisal in such form as he shall think proper, and under the seal of the United States, and make all needful rules and regulations for the government and conduct thereof, and for the adjudication and disposal of the prizes and salvages made by such vessels: Provided, That the authority conferred by this act shall cease and terminate at the end of three years from the passage of this act.

APPROVED, March 3, 1863.

CHAP. 338.—An Act To provide an American register for the steamship Garonne.

April 27, 1900.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Navigation is hereby authorized and directed to cause the foreign-built steamship Garonne, owned by Charles Richardson, of Tacoma, State of Washington, and Frank Waterhouse, of Seattle, State of Washington, citizens of the United States, to be registered as a vessel of the United States.

Steamship Garonne.
Granted American
register.

Approved, April 27, 1900.

CHAP. 339.—An Act To provide a government for the Territory of Hawaii.

April 30, 1900.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Hawaii.
Provisions for gov-
ernment of.**CHAPTER I.—GENERAL PROVISIONS.**

General provisions.

DEFINITIONS.

Definitions.

SEC. 1. That the phrase "the laws of Hawaii," as used in this Act — "laws of Hawaii," without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

"Civil laws," etc.

The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled "Civil Laws" and "Penal Laws," respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as "Civil Laws," "Penal Laws," and "Session Laws."

TERRITORY OF HAWAII.

SEC. 2. That the islands acquired by the United States of America under an Act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii.

Name of annexed
territory.
Vol. 30, p. 750.**GOVERNMENT OF THE TERRITORY OF HAWAII.**

SEC. 3. That a Territorial government is hereby established over the said Territory, with its capital at Honolulu, on the island of Oahu.

Government.

CITIZENSHIP.

SEC. 4. That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.

Citizenship.

And all citizens of the United States resident in the Hawaiian Islands who were resident there on or since August twelfth, eighteen hundred and ninety-eight, and all the citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year shall be citizens of the Territory of Hawaii.

APPLICATION OF THE LAWS OF THE UNITED STATES.

SEC. 5. That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, Application of Fed-
eral laws.

"minister" wherever they occur and insert in lieu thereof the word "governor."

Amend section sixty-seven so that it will read: "At least forty days before any election the governor shall issue an election proclamation and transmit copies of the same to the several boards of inspectors throughout the Territory, or where such election is to be held."

In section seventy-five strike out the word "perfectly," and in section seventy-six strike out "in" and insert "on."

In section one hundred and twelve strike out "interior department" and insert in lieu thereof "office of the secretary of the Territory."

In section one hundred and fourteen strike out the word "Republic" wherever it occurs and insert in lieu thereof "Territory."

In section one hundred and fifteen strike out the words "minister" and "minister of the interior" and insert in lieu thereof "treasurer," and strike out all after the word "refreshments." *Provided, however,* That for the holding of a special election before the first general election the governor may prescribe the time during which the boards of registration shall meet and the registration be made.

Sec. 65. That the legislature of the Territory may from time to time establish and alter the boundaries of election districts and voting precincts and apportion the senators and representatives to be elected from such districts.

Altering boundaries
of election districts.

CHAPTER 3.—THE EXECUTIVE.

The Executive.

THE EXECUTIVE POWER.

Sec. 66. That the executive power of the government of the Territory of Hawaii shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall be not less than thirty-five years of age; shall be a citizen of the Territory of Hawaii; shall be commander in chief of the militia thereof; may grant pardons or reprieves for offenses against the laws of the said Territory and reprieves for offenses against the laws of the United States until the decision of the President is made known thereon.

Governor.

ENFORCEMENT OF LAW.

Sec. 67. That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

Powers of governor.

GENERAL POWERS OF THE GOVERNOR.

Sec. 68. That all the powers and duties which, by the laws of Hawaii, are conferred upon or required of the President or any minister of the Republic of Hawaii (acting alone or in connection with any other officer or person or body) or the cabinet or executive council, and not inconsistent with the Constitution or laws of the United States,

—general powers.

Frontier railroads.	the President and the heads of executive departments as to the location of railroads with reference to the frontier of the United States so as to render possible expeditious concentration of troops and supplies to points of defense; the coordination of military, industrial, and commercial purposes in the location of extensive highways and branch lines of railroad; the utilization of waterways; the mobilization of military and naval resources for defense; the increase of domestic production of articles and materials essential to the support of armies and of the people during the interruption of foreign commerce; the development of seagoing transportation; data as to amounts, location, method and means of production, and availability of military supplies; the giving of information to producers and manufacturers as to the class of supplies needed by the military and other services of the Government, the requirements relating thereto, and the creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the Nation.
Highways, etc.	
Mobilizing resources. Increase of domestic production.	
Seagoing transportation. Sources of military supplies, etc.	
Conduct of investigations.	That the Council of National Defense shall adopt rules and regulations for the conduct of its work, which rules and regulations shall be subject to the approval of the President, and shall provide for the work of the advisory commission to the end that the special knowledge of such commission may be developed by suitable investigation, research, and inquiry and made available in conference and report for the use of the council; and the council may organize subordinate bodies for its assistance in special investigations, either by the employment of experts or by the creation of committees of specially qualified persons to serve without compensation, but to direct the investigations of experts so employed.
Subordinate bodies for special work, etc.	
Appropriation for experimental work, etc.	That the sum of \$200,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be immediately available for experimental work and investigations undertaken by the council, by the advisory commission, or subordinate bodies, for the employment of a director, expert and clerical expenses and supplies, and for the necessary expenses of members of the advisory commission or subordinate bodies going to and attending meetings of the commission or subordinate bodies. Reports shall be submitted by all subordinate bodies and by the advisory commission to the council, and from time to time the council shall report to the President or to the heads of executive departments upon special inquiries or subjects appropriate thereto, and an annual report to the Congress shall be submitted through the President, including as full a statement of the activities of the council and the agencies subordinate to it as is consistent with the public interest, including an itemized account of the expenditures made by the council or authorized by it, in as full detail as the public interest will permit: <i>Provided, however,</i> That when deemed proper the President may authorize, in amounts stipulated by him, unvouchered expenditures and report the gross sums so authorized not itemized.
Submission of reports, etc.	
Detail of expenses.	
Proviso. Amounts without items.	
Articles of War.	SEC. 3. That section thirteen hundred and forty-two of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:
Title and effect. R. S., sec. 1342, pp. 230-242, amended.	"SEC. 1342. The articles included in this section shall be known as the Articles of War and shall at all times and in all places govern the armies of the United States.
Preliminary provisions.	"I. PRELIMINARY PROVISIONS.
Definitions.	"ARTICLE 1. DEFINITIONS.—The following words when used in these articles shall be construed in the sense indicated in this Article, unless the context shows that a different sense is intended, namely:
Officer.	"(a) The word 'officer' shall be construed to refer to a commissioned officer;

"(b) The word 'soldier' shall be construed as including a non-commissioned officer, a private, or any other enlisted man;

Soldier.

"(c) The word 'company' shall be understood as including a troop or battery; and

Company.

"(d) The word 'battalion' shall be understood as including a squadron.

Battalion.

"ART. 2. PERSONS SUBJECT TO MILITARY LAW.—The following persons are subject to these articles and shall be understood as included in the term 'any person subject to military law,' or 'persons subject to military law,' whenever used in these articles: *Provided*, That nothing contained in this Act, except as specifically provided in Article two, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction, unless otherwise specifically provided by law.

Persons subject
thereto.

"(a) All officers and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same;

Regular Army, Vol-
unteers, etc.

"(b) Cadets;

Cadets.

"(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;

Marine Corps when
attached to Army.

"(d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

Retainers and follow-
ers abroad.

"(e) All persons under sentence adjudged by courts-martial;

Courts-martial pris-
oners, etc.

"(f) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia.

Soldiers' Home in-
mates.

II. COURTS-MARTIAL.

"ART. 3. COURTS-MARTIAL CLASSIFIED.—Courts-martial shall be of three kinds, namely:

Classification.
Vol. 37, p. 721.

"First, general courts-martial;

"Second, special courts-martial; and

"Third, summary courts-martial.

A. COMPOSITION.

Composition.

"ART. 4. WHO MAY SERVE ON COURTS-MARTIAL.—All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial.

Officers competent
for.

"ART. 5. GENERAL COURTS-MARTIAL.—General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen, when that number can be convened without manifest injury to the service.

General.

"ART. 6. SPECIAL COURTS-MARTIAL.—Special courts-martial may consist of any number of officers from three to five, inclusive.

Special.

"ART. 7. SUMMARY COURTS-MARTIAL.—A summary court-martial shall consist of one officer.

Summary.

Appointment.

"B. BY WHOM APPOINTED.

General.

"ART. 8. GENERAL COURTS-MARTIAL.—The President of the United States, the commanding officer of a territorial division or department, the Superintendent of the Military Academy, the commanding officer of an army, an army corps, a division, or a separate brigade, and, when empowered by the President, the commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

Special.

"ART. 9. SPECIAL COURTS-MARTIAL.—The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

Summary.

"ART. 10. SUMMARY COURTS-MARTIAL.—The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: *Provided*, That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him.

Proviso.
Single officer, with
command.

Judge advocates.

"ART. 11. APPOINTMENT OF JUDGE ADVOCATES.—For each general or special court-martial the authority appointing the court shall appoint a judge advocate, and for each general court-martial one or more assistant judge advocates when necessary.

Jurisdiction.

"C. JURISDICTION.

General.

"ART. 12. GENERAL COURTS-MARTIAL.—General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles and any other person who by the law of war is subject to trial by military tribunals: *Provided*, That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy.

Proviso.
Military
restriction.
Academy

Special.

"ART. 13. SPECIAL COURTS-MARTIAL.—Special courts-martial shall have power to try any person subject to military law, except an officer, for any crime or offense not capital made punishable by these articles: *Provided*, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.

Proviso.
Modification.
Punishment re-
stricted.

Summary.

"Special courts-martial shall not have power to adjudge dishonorable discharge, nor confinement in excess of six months, nor to adjudge forfeiture of more than six months' pay.

"ART. 14. SUMMARY COURTS-MARTIAL.—Summary courts-martial shall have power to try any person subject to military law, except an officer, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: *Provided*, That noncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring

Proviso.
Noncommissioned
officers.

them to trial before a general court-martial: *Provided further*, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

Modifications.

"Summary courts-martial shall not have power to adjudge confinement in excess of three months, nor to adjudge the forfeiture of more than three months' pay: *Provided*, That when the summary court officer is also the commanding officer no sentence of such summary court-marital adjudging confinement at hard labor or forfeiture of pay, or both, for a period in excess of one month shall be carried into execution until the same shall have been approved by superior authority.

Punishment constricted.

"ART. 15. NOT EXCLUSIVE.—The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by the law of war may be lawfully triable by such military commissions, provost courts, or other military tribunals.

Proviso.

Approval required.

"ART. 16. OFFICERS; HOW TRIABLE.—Officers shall be triable only by general courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank.

Jurisdiction not exclusive.

Trial of officers.

Procedure.

"ART. 17. JUDGE ADVOCATE TO PROSECUTE.—The judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented before the court by counsel of his own selection for his defense, if such counsel be reasonably available, but should he, for any reason, be unrepresented by counsel, the judge advocate shall from time to time throughout the proceedings advise the accused of his legal rights.

Prosecutions.

Counsel for accused.

Challenges.

"ART. 18. CHALLENGES.—Members of a general or special court-martial may be challenged by the accused, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

Oaths to be administered.

Members of court.

"ART. 19. OATHS.—The judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: 'You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge advocate and assistant judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God.'

Judge advocate and assistants.

"When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the judge advocate and to each assistant judge advocate, if any, an oath or affirmation in the following form: 'You, A. B., do swear (or affirm) that you will not divulge the findings or

Finality of Act.

*Proviso.
Continuance of
rights, prosecutions,
etc.*

*Employees not ex-
empt from draft.
Am. p. 956.*

*Invalidity of any
provision not to affect
remainder of Act.*

no contracts shall be made, property acquired, or other transaction performed under this Act except such as shall be necessary for the purpose of this section and incidental thereto, and two years after such proclamation of peace this Act shall cease to have effect and all powers conferred thereby shall end: *Provided*, That the termination of this Act shall not prevent the subsequent collection of any moneys due the United States, nor shall it affect any act done or any right or obligation accrued or accruing, or any suit or proceeding had or commenced before such termination, but all such collections, rights, obligations, suits and proceedings shall continue as if this Act had not terminated, and any offense committed or liability incurred prior thereto shall be prosecuted in the same manner and with the same punishment and effect as if this Act had not terminated.

SEC. 11. That employment under the provisions of this Act shall not exempt any person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen, or any Act amendatory thereto.

SEC. 12. That if any section or provision of this Act shall be declared invalid for any reason whatsoever, such invalidity shall not be construed to affect the validity of any other section or provision hereof.

Approved, October 5, 1918.

October 18, 1918.
(H. R. 12402.)
(Public, No. 221.)

*Alien anarchists,
etc., excluded ad-
ministratively.
Classes designated.*

CHAP. 186.—An Act To exclude and expel from the United States aliens who are members of the anarchistic and similar classes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That aliens who are anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property shall be excluded from admission into the United States.

*Deportation after
entry if member of
excluded classes.*

*Vol. 39, p. 866.
Irrespective of time
of entry.*

*Punishment for re-
turning after depar-
tation.*

SEC. 2. That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States.

SEC. 3. That any alien who shall, after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act, thereafter return to or enter the United States or attempt to return to or to enter the United States shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term of not more than five years; and shall, upon the termination of such imprisonment, be taken into custody, upon the warrant

of the Secretary of Labor, and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen.

Approved, October 16, 1918.

Vol. 30, p. 289.

CHAP. 187.—An Act To prevent corrupt practices in the election of Senators, Representatives, or Delegates in Congress.

October 16, 1918.
[S. 3433.]

[Public, No. 222.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall promise, offer, or give, or cause to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to any person, either to vote or withhold his vote or to vote for or against any candidate, or whoever solicits, accepts, or receives any money or other thing of value in consideration of his vote for or against any candidate for Senator or Representative or Delegate in Congress at any primary or general or special election, shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Approved, October 16, 1918.

Congressional elections.
Punishment for designated corrupt practices at primary, general, or special elections.

CHAP. 188.—An Act To authorize the Secretary of the Navy to purchase from the Commonwealth of Massachusetts a large dry dock and appurtenant lands.

October 17, 1918.
[H. R. 12862.]

[Public, No. 223.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Navy is hereby authorized to contract with the Commonwealth of Massachusetts for the purchase of the dry dock, with its equipment, now under construction at Boston by the Commonwealth of Massachusetts, together with the land adjacent thereto necessary for the proper utilization of said dock, and there is hereby appropriated for said purpose the sum of \$4,550,000, or so much thereof as may be necessary: *Provided*, That the Secretary of the Navy, in his discretion, in order to expedite the completion of the construction of said dry dock, may expend out of the sum above appropriated an amount not exceeding \$350,000.

Approved, October 17, 1918.

Boston, Mass.
Appropriation for purchase from Massachusetts of dry dock at Vol. 30, p. 1130.

Precise.
Amount for expediting construction.

CHAP. 189.—An Act To authorize the Philadelphia, Harrisburg and Pittsburgh Railroad Company, its lessees, successors, and assigns, to construct a bridge across the Susquehanna River from the city of Harrisburg, Dauphin County, Pennsylvania, to the borough of Lemoyne, Cumberland County, Pennsylvania.

October 19, 1918.
[S. 4871.]

[Public, No. 224.]

Susquehanna River.
Philadelphia, Harrisburg and Pittsburgh Railroad Company may bridge, Harrisburg, Pa.

Construction.
Vol. 34, p. 84.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Philadelphia, Harrisburg and Pittsburgh Railroad Company, its lessees, successors, and assigns, be, and they are hereby, authorized to reconstruct, maintain, and operate a bridge and approaches thereto across the Susquehanna River at a point suitable to the interests of navigation, at or about four thousand two hundred and fifty feet west of Philadelphia, Harrisburg and Pittsburgh Junction, city of Harrisburg, county of Dauphin, State of Pennsylvania, to a point in the borough of Lemoyne, county of Cumberland, State of Pennsylvania, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Amendment.

Approved, October 19, 1918.

on March 4, 1921, if then still unconfirmed. If any officer of the Regular Army is retired while holding a temporary appointment made under the provisions of this paragraph, he shall have the rank of such temporary grade, and his retired pay shall be computed upon the pay of that grade.

SEC. 52. That all laws and parts of laws in so far as they are inconsistent with this Act are hereby repealed.

ARMY REORGANIZATION.
Rank, etc., if retired thereunder.

Inconsistent laws repealed.

CHAPTER II.

The articles included in this section shall be known as the Articles of War and shall at all times and in all places govern the armies of the United States.

Articles of War.
R. S., sec. 1342, pp. 230-242.
Vol. 39, pp. 650-670, amended.

I. PRELIMINARY PROVISIONS.

Preliminary provisions.

Definitions.

"Officer."

"Soldier."

"Company."

"Battalion."

Persons subject here-to.

Proviso.
In naval jurisdiction.

Regular Army.

Volunteers.

Drafted persons, etc.

Cadets.

Marine Corps serv-ing with Army.

Proviso.
Naval offenses, etc.

Camp retainers and followers abroad or in the field.

Persons sentenced by courts-martial.
Soldiers' Home inmates.

ARTICLE 1. DEFINITIONS.—The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

- (a) The word "officer" shall be construed to refer to a commissioned officer;
- (b) The word "soldier" shall be construed as including a non-commissioned officer, a private, or any other enlisted man;
- (c) The word "company" shall be understood as including a troop or battery; and
- (d) The word "battalion" shall be understood as including a squadron.

ART. 2. PERSONS SUBJECT TO MILITARY LAW.—The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law," or "persons subject to military law," whenever used in these articles: *Provided*, That nothing contained in this Act, except as specifically provided in Article 2, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction unless otherwise specifically provided by law.

(a) All officers, members of the Army Nurse Corps, warrant officers, Army field clerks, field clerks Quartermaster Corps, and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same;

(b) Cadets;

(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;

(d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States; and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

(e) All persons under sentence adjudged by courts-martial;

(f) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia.

ARTICLES OF WAR.
Courts-martial.

Classes.

General.

Special.

Summary.

Composition.

Officers competent
to serve.Qualification, selec-
tion, etc.
Vol. 39, p. 651,
amended.

General courts.

Special.

Summary.

Appointment.

General courts.

Law member to be
detained.
Vol. 39, p. 652,
amended.

Additional duty.

Special courts.

II. COURTS-MARTIAL.

ART. 3. COURTS-MARTIAL CLASSIFIED.—Courts-martial shall be of three kinds, namely:

First, general courts-martial;

Second, special courts-martial; and

Third, summary courts-martial.

A. COMPOSITION.

ART. 4. WHO MAY SERVE ON COURTS-MARTIAL.—All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial. When appointing courts-martial the appointing authority shall detail as members thereof those officers of the command who, in his opinion, are best qualified for the duty by reason of age, training, experience, and judicial temperament; and officers having less than two years' service shall not, if it can be avoided without manifest injury to the service, be appointed as members of courts-martial in excess of the minority membership thereof.

ART. 5. GENERAL COURTS-MARTIAL.—General courts-martial may consist of any number of officers not less than five.

ART. 6. SPECIAL COURTS-MARTIAL.—Special courts-martial may consist of any number of officers—not less than three.

ART. 7. SUMMARY COURTS-MARTIAL.—A summary court-martial shall consist of one officer.

B. BY WHOM APPOINTED.

ART. 8. GENERAL COURTS-MARTIAL.—The President of the United States, the commanding officer of a territorial division or department, the Superintendent of the Military Academy, the commanding officer of an army, an army corps, a division, or a separate brigade, and, when empowered by the President, the commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

The authority appointing a general court-martial shall detail as one of the members thereof a law member, who shall be an officer of the Judge Advocate General's Department, except that when an officer of that department is not available for the purpose the appointing authority shall detail instead an officer of some other branch of the service selected by the appointing authority as specially qualified to perform the duties of law member. The law member, in addition to his duties as a member, shall perform such other duties as the President may by regulations prescribe.

ART. 9. SPECIAL COURTS-MARTIAL.—The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

ART. 10. SUMMARY COURTS-MARTIAL.—The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: *Provided*, That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him.

ARTICLES OF WAR.
Summary courts.

ART. 11. APPOINTMENT OF TRIAL JUDGE ADVOCATES AND COUNSEL.—For each general or special court-martial the authority appointing the court shall appoint a trial judge advocate and a defense counsel, and for each general court-martial one or more assistant trial judge advocates and one or more assistant defense counsel when necessary: *Provided, however*, That no officer who has acted as member, trial judge advocate, assistant trial judge advocate, defense counsel, or assistant defense counsel in any case shall subsequently act as staff judge advocate to the reviewing or confirming authority upon the same case.

Proviso.
Single officer of com-
mand.

Trial judge advo-
cates, and counsel.
Vol. 39, p. 652,
amended.

Proviso.
Restriction before
reviewing authority.

C. JURISDICTION.

ART. 12. GENERAL COURTS-MARTIAL.—General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles, and any other person who by the law of war is subject to trial by military tribunals: *Provided*, That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy: *Provided further*, That the officer competent to appoint a general court-martial for the trial of any particular case may, when in his judgment the interest of the service shall so require, cause any case to be tried by a special court-martial notwithstanding the limitations upon the jurisdiction of the special court-martial as to offenses set out in article 13; but the limitations upon jurisdiction as to persons and upon punishing power set out in said article shall be observed.

Jurisdiction.

General courts.

Proviso.
Military Academy
restrictions.

Substitution of spe-
cial court-martial.
Vol. 39, p. 652,
amended.

Limitations.

Special courts.

Proviso.
Exceptions.

Punishment restrict-
ed.
Vol. 39, p. 652,
amended.

Summary courts.

Proviso.
Noncommissioned
officers.

Exceptions.

Punishment restrict-
ed.
Vol. 39, p. 652,
amended.

ART. 13. SPECIAL COURTS-MARTIAL.—Special courts-martial shall have power to try any person subject to military law for any crime or offense not capital made punishable by these articles: *Provided*, That the President may, by regulations, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.

Special courts-martial shall not have power to adjudge confinement in excess of six months, nor to adjudge forfeiture of more than two-thirds pay per month for a period of not exceeding six months.

ART. 14. SUMMARY COURTS-MARTIAL.—Summary courts-martial shall have power to try any person subject to military law, except an officer, a member of the Army Nurse Corps, a warrant officer, an Army field clerk, a field clerk Quartermaster Corps, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: *Provided*, That noncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a general court-martial: *Provided further*, That the President may, by regulations, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

Summary courts-martial shall not have power to adjudge confinement in excess of one month, restriction to limits for more than three months, or forfeiture or detention of more than two-thirds of one month's pay.

ARTICLES OF WAR.
Jurisdiction not exclusive.

Trial of officers.

Procedure.

Prosecutions.

Counsel for accused.
Vol. 39, p. 653,
amended.

Associate counsel.

Challenges.
Vol. 39, p. 653,
amended.

Oaths to be administered.
To members of the court.

To trial judge advocate and assistant.
Vol. 39, p. 653,
amended.

ART. 15. JURISDICTION NOT EXCLUSIVE.—The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be triable by such military commissions, provost courts, or other military tribunals.

ART. 16. OFFICERS; HOW TRIABLE.—Officers shall be triable only by general and special courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank.

D. PROCEDURE.

ART. 17. TRIAL JUDGE ADVOCATE TO PROSECUTE; COUNSEL TO DEFEND.—The trial judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented in his defense before the court by counsel of his own selection, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by the defense counsel duly appointed for the court pursuant to article 11. Should the accused have counsel of his own selection, the defense counsel and assistant defense counsel, if any, of the court, shall, if the accused so desires, act as his associate counsel.

ART. 18. CHALLENGES.—Members of a general or special court-martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to one peremptory challenge; but the law member of the court shall not be challenged except for cause.

ART. 19. OATHS.—The trial judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: "You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court, except to the trial judge advocate and assistant trial judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the trial judge advocate and to each assistant trial judge advocate, if any, an oath or affirmation in the following form: "You, A. B., do swear (or affirm) that you will faithfully and impartially perform the duties of a trial judge advocate, and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

ARTICLES OF WAR.
Witnesses.

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

Reporter.

Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

Interpreter.

In case of affirmation the closing sentence of adjuration will be omitted.

Affirmations.

ART. 20. CONTINUANCES.—A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.

Continuances.

ART. 21. REFUSAL OR FAILURE TO PLEAD.—When an accused arraigned before a court-martial fails or refuses to plead, or answers foreign to the purpose, or after a plea of guilty makes a statement inconsistent with the plea, or when it appears to the court that he entered a plea of guilty improvidently or through lack of understanding of its meaning and effect, the court shall proceed to trial and judgment as if he had pleaded not guilty.

Refusal or failure to plead.
Vol. 39, p. 654, amend-
ed.

ART. 22. PROCESS TO OBTAIN WITNESSES.—Every trial judge advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States, having criminal jurisdiction, may lawfully issue; but such process shall run to any part of the United States, its Territories, and possessions.

Process to compel
attendance.

ART. 23. REFUSAL TO APPEAR OR TESTIFY.—Every person not subject to military law who, being duly subpoenaed to appear as a witness before any military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purpose; and it shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses: *Provided further*, That every person not subject to military law, who before any court-martial, military tribunal, or military board, or in connection with, or in relation to any proceedings or investigation before it or had under any of the provisions of this act, is guilty of any of the acts made punishable

Refusal of civilian to
appear or testify, a
misdemeanor.

Punishment for, in
United States court.

Provisions.
Witness fees.

Punishment for Of-
fenses in Criminal Code.
Vol. 33, p. 1111.

ARTICLES OF WAR.

as offenses against public justice by any provision of chapter 6 of the Act of March 4, 1909, entitled "An Act to codify, revise, and amend the penal laws of the United States" (volume 35, United States Statutes at Large, page 1088), or any amendment thereof, shall be punished as therein provided.

Compulsory self-incrimination prohibited.
Vol. 39, p. 654, amend.
ed.

ART. 24. COMPULSORY SELF-INCRIMINATION PROHIBITED.—No witness before a military court, commission, court of inquiry, or board, or before any officer conducting an investigation, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, or before an officer conducting an investigation, shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him, or to answer any question not material to the issue when such answer might tend to degrade him.

*Depositions.
Admissibility.*

ART. 25. DEPOSITIONS—WHEN ADMISSIBLE.—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing: *Provided*, That testimony by deposition may be adduced for the defense in capital cases.

*Proviso.
In capital cases, for
defense.*

ART. 26. DEPOSITIONS—BEFORE WHOM TAKEN.—Depositions to be read in evidence before military courts, commissions, courts of inquiry, or military boards, or for other use in military administration, may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

*Courts of inquiry.
Admission of records
of, as evidence.*

ART. 27. COURTS OF INQUIRY—RECORDS OF, WHEN ADMISSIBLE.—The record of the proceedings of a court of inquiry may, with the consent of the accused, be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: *Provided*, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer.

*Proviso.
By defense in capital,
etc., cases.*

ART. 28. CERTAIN ACTS TO CONSTITUTE DESERTION.—Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter.

*Enlisted man with-
out being discharged.*

Any soldier who, without having first received a regular discharge, again enlists in the Army, or in the militia when in the service of the United States, or in the Navy or Marine Corps of the United States, or in any foreign army, shall be deemed to have deserted the service of the United States; and, where the enlistment is in one of the forces of the United States mentioned above, to have fraudulently enlisted therein.

*To avoid hazardous
duty.
Vol. 39, p. 655, amend.
ed.*

Any person subject to military law who quits his organization or place of duty with the intent to avoid hazardous duty or to shirk important service shall be deemed a deserter.

*Open announcement
of action of court.*

ART. 29. COURT TO ANNOUNCE ACTION.—Whenever the court has acquitted the accused upon all specifications and charges, the court

shall at once announce such result in open court. Under such regulations as the President may prescribe, the findings and sentence in other cases may be similarly announced.

ART. 30. CLOSED SESSIONS.—Whenever a general or special court-martial shall sit in closed session, the trial judge advocate and the assistant trial judge advocate, if any, shall withdraw; and when their assistance in referring to the recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel, if there be any.

ART. 31. METHOD OF VOTING.—Voting by members of a general or special court martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who will forthwith announce the result of the ballot to the members of the court. The law member of the court, if any, or if there be no law member of the court, then the president, may rule in open court upon interlocutory questions, other than challenges, arising during the proceedings: *Provided*, That unless such ruling be made by the law member of the court if any member object thereto the court shall be cleared and closed and the question decided by a majority vote, *viva voce*, beginning with the junior in rank: *And provided further*, That if any such ruling be made by the law member of the court upon any interlocutory question other than an objection to the admissibility of evidence offered during the trial, and any member object to the ruling, the court shall likewise be cleared and closed and the question decided by a majority vote, *viva voce*, beginning with the junior in rank: *Provided further*, however, That the phrase, "objection to the admissibility of evidence offered during the trial," as used in the next preceding proviso hereof, shall not be construed to include questions as to the order of the introduction of witnesses or other evidence, nor of the recall of witnesses for further examination, nor as to whether expert witnesses shall be admitted or called upon any question, nor as to whether the court shall view the premises where an offense is alleged to have been committed, nor as to the competency of witnesses, as, for instance, of children, witnesses alleged to be mentally incompetent, and the like, nor as to the insanity of accused, or whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial, or accused required to submit to physical examination, nor whether any argument or statement of counsel for the accused or of the trial judge advocate is improper, nor any ruling in a case involving military strategy or tactics or correct military action; but, upon all these questions arising on the trial, if any member object to any ruling of the law member, the court shall be cleared and closed and the question decided by majority vote of the members in the manner aforesaid.

ART. 32. CONTEMPTS.—A military tribunal may punish as for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder: *Provided*, That such punishment shall in no case exceed one month's confinement, or a fine of \$100, or both.

ART. 33. RECORDS—GENERAL COURTS-MARTIAL.—Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the trial judge advocate; but in case the record can not be authenticated by the president and trial judge advocate, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member in lieu of the president and by an assistant trial judge advocate, if there be one,

ARTICLES OF WAR.

Closed sessions of court.

Method of voting.
By ballot.
Vol. 39, p. 655, amend-
ed.

Rulings in open court.

Proviso.
Viva voce votes.

On interlocutory questions.

Decisions as to ad-
missibility of desig-
nated questions.

Punishment for con-
tempt.
Vol. 39, p. 655, amend-
ed.

Proviso.
Limit.

Records of courts-
martial.
General.
Vol. 39, p. 655, amend-
ed.

ARTICLES OF WAR.

in lieu of the trial judge advocate; otherwise by another member of the court.

Special and summary.

ART. 34. RECORDS—SPECIAL AND SUMMARY COURTS-MARTIAL.—Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may from time to time prescribe.

Disposition of records.

General courts.

ART. 35. DISPOSITION OF RECORDS—GENERAL COURTS-MARTIAL.—The trial judge advocate of each general court-martial shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been acted upon, be transmitted to the Judge Advocate General of the Army.

Special and summary courts.

ART. 36. DISPOSITION OF RECORDS—SPECIAL AND SUMMARY COURTS-MARTIAL.—After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to such general headquarters as the President may designate in regulations, there to be filed in the office of the judge advocate. When no longer of use, records of summary courts-martial may be destroyed.

Irregularities.

Errors not invalidating proceedings.

ART. 37. IRREGULARITIES—EFFECT OF.—The proceedings of a court-martial shall not be held invalid, nor the findings or sentence disapproved, in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure unless in the opinion of the reviewing or confirming authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of an accused: *Provided*, That the act or omission upon which the accused has been tried constitutes an offense denounced and made punishable by one or more of these articles:

Provided further,

That the omission of the words "hard labor" in any sentence of a court-martial adjudging imprisonment or confinement shall not be construed as depriving the authorities executing such sentence of imprisonment or confinement of the power to require hard labor as a part of the punishment in any case where it is authorized by the Executive order prescribing maximum punishments.

President may prescribe rules.

Vol. 39, p. 656.

ART. 38. PRESIDENT MAY PRESCRIBE RULES.—The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States: *Provided*, That nothing contrary to or inconsistent with these articles shall be so prescribed: *Provided further*, That all rules made in pursuance of this article shall be laid before the Congress annually.

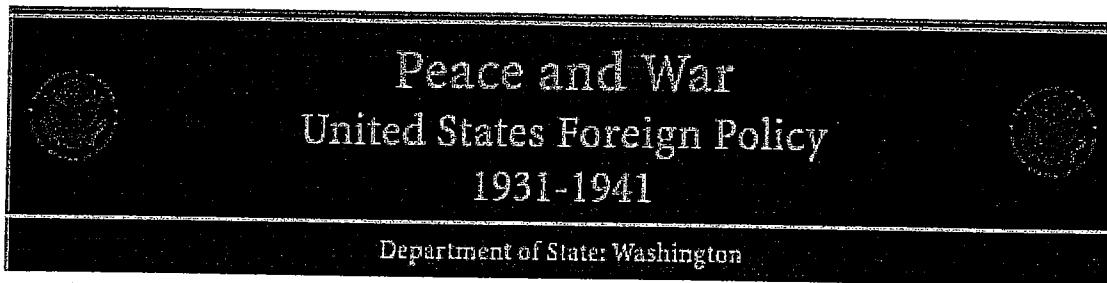
Limitation of prosecutions.

Time.

E. LIMITATIONS UPON PROSECUTIONS.

Proviso.
Desertion in time of peace, etc.

ART. 39. AS TO TIME.—Except for desertion committed in time of war, or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That for desertion in time of peace or for any crime or offense punishable under articles ninety-three and ninety-four of this code the period of limitations upon trial and punishment



268

55 Stat. 795

Joint Resolution Declaring That a State of War Exists Between The Imperial Government of Japan and the Government And the People of the United States and Making Provisions To Prosecute the Same

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 8, 1941, 4:10 p.m., E.S.T.

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for the protection and preservation of the navigable waters of the United States.

SEC. 3. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, March 21, 1942.

[CHAPTER 189]

AN ACT

To authorize the transfer of the custody of a portion of the Croatan National Forest, North Carolina, from the Department of Agriculture to the Department of the Navy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture be, and he is hereby, authorized and directed to transfer to the control and jurisdiction of the Secretary of the Navy a portion of the Croatan National Forest, North Carolina, containing approximately four hundred and sixty-five acres: *Provided*, That in the event the area transferred pursuant to the provisions of this Act shall cease to be used for military purposes, it shall revert to its former national-forest status.

Approved, March 21, 1942.

March 21, 1942
[S. 2000]
[Public Law 501]

Croatan National Forest, N. C.

Promulgated.

[CHAPTER 190]

AN ACT

To authorize the Federal Works Administrator to acquire title, on behalf of the United States, to not more than thirty-five acres of land subject to certain reservations in the grantors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That not more than thirty-five acres of the land to be acquired by the Federal Works Administrator on behalf of the United States as a site for the testing laboratory and research activities of the Public Roads Administration may be acquired subject to a nonassignable and nontransferable reservation to the grantor or grantors of the right to continued occupancy during his or their natural lives of so much thereof as, in the opinion of the Federal Works Administrator, will not impair the use of such land for the purpose for which acquired.

Approved, March 21, 1942.

March 21, 1942
[S. 2222]
[Public Law 502]

Public Roads Administration.
Site for laboratory,
etc.

[CHAPTER 191]

AN ACT

To provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both, for each offense.

Approved, March 21, 1942.

March 21, 1942
[L. R. 6784]
[Public Law 503]

Violation of military restrictions.

Penalty.

PL 107-40, 2001 SJRes 23

Page 2

PL 107-40, September 18, 2001, 115 Stat 224
(Cite as: 115 Stat 224)

<< 50 USCA § 1541 NOTE >>

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) IN GENERAL.--That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) War Powers Resolution Requirements--

(1) SPECIFIC STATUTORY AUTHORIZATION.--Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

*225 (2) APPLICABILITY OF OTHER REQUIREMENTS.--Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Approved September 18, 2001.

PL 107-40, 2001 SJRes 23

END OF DOCUMENT

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(b) The analysis of such chapter is amended by inserting, immediately after and underneath item 1506, as contained in such analysis, the following new item: "1507. Picketing or parading."

SEPARABILITY OF PROVISIONS

SEC. 32. If any provision of this title, or the application thereof to any person or circumstances, 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.

TITLE II—EMERGENCY DETENTION

Emergency Detention Act of 1950.

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 deemed 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) In the 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 reasonable 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 members 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.

Release of "detainee".

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 or 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 on 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 officer 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.

Issuance of warrant, etc.

Confinement.

Preliminary hearing.

Issuance of discharging order.

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.

Report to Attorney General, etc.

(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.

Appointment of preliminary hearing officers.

63 Stat. 954.
5 U. S. C., Sup. III,
§ 1071 note.
Ante, pp. 232, 262;
post, p. 1100.

(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.

Modification of detaining order.

(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.

Presentation of evidence.

(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.

Regulations.

Bimonthly reports during emergency.

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.

Chairman.

(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.

Divisions.

(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.

Seal.

(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.

Annual report.

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.

Termination.

(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.

Salaries, etc.

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.

60 Stat. 237.
5 U.S.C. § 1001 note:
Sup. III, § 1001.

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 subpoenas 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 subpoena 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.

Powers.

Ante, p. 1022.

Hearing.

Ante, p. 1022.

Subpoenas, etc.

Serving of process,
etc.

(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.

Counsel, etc.

(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.

Consideration
of evidence.

(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 insu-

lar 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 operations 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.

Evidence of income lost by claimant.

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.

Revocation of order of detention.
Anote, p. 1022.

(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 ascertain-

Claim for indemnity.

ment 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.

*Order confirming
order of detention.*

(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 fact 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.

*Recommended
order.*

(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.

*Order granting in-
demnity.*

(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.

*Filing of petition,
etc.*

(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.

Additional evidence.

(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.

62 Stat. 928.
28 U. S. C., Sup. III,
§ 1254.

(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 review or enforcement, 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.

Finality of order.

(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.

60 Stat. 237.
5 U. S. C. § 1001 note;
Sup. III, § 1001.

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

Attempt to escape,
etc.

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

"Espionage."

62 Stat. 735, 798.
18 U.S.C., Sup. III,
§ 791-797, 2151-2156.
Ante, p. 1003.

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.

SAM RAYBURN

Speaker of the House of Representatives.

ALBEN W. BARKLEY

*Vice President of the United States and
President of the Senate.*

IN THE HOUSE OF REPRESENTATIVES, U. S.

September 22, 1950.

The House of Representatives having proceeded to reconsider the bill (H. R. 9490) entitled "An Act to protect the United States against certain un-American and subversive activities by requiring registration of Communist organizations, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

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8 U.S.C.A. § 1226a

C**Effective: October 26, 2001**

United States Code Annotated Currentness

Title 8. Aliens and Nationality (Refs & Annos)

Chapter 12. Immigration and Nationality

Subchapter II. Immigration

Part IV. Inspection, Apprehension, Examination, Exclusion, and Removal (Refs & Annos)

→§ 1226a. Mandatory detention of suspected terrorists; habeas corpus; judicial review

(a) Detention of terrorist aliens

(1) Custody

The Attorney General shall take into custody any alien who is certified under paragraph (3).

(2) Release

Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3). If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate.

(3) Certification

The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien--

(A) is described in section 1182(a)(3)(A)(i), 1182(a)(3)(A)(iii), 1182(a)(3)(B), 1227(a)(4)(A)(i), 1227(a)(4)(A)(iii), or 1227(a)(4)(B) of this title; or

(B) is engaged in any other activity that endangers the national security of the United States.

(4) Nondelegation

The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

(5) Commencement of proceedings

The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

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8 U.S.C.A. § 1226a

(6) Limitation on indefinite detention

An alien detained solely under paragraph (1) who has not been removed under section 1231(a)(1)(A) of this title, and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months only if the release of the alien will threaten the national security of the United States or the safety of the community or any person.

(7) Review of certification

The Attorney General shall review the certification made under paragraph (3) every 6 months. If the Attorney General determines, in the Attorney General's discretion, that the certification should be revoked, the alien may be released on such conditions as the Attorney General deems appropriate, unless such release is otherwise prohibited by law. The alien may request each 6 months in writing that the Attorney General reconsider the certification and may submit documents or other evidence in support of that request.

(b) Habeas corpus and judicial review

(1) In general

Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6)) is available exclusively in habeas corpus proceedings consistent with this subsection. Except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

(2) Application

(A) In general

Notwithstanding any other provision of law, including section 2241(a) of Title 28, habeas corpus proceedings described in paragraph (1) may be initiated only by an application filed with--

- (i) the Supreme Court;
- (ii) any justice of the Supreme Court;
- (iii) any circuit judge of the United States Court of Appeals for the District of Columbia Circuit; or
- (iv) any district court otherwise having jurisdiction to entertain it.

(B) Application transfer

Section 2241(b) of Title 28 shall apply to an application for a writ of habeas corpus described in subparagraph (A).

(3) Appeals

Notwithstanding any other provision of law, including section 2253 of Title 28, in habeas corpus proceedings described in paragraph (1) before a circuit or district judge, the final order shall be subject to review, on appeal, by the United States Court of Appeals for the District of Columbia Circuit. There shall be no right of appeal in such proceedings to any other circuit court of appeals.

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(4) Rule of decision

The law applied by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit shall be regarded as the rule of decision in habeas corpus proceedings described in paragraph (1).

(c) Statutory construction

The provisions of this section shall not be applicable to any other provision of this chapter.

CREDIT(S)

(June 27, 1952, c. 477, Title II, ch. 4, § 236A, as added Oct. 26, 2001, Pub.L. 107-56, Title IV, § 412(a), 115 Stat. 350.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (c), was in the original, "this Act", meaning the Immigration and Nationality Act, June 27, 1952, c. 477, 66 Stat. 163, as amended, which is classified principally to this chapter. For complete classification, see Tables.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under 8 U.S.C.A. § 1551.

Reports

Pub.L. 107-56, Title IV, 412(c), Oct. 26, 2001, 115 Stat. 352, provided that: "Not later than 6 months after the date of the enactment of this Act [Oct. 26, 2001], and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on--

"(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a) [subsec.(a)(3) of this section];

"(2) the grounds for such certifications;

"(3) the nationalities of the aliens so certified;

"(4) the length of the detention for each alien so certified; and

"(5) The number of aliens so certified who--

"(A) were granted any form of relief from removal;

"(B) were removed;

"(C) the Attorney General has determined are no longer aliens who may be so certified; or

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CERTIFICATE OF SERVICE

I, Chad W. Pekron, an attorney, hereby certify that on this 13th day of June, 2005, an original and eight (8) copies of the Brief of *Amici Curiae* were served on the Court by placing the same in Federal Express overnight mail, postage prepaid, to:

Patricia S. Connor, Clerk
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I also certify that two copies of this brief were served upon the following by the same method:

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