BRIGADIER GENERAL DAVID M. BRAHMS (RET. USMC)
BRIGADIER GENERAL JAMES CULLEN (RET. USA)
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LIEUTENANT GENERAL ROBERT GARD (RET. USA)
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REAR ADMIRAL DON GUTER (RET. USN)
GENERAL JOSEPH HOAR (RET. USMC)
REAR ADMIRAL JOHN D. HUTSON (RET. USN)
LIEUTENANT GENERAL CLAUDIA KENNEDY (RET. USA)
GENERAL MERRILL MCPEAK (RET. USAF)
MAJOR GENERAL MELVYN MONTANO (RET. USA)
GENERAL JOHN SHALIKASHVILI (RET. USA)

January 3, 2005

The Honorable Members of the Senate Judiciary
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator:

We, the undersigned, are retired professional military leaders of the U.S. Armed Forces. We write to express our deep concern about the nomination of Alberto R. Gonzales to be Attorney General, and to urge you to explore in detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice.

During his tenure as White House Counsel, Mr. Gonzales appears to have played a significant role in shaping U.S. detention and interrogation operations in Afghanistan, Iraq, Guantanamo Bay, and elsewhere. Today, it is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world. Before Mr. Gonzales assumes the position of Attorney General, it is critical to understand whether he intends to adhere to the positions he adopted as White House Counsel, or chart a revised course more consistent with fulfilling our nation's complex security interests, and maintaining a military that operates within the rule of law.

Among his past actions that concern us most, Mr. Gonzales wrote to the President on January 25, 2002, advising him that the Geneva Conventions did not apply to the conflict then underway in Afghanistan. More broadly, he wrote that the "war on terrorism" presents a "new paradigm [that] renders obsolete Geneva's" protections.

The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would "reverse over a century of U.S. policy and practice in supporting the Geneva Conventions," and would "undermine the protections of the rule of law for our troops, both in this

specific conflict [Afghanistan] and in general." State Department adviser William H. Taft IV agreed that this decision "deprives our troops [in Afghanistan] of any claim to the protection of the Conventions in the event they are captured and weakens the protections afforded by the Conventions to our troops in future conflicts." Mr. Gonzales' recommendation also ran counter to the wisdom of former U.S. prisoners of war. As Senator John McCain has observed: "I am certain we all would have been a lot worse off if there had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war."

Mr. Gonzales' reasoning was also on the wrong side of history. Repeatedly in our past, the United States has confronted foes that, at the time they emerged, posed threats of a scope or nature unlike any we had previously faced. But we have been far more steadfast in the past in keeping faith with our national commitment to the rule of law. During the Second World War, General Dwight D. Eisenhower explained that the allies adhered to the law of war in their treatment of prisoners because "the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing." In Vietnam, U.S. policy required that the Geneva Conventions be observed for *all* enemy prisoners of war – both North Vietnamese regulars and Viet Cong – even though the Viet Cong denied our own prisoners of war the same protections. And in the 1991 Persian Gulf War, the United States afforded Geneva Convention protections to more than 86,000 Iraqi prisoners of war held in U.S. custody. The threats we face today – while grave and complex – no more warrant abandoning these basic principles than did the threats of enemies past.

Perhaps most troubling of all, the White House decision to depart from the Geneva Conventions in Afghanistan went hand in hand with the decision to relax the definition of torture and to alter interrogation doctrine accordingly. Mr. Gonzales' January 2002 memo itself warned that the decision not to apply Geneva Convention standards "could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries." Yet Mr. Gonzales then made that very recommendation with reference to Afghanistan, a policy later extended piece by piece to Iraq. Sadly, the uncertainty Mr. Gonzales warned about came to fruition. As James R. Schlesinger's panel reviewing Defense Department detention operations concluded earlier this year, these changes in doctrine have led to uncertainty and confusion in the field, contributing to the abuses of detainees at Abu Ghraib and elsewhere, and undermining the mission and morale of our troops.

The full extent of Mr. Gonzales' role in endorsing or implementing the interrogation practices the world has now seen remains unclear. A series of memos that were prepared at his direction in 2002 recommended official authorization of harsh interrogation methods, including waterboarding, feigned suffocation, and sleep deprivation. As with the recommendations on the Geneva Conventions, these memos ignored established U.S. military policy, including doctrine prohibiting "threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation." Indeed, the August 1, 2002 Justice Department memo analyzing the law on interrogation references health care administration law more than five times, but never once cites the U.S. Army Field Manual on interrogation. The Army Field Manual was the product of decades of experience – experience that had shown, among other things, that such interrogation methods produce unreliable results and often impede further intelligence collection. Discounting the Manual's wisdom on this central point shows a disturbing disregard for the decades of hard-won knowledge of the professional American military.

The United States' commitment to the Geneva Conventions – the laws of war – flows not only from field experience, but also from the moral principles on which this country was founded, and by which we all continue to be guided. We have learned first hand the value of adhering to the Geneva Conventions and practicing what we preach on the international stage. With this in mind, we urge you to ask of Mr. Gonzales the following:

(1) Do you believe the Geneva Conventions apply to all those captured by U.S. authorities in Afghanistan and Iraq?

(2) Do you support affording the International Committee of the Red Cross access to all detainees in U.S. custody?

(3) What rights under U.S. or international law do suspected members of Al Qaeda, the Taliban, or members of similar organizations have when brought into the care or custody of U.S. military, law enforcement, or intelligence forces?

(4) Do you believe that torture or other forms of cruel, inhuman and degrading treatment – such as dietary manipulation, forced nudity, prolonged solitary confinement, or threats of harm – may lawfully be used by U.S. authorities so long as the detainee is an "unlawful combatant" as you have defined it?

(5) Do you believe that CIA and other government intelligence agencies are bound by the same laws and restrictions that constrain the operations of the U.S. Armed Forces engaged in detention and interrogation operations abroad?

Signed,

Brigadier General David M. Brahms (Ret. USMC)
Brigadier General James Cullen (Ret. USA)
Brigadier General Evelyn P. Foote (Ret. USA)
Lieutenant General Robert Gard (Ret. USA)
Vice Admiral Lee F. Gunn (Ret. USN)
Rear Admiral Don Guter (Ret. USN)
General Joseph Hoar (Ret. USMC)
Rear Admiral John D. Hutson (Ret. USN)
Lieutenant General Claudia Kennedy (Ret. USA)
General Merrill McPeak (Ret. USAF)
Major General Melvyn Montano (Ret. USA)
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