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September 18, 2007

Dear Senator:

As the Senate resumes consideration of the FY 2008 Defense Authorization legislation this week, I write on behalf of the American Bar Association to express our strong support for an amendment crafted by Senators Arlen Specter (R-PA) and Patrick Leahy (D-VT) to restore habeas corpus for “enemy combatants” in U.S. custody. A cloture vote to limit debate on this amendment may occur as early as tomorrow.

Adoption of the Specter-Leahy Amendment (S.A. 2022) will fix the egregious 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. This important amendment is based upon S. 185, bipartisan legislation that was reported out of the Senate Judiciary Committee in June.

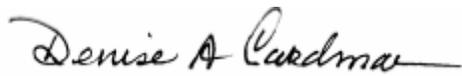
Habeas corpus, which is known as the “Great Writ,” has its roots in the Magna Carta. It serves as an important check on the power of executive detention and embodies the fundamental principle that one should not be held by the government without opportunity for a fair and impartial determination that 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 undermines the reputation and credibility of the United States as guardian of the rule of law. With approximately 340 individuals being detained at Guantanamo, only three have been charged formally under the process established by the MCA. One case resulted in a plea bargain for a nine-month sentence, but the other two cases were dismissed earlier this year by military judges on grounds that have resulted 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 in determining if governmental claims have legal and factual support and has resulted in unchecked executive power that is neither necessary nor wise. In order to strengthen our efforts to combat terrorism, it is essential to establish a credible review process that inspires public confidence in the system and that we would find acceptable if applied to our own service members.

We urge you to vote in favor of cloture to limit debate on the Specter-Leahy Amendment to restore independent judicial review and ensure the fundamental fairness of our government's detention process.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and has a fluid, connected style.

Denise A. Cardman  
Acting Director