

July 25, 2007

The Honorable Ike Skelton
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Skelton:

On behalf of the American Bar Association, I write to express our support for H.R. 2826, which restores habeas corpus jurisdiction to the federal courts.

The ABA applauds your efforts in introducing H.R. 2826 and your leadership in holding hearings to educate members on the importance of restoring habeas. This important bipartisan legislation would fix the troublesome provision in the Military Commissions Act (MCA) that prohibits judicial review of habeas corpus claims filed by detainees in U.S. custody that were already pending at the time the law was enacted. The legislation protects against the unintended consequence of extending habeas jurisdiction to the traditional battlefield in a way that that could disrupt active combat situations. It also provides injunctive relief against transfers to ensure that there are no attempts to circumvent fair process for the detainees.

Habeas corpus is a legal tradition that has its roots in the Magna Carta. It serves as an important check on the power of executive detention and embodies the fundamental principle that one should not be held by the government without opportunity for a fair and impartial determination that there is a reasonable basis in law and fact for the detention.

The current system of detaining individuals at Guantanamo Bay without providing an adequate independent review process has created a political firestorm and has undermined the reputation of the United States as a guardian of the rule of law. With 360 individuals being detained at Guantanamo, only three have been charged under the process set forth in the MCA. One case resulted in a plea bargain for a nine-month sentence and the other two cases were dismissed by military judges on grounds that may well result in substantial delays before any further commission proceedings can begin.

Under current law, the remaining prisoners could be held indefinitely as “enemy combatants” without ever being charged and without access to meaningful federal judicial review of the legitimacy of their detention.

The abolition of habeas review for detainees by Congress last year has prevented the federal courts from exercising their traditional role of determining if the government’s claims have legal and factual support and has resulted in unchecked executive power that is neither necessary nor wise. Restoring a credible review process will enhance, rather than undermine, our national security and will restore international confidence in our efforts to battle terrorism.

In order to strengthen our efforts to combat terrorism, it is essential that we establish procedures that inspire public confidence in the system and that we would find acceptable if applied to our own service members. We hope that your committee will act quickly to advance H.R. 2826.

Thank you for your consideration of these points.

Sincerely,

A handwritten signature in cursive script that reads "Karen J. Mathis". The signature is written in black ink and is positioned below the word "Sincerely,".

Karen J. Mathis