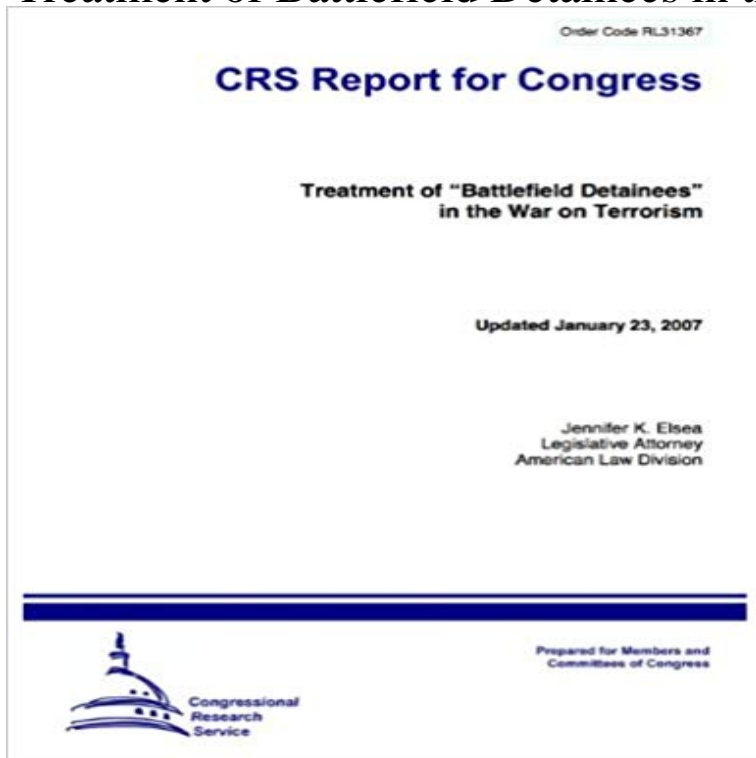


Treatment of Battlefield Detainees in the War on Terrorism



In June 2004, the U.S. Supreme Court ruled in *Rasul v. Bush* that U.S. courts have jurisdiction to hear challenges on behalf of persons detained at the U.S. Naval Station in Guantanamo Bay, Cuba, in connection with the war against terrorism. The Court overturned a ruling that no U.S. court has jurisdiction to hear petitions for habeas corpus on behalf of the detainees because they are aliens detained abroad, but left questions involving prisoners rights and status unanswered. The 9/11 Commission recommended a common coalition approach to such detention. Congress enacted the Detainee Treatment Act of 2005 (DTA), P.L. 109-148, to establish standards for interrogation and to deny detainees access to federal courts to file habeas petitions but allow limited appeals of status determinations and final decisions of military commissions. Congress approved the Military Commissions Act of 2006 (MCA), P.L. 109-366, to authorize military commissions for the prosecution of detainees for war crimes. The Bush Administration earlier deemed all of the detainees to be unlawful combatants, who may, according to Administration officials, be held indefinitely without trial or even if they are acquitted by a military tribunal. Fifteen of the detainees were designated as subject to the Presidents Military Order of November 13, 2001, making them eligible for trial by military commission. In answer to the *Rasul* decision, the Pentagon instituted Combatant Status Review Tribunals to provide a forum for detainees to challenge their status as enemy combatants. The Pentagon had earlier announced a plan for annual reviews to determine whether detainees may be released without endangering national security. The Presidents decision to deny the detainees prisoner-of-war (POW) status remains a point of contention, in particular with respect to members of the Taliban, with

some arguing that it is based on an inaccurate interpretation of the Geneva Convention for the Treatment of Prisoners of War (GPW), which they assert requires that all combatants captured on the battlefield are entitled to be treated as POWs until an independent tribunal has determined otherwise. The publication of executive branch memoranda documenting the internal debate about the status of prisoners evoked additional criticism of the Bush Administrations legal position. Finally, the Supreme Courts decision in Hamdan v. Rumsfeld determined that persons captured in Afghanistan in connection with the Global War on Terrorism are entitled at least to the minimum set of protections accorded by Common Article 3 of the 1949 Geneva Conventions. This report provides an overview of the law of war and the historical treatment of wartime detainees, in particular the U.S. practice; describes how the detainees status might affect their rights and treatment; and summarizes activity of the 108th and 109th Congresses related to detention in connection with the war against terrorism. The report also summarizes legislative proposals in the 110th Congress, including H.R. 1 and H.R. 267.

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