



June 9, 2015

Dear Senator:

We write in support of the Anti-Torture Amendment to the FY 2016 National Defense Authorization Act, introduced by Senator John McCain, and co-sponsored by Senators Dianne Feinstein, Susan Collins, and Jack Reed. We are co-chairs of the Liberty and Security Committee of the Constitution Project, a bipartisan committee formed after the terrorist attacks of September 11, 2001, to encourage counterterrorism policies that carefully balance our security needs and fundamental liberties. One of us is a Republican. One of us is a Democrat. We disagree about many things, but we agree wholeheartedly about the subject of this letter: the need for Congressional action to reinforce the absolute legal prohibition on torture and cruel treatment of detainees in an armed conflict. The Anti-Torture Amendment would ensure that the United States is crystal-clear about its commitment to the principle that all detainees be treated with dignity, regardless of their nationality or where they are held.

The United States already has laws prohibiting torture and cruel, inhuman, and degrading treatment. Indeed, the United States played a leading role in drafting, and has signed and ratified, both the Geneva Conventions and the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment. These treaties, ratified and made part of U.S. law, make clear that all detainees in an armed conflict must be treated humanely, and that the United States must not inflict cruel, inhuman, or degrading treatment, much less torture, on anyone. However, as has now been well documented by official government records, in the wake of the attacks of September 11, the government authorized a range of coercive and illegal interrogation tactics, including extended sleep deprivation, painful stress positions, slamming suspects into walls, and waterboarding. Lawyers in the Justice Department wrote secret memos, as late as 2007, opining that such tactics were consistent with the prohibitions on torture and cruel treatment contained in federal law, the laws of war, and the Convention Against Torture.

These memos and practices have been rescinded and rejected, and all such tactics have been banned for the last six years by E.O. 13491. But to ensure that we do not repeat the mistakes of the past, it is essential that Congress enact the Anti-Torture Amendment, which would limit the interrogation of all detainees in armed conflict to the techniques expressly approved in the Army Field Manual, and would require regular and public review of the Army Field Manual to ensure that it remains up to date, and a clear and unambiguous guide to interrogators.

The lessons learned from the abuses that have been revealed at Abu Ghraib, Guantanamo, and in CIA secret prisons, is that once the clear line against coercive or inhumane treatment is muddied, interrogators are all too likely, under the stresses of an armed conflict, to overreach, and to inflict inhumane and cruel treatment on those they detain. Experienced interrogators maintain that they do not need coercive tactics to obtain truthful information. More importantly, the laws of war and the Geneva Convention flatly forbid such tactics. As John McCain has said, this is about who we are as a nation. We can and must live up to our commitments to treat all others humanely, even or especially when we are responding to real threats and national security crises. By clearly limiting interrogation to the techniques set forth in the Army Field Manual—namely, those that the military has decided are appropriate for all of its interrogations—we can close the loopholes that were created and exploited to permit cruel, inhuman, degrading, and torture tactics in the past.

We urge you to support enactment of the Anti-Torture Amendment.

Thank you for your consideration.

Sincerely,



David Cole, Hon. George J. Mitchell Professor in Law and Public Policy at Georgetown University Law Center; co-chair of The Constitution Project Liberty and Security Committee



David Keene, Opinion Editor, The Washington Times; Former Chairman, American Conservative Union; co-chair of The Constitution Project Liberty and Security Committee