Testimony of
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INTRODUCTION

Thank you, Chairman Conyers and Members of the Judiciary Committee, for inviting me to speak to you today. My testimony is given in my capacity as Mr. Hamdan's military defense counsel and does not represent the opinions of either the Department of the Navy or the Department of Defense. I thank the Chairman and Committee for pausing to carefully reconsider the issue of denying habeas rights to an accused designated for trial by Military Commission in Guantanamo Bay.

On June 15, 2005, I first testified before the Senate Judiciary Committee regarding my decision to file a next friend habeas petition on behalf of Mr. Hamdan. I told that Committee that when the Chief Prosecutor for commissions requested assignment of counsel to Mr. Hamdan, he specified that access to Mr. Hamdan was contingent upon negotiating a guilty plea on Mr. Hamdan's behalf. I said then and I continue to believe today that the only way I could ethically represent Mr. Hamdan under those conditions was to present Hamdan with a second option of filing a habeas petition instead of pleading guilty. After the Appointing Authority refused to charge Mr. Hamdan and chose instead to keep him in the judicial limbo of "pre-trial isolation" that threatened Hamdan's sanity, I filed just such a petition.

During oral argument before the D.C. Court of Appeals, Assistant Attorney General Peter Keisler told the Court that I "had acted consistently with the highest traditions of the legal profession and his military service. He has done his duty." Apparently Mr. Keisler did not check with his client before making this statement because the legislation introduced by the President following the *Hamdan* decision attempted to see to it that no one else, myself included, will have a similar chance to do their duty by challenging the commissions. Section 7 of the Military Commissions Act (MCA) permits the government to do exactly what I was able to prevent – coerce a guilty plea in an unlawful forum.

I again believe, for reasons I detail below, that any commission under the MCA is unlawful and will ultimately be struck down by the courts. Whether I am right or not, a challenge to the legislation should happen immediately. Imagine if the courts had abstained in the *Hamdan* case as the government urged. Fifteen to twenty detainees would have been tried, with presumably some of them convicted, before the Supreme Court ultimately declared the process unlawful. All of the trials would be a nullity. The families of the victims of 9/11 would be forced to undergo a second round of trials – to the extent the Constitution would even sanction such double jeopardy. Justice would be delayed for years more.

Instead of permitting immediate challenge to spare the country such a fate, Section 7 of the MCA sanctions one of the most sweeping jurisdiction-stripping measures in our history and

raises grave constitutional questions.[1] Rather than simplifying the procedures for judicial review of military commissions, the MCA introduced several *new*, complex legal issues that the Supreme Court avoided deciding in *Hamdan v. Rumsfeld*. *See* 126 S. Ct. 2749, 2764, 2769 n.15 (2006). The MCA is inconsistent with prior interpretations of the Constitution, including the Suspension Clause, the Exceptions Clause, the Equal Protection Clause, and the prohibition on Bills of Attainder. To strip jurisdiction at the same time as an entirely newfangled military commission is created was an extremely dangerous and unwise act. It is a profound and dangerous threat to both judicial independence and core rule-of-law values.

I. The MCA Does Not Constitutionally Suspend the Right To Petition For Habeas Corpus.

The MCA seeks to achieve an unconstitutional suspension of habeas corpus. "Habeas corpus is…a writ antecedent to statute,…throwing its root deep into the genius of our common law….The writ appeared in English law several centuries ago [and] became an integral part of our common-law heritage by the time the Colonies achieved independence." *Rasul v. Bush*, 542 U.S. 466, 473-74 (2004) (citations omitted). Our Founders took care to ensure that the availability of habeas was not dependent upon executive or legislative grace. *See, e.g.*, *INS v. St. Cyr*, 533 U.S. 289, 304 n.24 (2001) (noting Suspension Clause protects against loss of right to pursue habeas claim by "either the inaction or the action of Congress"). The Constitution's right to habeas relief exists even in the absence of statutory authorization, and may be suspended only by explicit congressional action and only under limited conditions. *See Johnson v. Eisentrager*, 39 U.S. 763, 767-68 (1950) (assuming that, in the absence of statutory right of habeas, petitioners could bring claim directly under Constitution to the extent their claims fell within the scope of habeas protected by the Suspension Clause); *Rasul*, 542 U.S. at 473-78. Congress has not invoked its suspension power in the MCA, and any attempt to do so under the current circumstances would likely be invalid.

A. Congress May Suspend the Writ Only with Unmistakable Clarity and in Certain Circumstances.

If Congress intends to implement its Suspension Clause power, it must do so with unmistakable clarity. *See St. Cyr*, 533 U.S. at 298-99. The MCA in its current form does not meet that requirement. Congress has only suspended the writ four times. In each of those instances, Congress invoked its Suspension power, each time using the verb "suspend."[2] Simply

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[1] Indeed, "no case has ever countenanced an effort to strip both [the Supreme Court] and the lower federal courts of original and appellate jurisdiction to pass on the constitutionality of Executive action in derogation of personal liberty. To do so would place the very structure of the Constitution at risk by attacking an 'essential function' of the Supreme Court and the Article III judiciary. *See* Henry M. Hart, *The Power of Congress to Limit the Jurisdiction of the Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362, 1364-65 (1953)." Amicus Br. of Norman Dorsen *et al.*, Hamdan v. Rumsfeld, No. 05-184, at 20. This brief was signed, incidentally, by David Shapiro, a Harvard Law School professor who served as Principal Deputy Solicitor General to Ken Starr in the first Bush Administration.

[2] The four suspensions occurred (1) during the Civil War, as authorized in 1863; (2) in 1871, to confront widespread resistance to Reconstruction by armed groups such as the Ku Klux Klan; (3) in 1902, during a rebellion against United States authority in the Philippines; and (4) in December 1941, immediately following the attack on Pearl

withdrawing a statutory basis for habeas is not sufficient to suspend the Great Writ. *Cf. St. Cyr*, 533 U.S. at 298-300.

Even without using the clear term of "suspension," the MCA should not be read as an attempted exercise of the Suspension Clause power. Congress lacks *carte blanche* power to suspend the writ at will, even in times of open war. Instead, the Constitution permits a suspension only when in "Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. Nowhere in the MCA does Congress state that it is exercising its power to suspend habeas corpus. Nor does Congress make any finding that the Nation is currently undergoing a "Rebellion" or "Invasion," or that "the public Safety" was so endangered as to require suspension of the writ. *See* MCA, § 2.

B. Congressional Suspension of the Writ Must be Limited in Scope and Duration.

Even during actual "Rebellion or Invasion," congressional suspension must be limited in scope and duration in ways that the MCA is not. First, Congress must tailor its suspension geographically to jurisdictions in rebellion or facing imminent invasion. In *Ex parte Milligan*, 71 U.S. 2 (1866), the Supreme Court recognized that while some States were in rebellion when the Act of March 3, 1863 suspending habeas was issued, since Milligan was a resident of Indiana, a State not in rebellion, he maintained his right to habeas. *Id.* at 126.[3] The MCA purports to apply to Guantanamo Bay, the primary location where aliens have been held in United States custody since January 2002.[4] Yet like Indiana at the time of *Milligan*, Guantanamo Bay is "far removed from any hostilities." *Rasul*, 542 U.S. at 487 (Kennedy, J., concurring).[5] The MCA could not, even if intended to do so, constitutionally suspend the right of individuals detained at Guantanamo Bay and elsewhere to a writ of habeas corpus.

Moreover, the Supreme Court has made clear that Congress may suspend the writ only for the limited time during which the suspension can be justified constitutionally. Thus, *Duncan v. Kahanamoku*, 327 U.S. 304, 309 (1946), invalidated a habeas suspension permitting a military commission "more than eight months after the Pearl Harbor attack." The "courts must be utterly incapable of trying criminals or of dispensing justice in their usual manner before the Bill of Rights may be temporarily suspended." *Id.* at 330 (Murphy, J. concurring). The MCA, however, has no terminal date and indefinitely denies access to habeas corpus.

Harbor (but only for Hawaii). *See* Amicus Br. of Natl. Security Ctr., Hamdan v. Rumsfeld, No. 05-184, at 26-30 (discussing four instances of suspension).

[3] The Court reached this conclusion even though Congress had authorized a broader suspension. *See* Act of Mar. 3, 1863, 12 Stat. 755 (authorizing the President to "suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof").

[4] The MCA states that "the term 'United States', when used in a geographic sense, has the meaning given that term in section 1005(g) of the Detainee Treatment Act of 2005." § 6(a). That provision of the Detainee Treatment Act states that "the term 'United States', when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba."

[5] Nor can *all* the territory "outside the United States" be deemed in Rebellion, subject to Invasion, or a threat to public Safety.

The scope of the right protected from suspension is defined by the historic purposes and applications of the writ. *See St. Cyr*, 533 U.S. at 300-01. "Consistent with the historic purpose of the writ, [the Supreme] Court has recognized the federal courts' power to review applications for habeas relief in a wide variety of cases involving Executive detention, in wartime as well as in times of peace," including petitions of "admitted enemy aliens convicted of war crimes during a declared war and held in the United States, *Ex parte Quirin*…and its insular possessions, *In re Yamashita*." *Rasul*, 542 U.S. at 474 (citations omitted).[6]

Thus, *Yamashita* asked whether there was legal authority for the establishment of a commission and whether the petitioner fell within its jurisdiction. 327 U.S. at 9-18.[7] Although the petitioner was able to rely on the statutory provisions authorizing habeas, the Supreme Court explained that the result would have been no different had there been no statutory habeas, as Congress and the Executive "could not, unless there was suspension of the writ, withdraw from the courts the duty and power to make such inquiry into the authority of the commission as may be made by habeas corpus." *Id.* at 9. *See also Ex parte Quirin*, 317 U.S. 1, 25 (1942) ("[N]either the [Presidential Proclamation subjecting enemy aliens to commissions] nor the fact that they are enemy aliens forecloses consideration by the courts of petitioners' contentions that the Constitution and laws of the United States constitutionally enacted forbid their trial by military commission.").

Eisentrager does not support a different result. The *Eisentrager* petitioners were captured, held, and tried by a commission sitting in China. At no stage in their captivity had they been held within the United States' "territorial jurisdiction." *Johnson v. Eisentrager*, 339 U.S. 763, 768 (1950). The qualification was essential, for the writ has long been extended to alleged enemy aliens held or tried within English and U.S. territory. *E.g.*, *Rasul*, 542 U.S. at 482 ("As Lord Mansfield wrote in 1759, . . . there was 'no doubt' as to the court's power to issue writs of habeas corpus if the territory was 'under the subjection of the Crown.'") (citation omitted); *id*. at 480-82 & nn.11-14 (collecting cases); 3 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 131 (1766) (observing that "[t]his is a high prerogative writ, . . . running into all parts of the king's dominions . . . wherever that restraint may be inflicted.").

Thus, *Eisentrager* acknowledged that the judiciary retained the obligation to inquire into

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[6] It makes no constitutional difference whether an individual petitioning for habeas corpus is a non-citizen accused of being an enemy of the United States. Aliens have been able to file habeas petitions to challenge detention at least since the 17th century. *See St. Cyr*, 533 U.S. at 305-06 (from founding, habeas "jurisdiction was regularly invoked on behalf of noncitizens"); *id*. at 301-02 (collecting cases). Both the Habeas Corpus Act of 1641, 16 Car. 1, and the Habeas Corpus Act of 1679, 31 Car. 2, granted "any person" the right to file a petition. *See generally* Amicus Br. of Legal Historians, Rasul v. Bush, No. 03-334 (original conception of habeas permitted challenges by enemy aliens).

Moreover, the Great Writ has long been available to challenge the military's treatment of alleged enemies. *See Rasul*, 542 U.S at 474-75. For example, English courts heard habeas claims from alleged foreign enemy combatants challenging their status in the Eighteenth Century. *See, e.g.*, *Three Spanish Sailors' Case*, 96 Eng. Rep. 775, 776 (C.P. 1779) (Spanish sailors challenging detention as alleged prisoners of war); *Rex v. Schiever*, 97 Eng. Rep. 51 (K.B. 1759) (Swedish sailor captured aboard enemy ship); *Commonwealth Lawyers Br*. 6-8 & n.9 (collecting cases). Similarly, U.S. courts have heard enemy aliens' habeas petitions from the War of 1812, *Lockington* v. *Smith*, 15 F. Cas. 758 (C.C.D. Pa. 1817), through the Second World War, *Quirin*, 317 U.S. at 1.

[7] The writ has traditionally been available to challenge the jurisdiction of a committing tribunal, including a military commission. *E.g.*, *Quirin*, 317 U.S. at 19; *Milligan*, 71 U.S. at 118; Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 475 (1963) ("The classical function of the writ of habeas corpus was to assure the liberty of subjects against detention by the executive or the military."); *St. Cyr*, 533 U.S. at 302 n.19 ("impressment into the British Navy").

the "jurisdictional elements" of the detention of an enemy alien with a sufficient connection to U.S. territory. 339 U.S. at 775. In these and other habeas cases, the Court explained, "it was the alien's presence within its territorial jurisdiction that gave the Judiciary power to act," *id*. at 771, for "their presence in the country implied protection," *id*. at 777-78.[8] The Supreme Court has already concluded that individuals detained in Guantanamo Bay are within the "territorial jurisdiction" of the United States. *Rasul*, 542 U.S. at 480. *See also id*. at 487 (Kennedy, J., concurring in judgment) ("Guantanamo Bay is in every practical respect a United States territory, and it is one far removed from any hostilities."). Thus, where there has been no suspension of the Great Writ, those individuals have a right to bring habeas claims directly under the Constitution. The MCA would run squarely up against this hallowed line of constitutional interpretation.

Finally, Congress has provided nothing to resemble an adequate substitute remedy for the writ to detainees. *See St. Cyr*, 533 U.S. at 305 ("[A] serious Suspension Clause issue would be presented if we were to accept the INS' submission that the 1996 statutes have withdrawn that power from federal judges and provided no adequate substitute for its exercise."). The limited judicial review in the MCA is wholly inadequate. *See In re Bonner*, 151 U.S. 242, 259 (1894) (holding that when a "prisoner is ordered to be confined in [a facility] where the law does not allow the court to send him for a single hour …[t]o deny the writ of habeas corpus in such a case is a virtual suspension of it"). Under the MCA, an individual's entitlement to judicial review of the legality of his detention, treatment, or trial is entirely dependent on the government's decision to institute – and render a final decision in – proceedings against him. By permitting review only after a final judgment, the statute precludes entirely any claim that a prisoner is being held unlawfully without trial, a claim at the core of the right to habeas and of no small significance in light of the powers asserted by the President. *See, e.g.*, *Rasul*, 542 U.S. at 556; *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004); *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). By the same token, the MCA provides no review for a person who is allegedly being held for trial, but never is given one.

Let me further put the habeas-stripping in context. In past wars, the federal courts have always been open – before trial – to test the legality of the military commission. So in the Civil War, when McCardle was indicted in a military commission – he sought to challenge his commission before his trial began. That of course led the Congress to divest part of the jurisdiction over his challenge, but the Supreme Court made clear in its opinion that McCardle had a contemporaneously available avenue to contest the lawfulness of the tribunal. In World War II, in the midst of fighting, eight[I don't understand why this footnote is here] Nazi saboteurs landed on our shores. These were evil men, with plans to blow up critical American infrastructure. The United States Supreme Court heard their challenge *before* the individuals were convicted. That type of process ensures basic fairness.

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[8] The reason the *Eisentrager* petitioners lacked a constitutional right to habeas was because of the lack of any nexus with U.S. territory. Each

> (a) [was] an enemy alien; (b) [had] *never been or resided in* the United States; (c) was captured *outside* of our territory and there held in military custody…; (d) was tried and convicted by a Military Commission sitting *outside* the United States; (e) for offenses against laws of war committed *outside* the United States; (f) and [was] at all times imprisoned *outside* the United States.

Id. at 777 (emphasis added). It was based on this lack of connection to territory within U.S. control that the Court distinguished *Quirin* and *Yamashita*. *Id*. at 779-80. The Court explained that a nexus with a territory under U.S. control, like the Philippines then or Guantanamo now, was sufficient to invoke the right to habeas. *Id*. at 780.

People who face military commissions have two barriers to their freedom – their trial before this newfangled tribunal *and* detention as an enemy combatant. As the government has said several times, even if the tribunal finds someone not guilty, or even if a tribunal's verdict is overthrown by a federal court, that individual can still be detained indefinitely as an enemy combatant. But what is on the line in military commissions goes to the heart of justice – involving the most awesome powers of the government – life imprisonment and the death penalty. In that zone, American courts have always policed the jurisdiction and lawfulness of military tribunals at the outset – to avoid the trauma to the nation that would come from convictions that would later have to be tossed out.

Therefore, Congress should restore the right to challenge, via habeas corpus, the lawfulness and jurisdiction of this novel military commission. Doing so would be in line with American court tradition for 150 years, and will ensure that when trials begin, they are brought in tribunals that are lawful and just.

II. The MCA Violates Equal Protection Guarantees.

If the MCA precludes an individual from pursuing his pending claim for relief, it is only because that individual is an alien (rather than a citizen) in United States custody, yet has been detained outside the United States (rather than in a brig in Norfolk, Virginia or any other place), since September 11, 2001. Legislation that deprives individuals of access to the protections of the Great Writ based on such an arbitrary collage of distinctions—and at the exclusive discretion of the Executive—violates the Fifth Amendment.

The Fifth Amendment protects aliens within U.S. territory as well as U.S. citizens. *See, e.g., Wong Wing v. United States*, 163 U.S. 228 (1896); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (all "aliens within the *jurisdiction* of the United States" are protected) (emphasis added); *Galvan v. Press*, 347 U.S. 522, 530 (1954). As the Supreme Court noted, "the United States exercises 'complete jurisdiction and control' over the Guantanamo Bay Naval Base." *Rasul*, 542 U.S. at 480. Accordingly, detainees held in U.S. custody there are protected by the Fifth Amendment.

Legislation that enacts substantial discriminatory barriers to the exercise of fundamental rights is subject to strict scrutiny. *See, e.g., Clark v. Jeter*, 486 U.S. 456, 461 (1988). Access to courts is such a fundamental right. *See Tennessee v. Lane*, 541 U.S. 509, 522-23 (2004); *Griffin v. Illinois*, 351 U.S. 12 (1956); *Douglas v. California*, 372 U.S. 353 (1963). The right of access to habeas is particularly fundamental, and is indeed so important to our constitutional tradition that it is singled out for constitutional protection. U.S. Const. art. I, § 9, cl. 2.[9]

No justification for the distinctions drawn by the MCA is apparent. While alienage may be a relevant basis for determining membership in a political community,[10] or for allocating

[9] *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (declaring that the right to habeas corpus is "shaped to guarantee the most fundamental of all rights"); *Coolidge v. New Hampshire*, 403 U.S. 443, 454 n.4 (1971) (listing the right to the writ of habeas corpus among rights that are "to be regarded as of the very essence of constitutional liberty") (citation omitted).

[10] *Foley v. Connelie*, 435 U.S. 291 (1978).

scarce entitlements,[11] it is not a permissible basis for determining access to an Article III court in an effort to protect an alien's personal liberty. *See In re Griffiths*, 413 U.S. 717 (1973); *Plyler v. Doe*, 457 U.S. 202 (1982). Furthermore, "where there is in fact discrimination against individual interests, the constitutional guarantee of equal protection of the laws is not inapplicable simply because the discrimination is based upon some group characteristic such as geographic location." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 92 (1973) (Marshall, J., dissenting). The discrimination here is surely more corrosive than, for example, conditioning access to habeas on a filing fee. *Smith v. Bennett*, 365 U.S. 708 (1961). It offends the very essence of equal justice under law. It is targeted at a population who cannot vote, and concerns not government benefits, but the touchstone issue of who can come into court to protect his liberty.

III. The MCA Violates the Exceptions Clause.

Congress' power to make "Exceptions" to the Supreme Court's appellate jurisdiction is limited. U.S. CONST., art. III, § 2, cl. 2. Indeed, every time the Supreme Court has upheld a congressional limitation under the Exceptions Clause, it has gone out of its way to confirm that an alternative avenue of *contemporaneous* appellate review was available. *See Felker v. Turpin*, 518 U.S. 651, 661-62 (1996); *id*. at 667 (Souter, J., concurring) ("[I]f it should later turn out that statutory avenues other than certiorari for reviewing [a lower court's denial of habeas] were closed, the question whether the statute exceeded Congress's Exceptions Clause power would be open"); *Ex parte Yerger*, 75 U.S. 85, 105-06 (1869); *Ex parte McCardle*, 74 U.S. 506, 515 (1869).[12] Yet in many cases, the MCA provides absolutely *no* right to judicial review, much less a right to contemporaneous appellate review in a timely and meaningful manner. *See infra* at 6-7. In addition, the MCA significantly restricts the scope of legal challenges that petitioner may ultimately bring to any final decision of a military commission or a combatant status review tribunal. *See* MCA § 6(a); Detainee Treatment Act of 2005, §1005(e)(2), (3).[13]

IV. The MCA Constitutes a Bill of Attainder.

Finally, the MCA likely runs afoul of the Bill of Attainder Clause. U.S. Const., art. I, sec. 9, cl. 9. A law is an unlawful attainder if (1) it applies to easily ascertainable members of a group, and (2) inflicts punishment. *United States v. Lovett*, 328 U.S. 303, 315 (1946). The MCA satisfies both prongs. The MCA's plain language applies only to "alien[s] detained outside the United States…since September 11, 2001." § 6(b). The MCA undoubtedly constitutes punishment. The extended detention and the denial of a right to challenge treatment or unfair trials, is at least as punitive as the denial of the right to engage in a particular profession. *See Ex Parte Garland*, 4 Wall. 333 (1867) (denial of right to practice law is an attainder).

In general, it will be difficult, if not impossible, to use the new MCA against Khalid Sheik Muhammad or any of the other individuals currently detained. This legislation is punitive,

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[11] *Matthews v. Diaz*, 426 U.S. 67 (1976).

[12] Nor may Congress use its power under the Exceptions Clause "to withhold appellate jurisdiction . . . as a means to an end." *United States v. Klein*, 80 U.S. 128, 145 (1872).

[13] The Supreme Court did indicate that the statutory language conferring "exclusive jurisdiction" upon the Court of Appeals for the D.C. Circuit to review CSRT and military commissions determinations would not deprive the Supreme Court of jurisdiction over an appeal of a decision under the Act.

and ex post facto, and likely to run afoul of both of those prohibitions

V. Expedited Review

Instead of unconstitutionally attempting to suspend the writ, Section 7 of the MCA should provide for a three-judge district court to immediately hear a challenge to this scheme via an anti-abstention provision modeled on the McCain-Feingold Campaign Finance Act. The need for expedited judicial review is highlighted by the recent developments in Guantanamo Bay earlier this month where two different military judges dismissed separate cases due to a lack of jurisdiction. The Administration has publicly criticized these decisions and announced that it intends to appeal the ruling to the intermediate military court created under the MCA. Apart from the chilling effect that public criticism of the military judges represents, the review process is already inexorably tainted by the fact that the court does not yet exist and the Administration is going to select its members while a critical issue is pending without congressional approval allowing or, at the very least, giving the appearance of, court-stacking. After so many missteps this is no way to proceed if we are to regain confidence in the judicial system. To that end I propose that the MCA be amended by inserting the following provision into the Act, after the severability clause:

Sec. 11. EXPEDITED REVIEW.

> (a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the legality of any provision of, or any amendment made by, this Act, shall be heard by a three-judge panel in the United States District Court for the District of Columbia convened pursuant to the provisions of section 2284 of title 28, United States Code. For purposes of the expedited review provided by this section, the exclusive venue for such an action shall be the United States District Court for the District of Columbia
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> (b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under subsection (a) shall be reviewable as a matter of right by direct appeal to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order or judgment is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order or judgment is entered.
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> (c) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

CONFORMING AMENDMENTS

The following MCA provision would also have to be modified:

§ 950i. Finality of proceedings, findings, and sentences

…

(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.