

**Lawrence B. Wilkerson**  
**Colonel, U.S. Army (Retired)**  
**7312 Rockford Drive**  
**Falls Church, Virginia 22043-2931**

3 May 2007

Dear Members of Congress:

I served for thirty-one years in the United States Army and, from 2002 to 2005, as Chief of Staff to Secretary of State Colin Powell, and am writing to urge that you restore the *habeas corpus* rights eliminated by the enactment of the Military Commissions Act (MCA) last year. Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement notes that *habeas corpus* rights are most critical in situations of executive detention without charge and that these rights represent the essence of the American legal system. I am aware that Abraham Lincoln suspended these rights in our Civil War. But I believe that had Lincoln survived to read it, he would have applauded the Supreme Court decision in 1866 that restored these rights. I also know that no matter how desperate our Civil War was at times, no one seriously believed it would endure for several decades. The so-called war on terror may do just that. We cannot afford to become so accustomed to a deprivation of these rights.

I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these *habeas corpus* rights.

Sincerely,

  
Lawrence B. Wilkerson

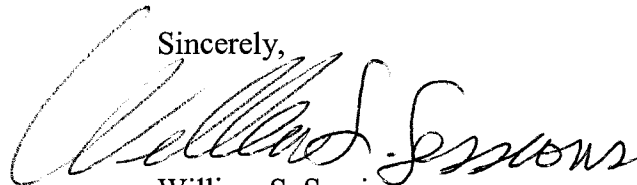
May 4, 2007

Dear Members of Congress:

I am writing to urge that you restore the *habeas corpus* rights eliminated by the enactment of the Military Commissions Act (MCA) last year. I am a former Chief Judge in the United States District Court for the Western District of Texas and served as Director of the Federal Bureau of Investigation. Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement notes that *habeas corpus* rights are most critical in situations of executive detention without charge and that these rights represent the essence of the American legal system.

I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these *habeas corpus* rights.

Sincerely,



William S. Sessions

**Alberto J. Mora**  
6 Mission Hills Circle  
Rogers, AR 72758

May 7, 2007

Dear Members of Congress:

I served as General Counsel to the Department of the Navy earlier in the current administration and am writing to urge that you restore the habeas corpus rights eliminated by the enactment of the Military Commissions Act last year. Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances.

Habeas corpus rights represent the essence of the American legal system, a manifestation of fundamental fairness. But restoration of these rights is required not only as a matter of consistency with our values and legal system. In the War on Terror, the extension of habeas rights to potentially long-term detainees helps etch the sharpest possible distinction between ourselves and our adversaries at no real cost to our security. At the same time, it helps establish a common legal framework with our traditional allies – which we do not now have – for the prosecution of the war. Such a framework, and the broad-based alliances it can facilitate, is a war-fighting necessity in this type of war. Its absence reduces our defenses.

I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these rights.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amora', with a long horizontal flourish extending to the right.

Alberto Mora



THE  
AMERICAN  
CONSERVATIVE  
UNION

May 7, 2007

Dear Members of Congress:

I am writing to you today both as Chairman of the American Conservative Union and as Co-chair of the Constitution Project's Liberty & Security Initiative to urge your support of action to restore the *habeas corpus* rights eliminated by the enactment of the Military Commissions Act (MCA) last year.

The world wide struggle in which our nation is today engaged is one we must win and I agree completely with those who argue that our government needs the powers necessary both to pursue that struggle to a victorious conclusion and to protect the US homeland from terrorist attack, but that does not mean that we simply ignore the traditional American constitutional and common law rights that have made our regard for human liberty unique in world history.

Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement notes that *habeas corpus* rights are most critical in situations of executive detention without charge and that these rights represent the essence of the American legal system.

I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these *habeas corpus* rights.

Sincerely,

David Keene

# THE RUTHERFORD INSTITUTE

INTERNATIONAL HEADQUARTERS  
Post Office Box 7482  
Charlottesville, Virginia 22906-7482

TELEPHONE 434 / 978 - 3888  
FACSIMILE 434/ 978 - 1789  
[www.rutherford.org](http://www.rutherford.org)

Dear Members of Congress:

I urge you to restore the *habeas corpus* rights eliminated by the enactment of the Military Commissions Act (MCA) last year.

Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement notes that *habeas corpus* rights are most critical in situations of executive detention without charge and that these rights represent the essence of the American legal system.

As a constitutional attorney who has served as president of The Rutherford Institute for the past 25 years, I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these *habeas corpus* rights.

Sincerely yours,

John W. Whitehead  
President

Enclosure

# American Freedom Agenda

910 SEVENTEENTH STREET, NW SUITE 800

WASHINGTON, DC 20006

TELEPHONE: 202-775-1776, FACSIMILE: 202-478-1664

WWW.AMERICANFREEDOMAGENDA.ORG

May 4, 2007

Dear Members of Congress:

I served as Associate Deputy Attorney General in the Reagan Administration and am writing to urge that you restore the *habeas corpus* rights eliminated by the enactment of the Military Commissions Act (MCA) last year. Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement notes that *habeas corpus* rights are most critical in situations of executive detention without charge and that these rights represent the essence of the rule of law.

I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these *habeas corpus* rights.

Sincerely,



Bruce Fein  
Chairman  
American Freedom Agenda

**Richard A. Epstein**  
**4824 So. Woodlawn Avenue**  
**Chicago, IL 60615**

May 4, 2007

Dear Members of Congress:

I understand that the Congress is now considering the possibility of restoring the *habeas corpus* rights that were eliminated by the enactment of the Military Commissions Act (MCA) last year. It is an issue to which I have devoted much thought as both a professor of law at the University of Chicago and a Senior Fellow at the Hoover Institution. Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. That broad coalition understood that excessive uses of government power against any individual, either domestic or foreign, constitutes a threat to our democratic institutions that should be opposed by all persons regardless of their political persuasion. I shall not recount in this covering letter the arguments that stirred our coalition to action. But I have taken the liberty of enclosing the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement rightly notes that the writ of *habeas corpus* is of greatest importance in instances of executive detention without charge, as is now possible under the MCA.

Congress's unwise decision to block the use of *habeas corpus* should be of great concern to all Americans, no matter what their political philosophy. I urge you to support legislation that will restore the right to *habeas corpus* that was stripped away in the MCA.

Sincerely,

A handwritten signature in black ink that reads "Richard Epstein /TB". The signature is written in a cursive, flowing style.

Richard Epstein



## BOB BARR

*Member of Congress, 1995 - 2003*

May 2, 2007

Dear Members of Congress:

As a former Member of Congress (R-GA), I respectfully urge that you restore the fundamental *habeas corpus* rights eliminated by the enactment last year of the Military Commissions Act (MCA). Earlier this year, I was pleased to join with a broad, bipartisan group of over 45 legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement notes that *habeas corpus* rights are most critical in situations of executive detention without charge and that these rights represent the essence of the American legal system.

I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these *habeas corpus* rights.

With best wishes,

Bob Barr  
Member of Congress, 1995 - 2003





**INTERNATIONAL LAW INSTITUTE**

**Don Wallace, Jr.**  
Chairman, and Professor of Law,  
Georgetown University Law Center

May 1, 2007

Dear Members of Congress:

I am a professor at Georgetown University Law Center and serve as Chairman of the International Law Institute, and am writing to urge that you restore the *habeas corpus* rights eliminated by the enactment of the Military Commissions Act (MCA) last year. Earlier this year, I was pleased to join with a broad, bipartisan group of over forty-five legal and policy experts in a statement urging restoration of these rights. I have enclosed the statement, which was issued by members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances. The statement notes that *habeas corpus* rights are most critical in situations of executive detention without charge and that these rights represent the essence of the American legal system.

I believe that this issue should unite all Americans, no matter what their political philosophy, and I urge you to support legislation that will restore these *habeas corpus* rights.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Wallace, Jr.", written in dark ink.



STATEMENT ON RESTORING *HABEAS CORPUS*  
RIGHTS ELIMINATED BY THE MILITARY  
COMMISSIONS ACT

Statement of the Constitution Project's  
Liberty and Security Initiative &  
Coalition to Defend Checks and Balances

March 4, 2007

The Constitution Project  
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Third Floor  
Washington, DC 20005

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[info@constitutionproject.org](mailto:info@constitutionproject.org)  
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## STATEMENT ON RESTORING *HABEAS CORPUS* RIGHTS ELIMINATED BY THE MILITARY COMMISSIONS ACT\*

We, the undersigned members of the Constitution Project's Liberty and Security Committee and the Project's Coalition to Defend Checks and Balances, are deeply troubled by the recent legislation eliminating *habeas corpus* for certain non-citizens detained by the United States. We recommend that Congress vote to restore federal court jurisdiction to hear these *habeas corpus* petitions.

*Habeas corpus* has for centuries served as the preeminent safeguard of individual liberty and the separation of powers by providing meaningful judicial review of executive action. In 2004, the United States Supreme Court upheld the right of Guantanamo detainees to file *habeas corpus* petitions to challenge the lawfulness of their indefinite detentions.

Nevertheless, in October 2006, Congress enacted the Military Commissions Act ("MCA") eliminating *habeas corpus* for certain aliens held by the United States as "enemy combatants." While we recognize the need to detain foreign terrorists to protect national security, we do not believe repealing federal court jurisdiction over *habeas corpus* serves that goal. On the contrary, *habeas corpus* is crucial to ensure that the government's detention power is exercised wisely, lawfully, and consistently with American values.

The protections of *habeas corpus* have always been most critical in cases of executive detention without charge. In these circumstances, *habeas corpus* proceedings afford prisoners a meaningful opportunity to be heard before a neutral decisionmaker.

The unconventional nature of the current "war on terrorism" makes *habeas corpus* more, not less, important. Unlike in traditional conflicts, there is no clearly defined enemy, no identifiable battlefield, and no foreseeable end. The administration claims the power to imprison individuals without charge indefinitely, potentially forever. For that reason, it is essential that there be a meaningful process to prevent the United States from detaining people without legal

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\* The Constitution Project sincerely thanks Jonathan Hafetz, Litigation Director, Liberty & National Security Project, Brennan Center for Justice at NYU School of Law, for sharing his expertise on this subject and for his guidance in drafting this statement.

authority or mistakenly depriving innocent people of their liberty. *Habeas corpus* provides that process.

*Habeas corpus* is particularly important because of the way in which many detainees at Guantanamo came into U.S. custody. Most detainees were captured far from an active battlefield; many were sold for bounty by Afghani warlords to the Northern Alliance before being handed over to American forces. And, unlike in previous conflicts, the U.S. military did not provide a prompt hearing to determine a detainee's status, as the Geneva Conventions and U.S. army regulations require. As the Supreme Court has made clear, in the absence of such process *habeas corpus* is necessary to ensure that legal and factual errors are corrected and detention decisions are viewed as legitimate.

We recognize that the Military Commissions Act and the Detainee Treatment Act of 2005 provide detainees at Guantanamo with hearings before a Combatant Status Review Tribunal ("CSRT"), and that the CSRT decisions may be reviewed by the United States Court of Appeals for the D.C. Circuit. But we believe that this review scheme cannot replace *habeas corpus* for two principal reasons.

First, the CSRT process lacks the basic hallmarks of due process. Among other problems, it relies on secret evidence, denies detainees the chance to present evidence in their favor, and prohibits the assistance of counsel. In addition, the process permits the tribunal to rely on evidence obtained by coercion. Second, the D.C. Circuit's review is limited to what will inevitably be an inherently flawed record created by the CSRT. Unlike a U.S. district court judge hearing a *habeas corpus* petition, the D.C. Circuit cannot consider evidence or make its own findings of fact, and, therefore, it cannot rectify the CSRT's inherent procedural flaws.

The result does not provide these prisoners the process which they are due. The government has detained prisoners for more than five years without a meaningful opportunity to be heard, and has failed to create an adequate substitute for *habeas corpus*.

Restoring *habeas corpus* is also important to protecting Americans overseas. The United

States cannot expect other nations to afford our citizens the basic guarantees provided by *habeas corpus* unless we provide those guarantees to others.

If the United States is going to establish a system of indefinite detention without charge, it must at least ensure there is a meaningful process to determine it is holding the right people. When no such process has been provided, as in the case of Guantanamo detainees, *habeas corpus* supplies the critical fail-safe procedure to ensure that the executive has complied with the Constitution and laws of the United States. We also believe that in our constitutional system of checks and balances, it is unwise for the legislative branch to limit an established and traditional avenue of judicial review.

America's detention policy has undermined its reputation in the international community and weakened support for the fight against terrorism, particularly in the Arab world. Restoring *habeas corpus* would help repair the damage and demonstrate America's commitment to a tough, but rights-respecting counter-terrorism policy. Therefore, we urge Congress to restore the *habeas corpus* rights that were eliminated by the Military Commissions Act.

**Members of the Constitution Project's  
Liberty and Security Committee &  
Coalition to Defend Checks and Balances  
Endorsing the Statement on Restoring *Habeas Corpus* Rights  
Eliminated by the Military Commissions Act\***

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**Floyd Abrams**, Partner, Cahill Gordon & Reindel LLP

**Azizah al-Hibri**, Professor, The T.C. Williams School of Law, University of Richmond;  
President, Karamah: Muslim Women Lawyers for Human Rights

**Bob Barr**, Former Member of Congress (R-GA); CEO, Liberty Strategies, LLC; the 21st Century Liberties Chair for Freedom and Privacy at the American Conservative Union; Chairman of Patriots to Restore Checks and Balances; Practicing Attorney; Consultant on Privacy Matters for the ACLU

**David Birenbaum**, Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP; Senior Scholar, Woodrow Wilson International Center for Scholars; former US Ambassador to the UN for UN Management and Reform, 1994-96

**Christopher Bryant**, Professor of Law, University of Cincinnati; former Assistant to the Senate Legal Counsel, 1997-99

**David Cole**, Professor, Georgetown University Law Center

**Phillip J. Cooper**, Professor, Mark O. Hatfield School of Government, Portland State University

**John J. Curtin, Jr.**, Bingham McCutchen LLP; former President, American Bar Association

**John W. Dean**, Former Counsel to President Richard Nixon

**Mickey Edwards**, Lecturer at the Woodrow Wilson School of Public and International Affairs, Princeton University; former Member of Congress (R-OK) and Chairman of the House Republican Policy Committee

**Richard Epstein**, James Parker Hall Distinguished Service Professor of Law, The University of Chicago; Peter and Kirsten Bedford Senior Fellow, The Hoover Institution

**Bruce Fein**, Constitutional Lawyer and International Consultant at Bruce Fein & Associates and The Lichfield Group; former Associate Deputy Attorney General, Reagan Administration

**Eugene R. Fidell**, President, National Institute of Military Justice; Partner, Feldesman Tucker Leifer Fidell LLP

**Louis Fisher**, Specialist in Constitutional Law, Law Library, Library of Congress

**Melvin A. Goodman**, Senior Fellow, Director of the National Security Project, Center for International Policy

**Morton H. Halperin**, Director of U.S. Advocacy, Open Society Policy Center; Senior Vice President, Center for American Progress; Director of the Policy Planning Staff, Department of State, Clinton Administration

**Philip Heymann**, James Barr Ames Professor of Law, Harvard Law School; Deputy Attorney General, Clinton Administration

**Robert E. Hunter**, Former U.S. Ambassador to NATO, 1993-98

**David Kay**, Former Head of the Iraq Survey Group and Special Adviser on the Search for Iraqi Weapons of Mass Destruction to the Director of Central Intelligence

**David Keene**, Chairman, American Conservative Union

**Christopher S. Kelley**, Visiting Assistant Professor of Political Science, Miami University (OH)

**Harold Hongju Koh**, Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, 1998-2001

**David Lawrence, Jr.**, President, Early Childhood Initiative Foundation; former Publisher, *Miami Herald* and *Detroit Free Press*

**Thomas Mann**, Senior Fellow and W. Averell Harriman Chair, Governance Studies Program, the Brookings Institution

**Joseph Margulies**, Deputy Director, MacArthur Justice Center; Associate Clinical Professor, Northwestern University School of Law

**Alberto Mora**, Former General Counsel, Department of the Navy

**Norman Ornstein**, Resident Scholar, the American Enterprise Institute

**Thomas R. Pickering**, Former Undersecretary of State for Political Affairs 1997-2000; United States Ambassador and Representative to the United Nations, 1989-1992

**Jack Rakove**, W. R. Coe Professor of History and American Studies and Professor of Political Science, Stanford University

**Peter Raven-Hansen**, Professor, Glen Earl Weston Research Professor, George Washington Law School

**L. Michael Seidman**, Professor, Georgetown University Law Center

**William S. Sessions**, Former Director, Federal Bureau of Investigation; former Chief Judge, United States District Court for the Western District of Texas

**Jerome J. Shestack**, Partner, Wolf, Block, Schorr and Solis-Cohen LLP; former President, American Bar Association

**John Shore**, Founder and President, noborg LLC; former Senior Advisor for Science and Technology to Senator Patrick Leahy

**Neal Sonnett**, Chair, American Bar Association Task Force on Treatment of Enemy Combatants and Task Force on Domestic Surveillance in the Fight Against Terrorism

**Suzanne E. Spaulding**, Principal, Bingham Consulting Group; former Chief Counsel for Senate and House Intelligence Committees; former Executive Director of National Terrorism Commission; former Assistant General Counsel of CIA

**Geoffrey Stone**, Harry Kalven, Jr. Distinguished Service Professor of Law, the University of Chicago

**Jane Stromseth**, Professor, Georgetown University Law Center

**William H. Taft, IV**, Of Counsel, Fried, Frank, Harris, Shriver & Jacobson; former Legal



Advisor, Department of State, George W. Bush Administration; Deputy Secretary of Defense, Reagan Administration

**John Terzano**, Vice President, Veterans for America

**James A. Thurber**, Director and Distinguished Professor, Center for Congressional and Presidential Studies, American University

**Charles Tiefer**, General Counsel (Acting), 1993-94, Solicitor and Deputy General Counsel, 1984-95, U.S. House of Representatives

**Patricia Wald**, Former Chief Judge, U.S. Court of Appeals for D.C. Circuit

**Don Wallace, Jr.**, Professor, Georgetown University Law Center; Chairman, International Law Institute, Washington, DC

**John W. Whitehead**, President, the Rutherford Institute

**Lawrence B. Wilkerson, Col, USA (Ret)**, Visiting Pamela C. Harriman Professor of Government at the College of William and Mary; Professorial Lecturer in the University Honors Program at the George Washington University; former Chief of Staff to Secretary of State Colin Powell

**Roger Wilkins**, Clarence J. Robinson Professor of History and American Culture, George Mason University; former Director of U. S. Community Relations Service, Johnson Administration

*\*Affiliations Listed for Identification Purposes Only*