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June 6, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Republican
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

On behalf of the American Bar Association, I write to express our strong support for S. 185, the "Habeas Corpus Restoration Act."

The ABA is deeply concerned that last year Congress included in the Military Commissions Act (MCA) a provision 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 writ of habeas corpus, which ensures protection against unjust government imprisonment, is one of the pillars of our constitutional system. 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 ABA applauds your leadership in introducing S. 185, which would effectively restore to the federal courts the ability to hear habeas petition of any detainee being held at Guantanamo Bay. The central importance of the writ of habeas corpus has been reaffirmed by the U.S. Supreme Court on multiple occasions. In 2004, the Supreme Court ruled in *Rasul v. Bush* that the federal courts have jurisdiction to consider petitions for writs of habeas corpus from Guantanamo detainees under the federal habeas statute. In *Hamdan v. Rumsfeld*, the Supreme Court held that the framework for judicial review

established by the Detainee Treatment Act did not apply to habeas corpus claims that were already pending in the U.S. courts.

Nonetheless, Congress enacted the MCA with the habeas-stripping provision, which has resulted in the dismissal of hundreds of habeas corpus claims from the federal courts. The Supreme Court's recent decision not to hear the cases of *Boumediene v. Bush* and *Al Odah v. United States* examining the constitutionality of the habeas-stripping provision in the MCA makes it is critical for Congress to promptly pass remedial legislation.

The ABA believes that Congress should act now to adopt the Habeas Corpus Restoration Act to ensure a fair process and to restore our international credibility. Executive Branch officials have acknowledged that of the approximately 385 detainees now at Guantanamo, the government only intends to try approximately 60 to 80 of these individuals before a military commission. Thus far, only three individuals have even been charged under the process set forth in the MCA; one case resulted in a plea bargain for a nine-month sentence, but the other two cases were dismissed this week by military judges on grounds that may well result in substantial delays before any further commission proceedings can begin.

Under current law, the remaining 385 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 governmental 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.

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 the Habeas Corpus Restoration Act.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and is positioned above the typed name and title.

Denise A. Cardman
Acting Director

cc: Members of the Senate Committee on the Judiciary