

November 14, 2005

Dear Senator:

As the Senate moves to conclude its action on the Fiscal Year 2006 Department of Defense Authorization bill, I write on behalf of the American Bar Association strongly to urge you to oppose the Graham Amendment (#2515), which would eliminate habeas corpus review for detainees being held at Guantanamo Bay.

The Graham Amendment provides that no court, justice or judge shall consider an application for a writ of habeas corpus by an alien who is detained by the Department of Defense at Guantanamo Bay. It purports to provide an alternative avenue of review through the Court of Appeals for the District of Columbia Circuit. However, an examination of this provision proves that this proposal is illusory. The jurisdiction given to the Court of Appeals is only to consider whether the detainee's status determination was conducted consistent with the procedures specified by the Secretary of Defense for Combat Status Review Tribunals. This extremely limited review cannot and should not replace the time-honored mechanism of the writ of habeas corpus.

Throughout our nation's history, starting with the defense by lawyer, later president, John Adams of Massachusetts, of the British soldiers who fired on patriots in the Boston Massacre, it has been our commitment to basic principles of justice, even for the most unpopular among us, that has allowed us to maintain the high moral ground in the world, the most strategically important territory for us to occupy as we struggle with the enemies of freedom.

The fundamental purpose of the writ of habeas corpus is to prevent unlawful detention by the government. The detainees at Guantanamo have been held for over four years, largely incommunicado, initially with no access to counsel and no specified procedures to determine their status as combatants. Even with tribunals now established to make status determinations and commissions created to try detained individuals for war crimes, these processes remain largely out of sight of the world and are conducted by the very authority leveling the charges against those detained.

The principle of independent judicial review of governmental detention was important enough to our nation's founders to enshrine in the Constitution, not to be suspended by Congress except in the direst circumstances. Preserving the opportunity for Guantanamo detainees to seek habeas review in our federal courts will demonstrate our nation's commitment to its own constitutional values and serve as an important example to the rest of the world.

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September 11 and other terrorist attacks, at home and abroad, raise difficult issues for our legal and political systems. For more than two hundred years, whenever this nation has been confronted by war, our government has struggled to achieve the proper balance between security and liberty. Senator Graham himself has said that in the battle against terrorism we cannot allow ourselves to become the enemy. Adoption of his amendment would undermine the very principles that distinguish us from our enemies.

We urge you, in the strongest terms, to oppose the Graham Amendment.

Sincerely,

A handwritten signature in cursive script that reads "Michael S. Greco". The signature is written in dark ink and is positioned above the printed name.

Michael S. Greco