

REAR ADMIRAL DON GUTER, USN (RET.)
REAR ADMIRAL JOHN D. HUTSON, USN (RET.)
BRIGADIER GENERAL DAVID M. BRAHMS, USMC (RET.)
BRIGADIER GENERAL JAMES P. CULLEN, USA (RET.)

March 2, 2007

The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

We strongly support your legislation to restore habeas corpus for detainees in US custody. We hope that it quickly becomes law.

Known as the "Great Writ," habeas corpus is the legal proceeding that allows individuals a chance to contest the legality of their detention. It has a long pedigree in Anglo Saxon jurisprudence, dating back to 13th Century England when it established the principle that even Kings are bound by the rule of law. Our Founding Fathers enshrined the writ in the Constitution, describing it as one of the essential components of a free nation.

In discarding habeas corpus, we are jettisoning one of the core principles of our nation precisely when we should be showcasing to the world our respect for the rule of law and basic rights. These are the characteristics that make our nation great. These are the values our men and women in uniform are fighting to preserve.

Abiding by these principles is critical to defeating terrorist enemies. The U.S. Army's Counterinsurgency Manual, which outlines our strategy against non-traditional foes like al Qaeda, makes clear that victory depends on building the support of local populations where our enemies operate through the legitimate exercise of our power. The Manual states: "Respect for preexisting and impersonal legal rules can provide the key to gaining widespread and enduring societal support. . . . Illegitimate actions," including "unlawful detention, torture, and punishment without trial . . . are self-defeating, even against insurgents who conceal themselves amid non-combatants and flout the law." Our enemies have used our detention of prisoners without trial or access to courts to undermine the legitimacy of our actions and to build support for their despicable cause.

It is certainly true that prisoners of war have never been given access to courts to challenge their detention. But the United States does have a history of providing access to courts to those who have not been granted POW status and are instead being held as unlawful combatants, as are the detainees in this conflict. See., e.g., *Ex Parte Quirin*, 317 U.S. 1 (1942) (rejecting the claim that the Court could not review the habeas claim of enemy aliens held for law of war violations).

POWs are combatants held according to internationally prescribed rules, and are released at the end of the war in which they fought. In a traditional war, it is generally easy to determine who is a combatant and governed by these special rules. But the war we are fighting today is different. Detainees held at Guantanamo Bay were captured in 14 countries around the world, including places as far away from any traditional battlefield as Thailand, Gambia, and Russia. Some were sold to the United States by bounty hunters. Our enemies blend into the civilian population, making the practice of identifying them more

difficult. For all these reasons, the possibility of making mistakes is much higher than in a traditional conflict. In such a situation, it is incumbent on our nation to ensure that there is an independent review of the decision to detain.

The denial of habeas corpus also threatens to harm our national interests by placing American civilians at risk. Imagine if an enemy of the United States arrested an American citizen - a nurse or interpreter or employee of a military contractor - because they once provided assistance to our armed forces, and held that American without charge or opportunity to challenge their detention in court. We would be outraged, and rightly so. Yet, this is the precedent we are setting by holding without charge those deemed to have aided the enemy and denying them access to a court that could review the basis of their detention.

A judicial check on the decision to detain is in the best tradition of the United States - a tradition that ensures accountability, accuracy, and credibility. Restoring habeas corpus will help ensure that we are detaining the right people and showcase to the world our respect for the rule of law and the values that distinguish America from our enemies.

We hope that Congress will act quickly to pass this legislation.

Sincerely,

Rear Admiral Don Guter, USN (Ret.)

Rear Admiral John D. Hutson, USN (Ret.)

Brigadier General David M. Brahms, USMC (Ret.)

Brigadier General James P. Cullen, USA (Ret.)

BIOGRAPHICAL INFORMATION

Rear Admiral Don Guter, USN (Ret.)

Admiral Guter served in the U.S. Navy for 32 years, concluding his career as the Navy's Judge Advocate General from 2000 to 2002. Admiral Guter currently serves as the Dean of Duquesne University Law School in Pittsburgh, PA.

Rear Admiral John D. Hutson, JAGC, USN (Ret.)

Rear Admiral John D. Hutson served in the U. S. Navy from 1973 to 2000. He was the Navy's Judge Advocate General from 1997 to 2000. Admiral Hutson now serves as President and Dean of the Franklin Pierce Law Center in Concord, New Hampshire. He also joined Human Rights First's Board of Directors in 2005.

Brigadier General David M. Brahms, USMC (Ret.)

General Brahms served in the Marine Corps from 1963-1988. He served as the Marine Corps' senior legal adviser from 1983 until his retirement in 1988. General Brahms currently practices law in Carlsbad, California and sits on the board of directors of the Judge Advocates Association.

Brigadier General James P. Cullen, USA (Ret.)

Mr. Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General's Corps and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.