

April 23, 2007

The Honorable Carl Levin
United States Senate
269 Russell Senate Office Building
Washington, DC 20510

Dear Senator Levin:

We know that you have worked long and hard over the past five years to roll back detainee policies that cause damage to the United States' reputation around the world and that are inconsistent with American laws and values. We are especially grateful for your extraordinary leadership and hard work on the issue of detainee abuse.

The Department of Defense Authorization bill provides one of the best opportunities to continue these important efforts, and we understand that you are considering various proposals for that bill. While we greatly appreciate these efforts, we are concerned about one initiative currently under consideration that would reform the procedures and rules governing the Combatant Status Review Tribunals (CSRTs) – the military review boards designed in response to the Supreme Court's ruling in *Rasul* to confirm the Pentagon's determination that the detainees are "enemy combatants." While we understand why some Senators may be interested in improving what are deeply flawed review proceedings, we nonetheless believe that such an effort would be a grave mistake.

The problem with the CSRTs does not lie simply in the unfairness of their procedures. It lies in the extraordinary breadth of their jurisdiction, which the administration has extended far beyond traditional battlefield detainees. As you know, the majority of detainees subject to the CSRTs in Guantanamo were not captured by US forces on the battlefield but instead were handed to the United States by Pakistanis or rival clan members, often for large cash bounties. Some were arrested as far afield as Bosnia, Thailand, and Gambia. Few have been accused of bearing arms or engaging in specific hostile acts against the United States; most are alleged merely to have supported or somehow "associated" with individuals or groups deemed hostile to the United States or its allies.

In short, the CSRTs have become an alternative system of justice allowing the indefinite detention without charge of anyone the chief executive designates an "enemy combatant" – a phrase that has been defined so broadly by the administration that it could encompass anyone the president considers a threat to national security. Indeed, the administration has even held as "enemy combatants" a US citizen (Padilla) arrested at O'Hare Airport and a legal alien (al-Marri) arrested at his home in Peoria, Illinois. If Congress acts to "improve" this system, it will be saying – to the administration, to the courts, and to the world – that it approves of its use against a broad category of individuals who traditionally have been entitled to due process in civilian courts.

Legitimizing this alternative system would set an extraordinarily dangerous precedent. Under such a system (even one with some improvements, such as the availability of counsel) the

chief executive of Iran could, for example, convene a military panel and hold indefinitely and without charge a civilian employee of a US defense contractor on the grounds that the contractor “supported” the “enemy”; the chief executive of Russia could detain without charge an American aid worker because he worked with a Chechen charity deemed by Russia to be sympathetic to terrorism; the chief executive of China could seize and hold without trial an exiled dissident for “associating” with Tibetan or Uighur separatists who China considers to be hostile. For these reasons, we strongly believe that Congress should concentrate on narrowing the definition of “enemy combatant” and restoring habeas corpus rights to detainees so that they can contest the basis of their detention before an independent court.

In this respect, we are concerned that if Congress tinkers with the CSRT process in a way that gives it a greater veneer of due process respectability, it will be seen by some as an adequate substitute for habeas corpus, and the critical effort to restore habeas rights to detainees will flounder. Moreover, should Congress fail to restore habeas, the fact that both the executive and legislative branches have embraced this alternative system will make it harder to convince the Supreme Court to restore it. But as you well know, an internal review by a military tribunal operating under the chain of command of an executive who has already made the decision to arrest, label, and detain cannot serve as an adequate substitute for independent court review.

Finally, the divergence between an adequate independent court review and the current CSRT process is so great that it is hard to see how even significant improvements could remedy what is a fatally flawed system. Detainees are asked to rebut evidence that they have never seen; are denied access to counsel; and all of the government’s evidence is presumed to be “genuine and accurate,” even if obtained through torture. In the hundreds of CSRTs that have taken place for Guantanamo Bay detainees, the government relied entirely on hearsay allegations without providing the detainees with any information about the source of that information; and, in nearly every case, the tribunal said that the dispositive evidence was precisely what the prisoner could not see.

Even if these problems were fixed, the CSRTs – particularly with respect to the Guantanamo Bay detainees – would remain utterly deficient. Not only are they adjudicating detainee status years after initial capture and detention when witnesses and evidence are no longer readily available, but they are operating under the chain of command of a president who made the decision to detain them first place, who *already* labeled them “enemy combatants,” and who repeatedly described them as the worst of the worst. Such a system hardly provides the checks and balances needed to protect against erroneous executive detention and to restore the nation’s standing as a leading proponent of the rule of law.

For these reasons, we would strongly oppose any effort to reform the CSRT process.

At the same time, we welcome the opportunity to work with you to advance the goals that we all share. We share your concern about rules that allow for the use of coerced evidence in the military commissions and would welcome the opportunity to work with you on language to fix this problem, which is a high priority for all of us. We also want to work with you to support habeas restoration – relying on whatever legislative vehicle proves appropriate.

We hope to meet with you to discuss these concerns in more detail and to hear your perspective as well.

Thank you again for your tireless work on these issues,

Alliance for Justice

Amnesty International

American Civil Liberties Union

Center for Constitutional Rights

The Constitution Project

Friends Committee on National Legislation

Human Rights Watch

National Institute of Military Justice

Open Society Policy Center

Physicians for Human Rights