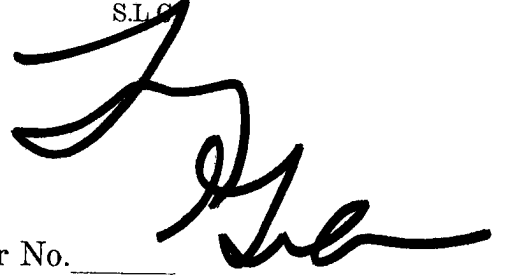


**PENDING**

HC-7



AMENDMENT NO. 2516

Calendar No. \_\_\_\_\_

Purpose: To improve the amendment.

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

**S. 1042**

**AMENDMENT NO. 2524**

To :

By: Graham - Others

To: Amnt. No. 2515

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other

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**Page(s)**

GPO: 2000 68-330 (mac)

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRAHAM (for himself, Mr. LEVIN, and Mr. KYL) to the amendment (No. 2516) proposed by Mr. GRAHAM

Viz:

- 1 In lieu of the matter proposed to be inserted, insert
- 2 the following:
- 3 **SEC. \_\_\_\_ . REVIEW OF STATUS OF DETAINEES.**
- 4 (a) SUBMITTAL OF PROCEDURES FOR STATUS RE-
- 5 VIEW OF DETAINEES AT GUANTANAMO BAY, CUBA.—Not
- 6 later than 180 days after the date of the enactment of
- 7 this Act, the Secretary of Defense shall submit to the con-

1 gressional defense committees, and to the Committees on  
2 the Judiciary of the Senate and the House of Representa-  
3 tives, a report setting forth the procedures of the Combat-  
4 ant Status Review Tribunals and the noticed Administra-  
5 tive Review Boards in operation at Guantanamo Bay,  
6 Cuba, for determining the status of the detainees held at  
7 Guantanamo Bay.

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

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

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

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

1 modification of the procedures submitted under subsection  
2 (a) not later than 60 days before the date on which such  
3 modification goes into effect.

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

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

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

16 (2) REVIEW OF DECISIONS OF COMBATANT STA-  
17 TUS REVIEW TRIBUNALS OF PROPRIETY OF DETEN-  
18 TION.—

19 (A) IN GENERAL.—Subject to subpara-  
20 graphs (B), (C), and (D), the United States  
21 Court of Appeals for the District of Columbia  
22 Circuit shall have exclusive jurisdiction to deter-  
23 mine the validity of any decision of a Des-  
24 ignated Civilian Official described in subsection

1 (b)(2) that an alien is properly detained as an  
2 enemy combatant.

3 (B) LIMITATION ON CLAIMS.—The juris-  
4 diction of the United States Court of Appeals  
5 for the District of Columbia Circuit under this  
6 paragraph shall be limited to claims brought by  
7 or on behalf of an alien—

8 (i) who is, at the time a request for  
9 review by such court is filed, detained by  
10 the Department of Defense at Guanta-  
11 namo Bay, Cuba; and

12 (ii) for whom a Combatant Status Re-  
13 view Tribunal has been conducted, pursu-  
14 ant to applicable procedures specified by  
15 the Secretary of Defense.

16 (C) SCOPE OF REVIEW.—The jurisdiction  
17 of the United States Court of Appeals for the  
18 District of Columbia Circuit on any claims with  
19 respect to an alien under this paragraph shall  
20 be limited to the consideration of—

21 (i) whether the status determination  
22 of the Combatant Status Review Tribunal  
23 with regard to such alien applied the cor-  
24 rect standards and was consistent with the  
25 procedures specified by the Secretary of

1 Defense for Combatant Status Review Tri-  
2 bunals (including the requirement that the  
3 conclusion of the Tribunal be supported by  
4 a preponderance of the evidence and allow-  
5 ing a rebuttable presumption in favor the  
6 Government's evidence); and

7 (ii) whether subjecting an alien enemy  
8 combatant to such standards and proce-  
9 dures is consistent with the Constitution  
10 and laws of the United States.

11 (D) TERMINATION ON RELEASE FROM  
12 CUSTODY.—The jurisdiction of the United  
13 States Court of Appeals for the District of Co-  
14 lumbia Circuit with respect to the claims of an  
15 alien under this paragraph shall cease upon the  
16 release of such alien from the custody of the  
17 Department of Defense.

18 (3) REVIEW OF FINAL DECISIONS OF MILITARY  
19 COMMISSIONS.—

20 (A) IN GENERAL.—Subject to subpara-  
21 graphs (C) and (D), the United States Court of  
22 Appeals for the District of Columbia Circuit  
23 shall have exclusive jurisdiction to determine  
24 the validity of any final decision rendered pur-  
25 suant to Military Commission Order No. 1,

1           dated August 31, 2005 (or any successor mili-  
2           tary order).

3           (B) GRANT OF REVIEW.—Review under  
4           this paragraph—

5                   (i) with respect to a capital case or a  
6                   case in which the alien was sentenced to a  
7                   term of imprisonment of 10 years or more,  
8                   shall be as of right; or

9                   (ii) with respect to any other case,  
10                  shall be at the discretion of the United  
11                  States Court of Appeals for the District of  
12                  Columbia Circuit.

13          (C) LIMITATION ON APPEALS.—The juris-  
14          diction of the United States Court of Appeals  
15          for the District of Columbia Circuit under this  
16          paragraph shall be limited to an appeal brought  
17          by or on behalf of an alien—

18                   (i) who was, at the time of the pro-  
19                   ceedings pursuant to the military order re-  
20                   ferred to in subparagraph (A), detained by  
21                   the Department of Defense at Guanta-  
22                   namo Bay, Cuba; and

23                   (ii) for whom a final decision has been  
24                   rendered pursuant to such military order.

1 (D) SCOPE OF REVIEW.—The jurisdiction  
2 of the United States Court of Appeals for the  
3 District of Columbia Circuit on an appeal of a  
4 final decision with respect to an alien under  
5 this paragraph shall be limited to the consider-  
6 ation of—

7 (i) whether the final decision applied  
8 the correct standards and was consistent  
9 with the procedures specified in the mili-  
10 tary order referred to in subparagraph (A);  
11 and

12 (ii) whether subjecting an alien enemy  
13 combatant to such order is consistent with  
14 the Constitution and laws of the United  
15 States.

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as provided in para-  
18 graph (2), this section shall take effect on the day  
19 after the date of the enactment of this Act.

20 (2) REVIEW OF COMBATANT STATUS TRIBUNAL  
21 AND MILITARY COMMISSION DECISIONS.—Para-  
22 graphs (2) and (3) of subsection (d) shall apply with  
23 respect to any claim ~~regarding a decision~~ whose re-  
24 view is governed by one of such paragraphs and that

1 is pending on or after the date of the enactment of  
2 this Act.