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Safeguarding Liberty, Justice & the Rule of Law

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TCP Applauds Bipartisan Amendment to NDAA Strengthening Torture Ban

Implements key recommendations from TCP Task Force

WASHINGTON, D.C. -- Ambassador James Jones, co-chair of The Constitution Project Task Force on Detainee Treatment, issued the following statement in response to a proposed amendment to the FY 2016 National Defense Authorization Act strengthening the ban on torture, introduced by Senator John McCain (R-Ariz.) and co-sponsored by Senators Dianne Feinstein (D-Calif.), Susan Collins (R-Maine) and Jack Reed (D-R.I.):

"We applaud Senators McCain and Feinstein for their tireless, bipartisan efforts to make sure that government-sanctioned torture and cruel treatment are relics of the past. This legislation is a critical step towards that end not only for the additional legal protections it would provide, but also for the message it would send about Congress' commitment to our country never again repeating the interrogation-related abuses of the post 9/11 era. We urge senators to support it."

In 2005, the Senate voted overwhelmingly to pass the Detainee Treatment Act, which requires that all interrogations conducted by Defense Department personnel, or in a Defense Department facility, adhere to the Army Field Manual on Interrogation and the specific interrogation techniques it sets out. The McCain amendment takes the next critical step by applying that legal requirement across the board to all U.S. government interrogations outside a law enforcement context.

The amendment also mandates a review of the interrogation manual to make certain that it complies with all U.S. legal obligations and "reflects current, evidenced-based, best practices for interrogation that are designed to elicit reliable and voluntary statements and do not involve the use or threat of force." Both the manual and any revisions to it must be public. These mechanisms are designed to ensure that the manual includes only lawful, humane, and effective interrogation techniques.

Finally, the amendment mandates that the International Committee of the Red Cross be notified of,

and be given prompt access to, all detainees in U.S. custody or control no matter where they are being held.

A strong bipartisan majority of Americans supports legislation like the amendment proposed by Senator McCain, which would reinforce the prohibition on torture. In January 2015, The Constitution Project [released a poll](#) on Americans' attitudes towards torture. The poll found widespread approval across the political spectrum for strengthening U.S. laws against torture, specifically by making it clearer to the CIA and to the military what behavior is legal, and what is illegal, when they are interrogating people who may have information about terrorists. More than two-thirds of respondents said they would approve of such a proposal, with 75% of Democrats, 69% of independents and 56% of Republicans backing the idea. Even stronger bipartisan majorities of Americans think that torturing people is immoral, and that torture should not be used if the government might have other ways to obtain information about terrorists.

In April 2013, The Constitution Project [Task Force on Detainee Treatment](#) -- a bipartisan, blue ribbon panel -- issued a [comprehensive report](#) following two years of investigation into the treatment of suspected terrorists across the Clinton, Bush, and Obama administrations. Members of the task force made a series of recommendations aimed at safeguarding against a return to government-sanctioned torture and abuse in the face of a future crisis. The McCain amendment furthers several of those recommendations, including:

- that U.S. intelligence professionals and service members in harm's way need clear orders on the treatment of detainees, requiring, at a minimum, compliance with Common Article 3 of the Geneva Conventions;
- that the U.S. must take additional steps to codify the requirement that the ICRC be notified of, and given access to, individuals detained pursuant to an armed conflict; and
- that the Army Field Manual on Interrogation be amended so as to eliminate its Appendix M, which could permit the use of abusive interrogation tactics, and to restore language prohibiting the use of stress positions and abnormal sleep manipulation that was removed in 2006.

There are additional steps that both Congress and the executive branch can and should be taking to bolster safeguards against torture and cruel treatment, many of which are [set out](#) in TCP's Detainee Task Force report. The McCain amendment is, however, a much welcome and very important start.

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Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.

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