

September 27, 2006

Dear Senator:

We are writing to strongly encourage you to reject the “compromise” Military Commissions Act of 2006 and to vote no on final passage of the bill. More than anything else, the bill compromises America’s commitment to fairness and the rule of law.

For the last five years the United States has repeatedly operated in a manner that betrays our nation’s commitment to law. The US has held prisoners in secret prisons without any due process or even access to the Red Cross and has placed other prisoners in Guantanamo Bay in a transparent effort to avoid judicial oversight and the application of US treaty obligations. The federal government has operated under legal theories which dozens of former senior officers have warned endanger US personnel in the field and has produced legal interpretations of the meaning of “torture” and “cruel, inhuman and degrading” treatment which had to be abandoned when revealed to the public.

Interrogation practices were approved by the Department of Defense which former Bush Administration appointee and General Counsel of the Navy Alberto Mora described as “clearly abusive, and ... clearly contrary to everything we were ever taught about American values.”

According to media reports the CIA has used a variety of interrogation techniques which the United States has previously prosecuted as war crimes and routinely denounces as torture when they are used by other governments.

Instead of finally coming to grips with this situation and creating a framework for detaining, interrogating and prosecuting alleged terrorists which comports with the best traditions of American justice, the proposed legislation will mostly perpetuate the current problems. Worse, it would seek to eliminate any accountability for violations of the law in the past and prevent future judicial oversight. While we appreciate the efforts various members of Congress have made to address these problems, the “compromise” falls far short of an acceptable outcome.

The serious problems with this legislation are many and this letter will not attempt to catalogue them all. Indeed, because the legislation has only just been made available, many of the serious flaws in this long, complex bill are only now coming to light. For instance, the bill contains a new, very expansive definition of enemy combatant. This definition violates traditional understandings of the laws of war and runs directly counter to Pres. Bush’s pledge to develop a common understanding of such issues with US allies. Because the proposed definition of combatant is so broad, the language may also have potential consequences for US civilians. For instance, it may mean that adversaries of the United States will use the definition to define civilian employees and contractors providing support to US combat forces, such as providing food, to be “combatants” and therefore legitimate subjects for attack. Yet, there has been no opportunity to consider and debate the implications of this definition, or other parts of the bill such as the definitions of rape and sexual abuse.

We strongly oppose the provisions in the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse.

We are deeply concerned that many provisions in the bill will cast serious doubt on the fairness of the military commission proceedings and undermine the credibility of the convictions as a result. For instance, we are deeply concerned about the provisions that permit the use of evidence obtained

through coercion. Provisions in the bill which purport to permit a defendant to see all of the evidence against him also appear to contain serious flaws.

We believe that any good faith interpretation of the definitions of “cruel, inhuman and degrading” treatment in the bill would prohibit abusive interrogation techniques such as waterboarding, hypothermia, prolonged sleep deprivation, stress positions, assaults, threats and other similar techniques because they clearly cause serious mental and physical suffering. However, given the history of the last few years we also believe that the Congress must take additional steps to remove any chance that the provisions of the bill could be exploited to justify using these and similar techniques in the future.

Again, this letter is not an attempt to catalogue all of the flaws in the legislation. There is no reason why this legislation needs to be rushed to passage. In particular, there is no substantive reason why this legislation should be packaged together with legislation unrelated to military commissions or interrogation in an effort to rush the bill through the Congress. Trials of the alleged “high value” detainees are reportedly years away from beginning. We urge the Congress to take more time to consider the implications of this legislation for the safety of American personnel, for US efforts to build strong alliances in the effort to defeat terrorists and for the traditional US commitment to the rule of law. Unless these serious problems are corrected, we urge you to vote no.

Sincerely,

Physicians for Human Rights
Center for National Security Studies
Amnesty International USA
Human Rights Watch
Human Rights First
American Civil Liberties Union
Open Society Policy Center
Center for American Progress Action Fund
The Episcopal Church
Jewish Council for Public Affairs
National Religious Campaign Against Torture
Presbyterian Church (USA), Washington Office
Friends Committee on Nat'l Legislation
Maine Council of Churches
Pennsylvania Council of Churches
Wisconsin Council of Churches
Brennan Center for Justice at NYU Law School
Center for Constitutional Rights
Robert F. Kennedy Memorial Center for Human Rights
The Bill of Rights Defense Committee
Unitarian Universalist Service Committee
Leadership Conference of Women Religious
Center for Human Rights and Global Justice,
NYU School of Law

The Shalom Center
Washington Region Religious Campaign
Against Torture
The Center for Justice and Accountability
Center of Concern
Justice, Peace & Integrity of Creation
Missionary Oblates
Rabbis for Human Rights - North America
Humanist Chaplaincy at Harvard University
No2Torture
Maryland Christians for Justice and Peace
American Library Association
Churches Center for Theology and Public Policy
Disciples Justice Action Network (Disciples of Christ)
Equal Partners in Faith
Christians for Justice Action (United Church of Christ)
Reclaiming the Prophetic Voice
Baptist Peace Fellowship of North America
Pax Christi USA: National Catholic Peace Movement
Fellowship of Reconciliation
Maryknoll Office for Global Concerns