

TEN STEPS TO RESTORE THE UNITED STATES' MORAL AUTHORITY

A Common Sense Agenda for the 110th Congress

(1) Restore Habeas Corpus

Perhaps the most important protection against the arbitrary exercise of executive power, the writ of habeas corpus ensures that all persons can challenge the legality of their detention before an independent court. The Military Commissions Act of 2006, as interpreted by the current administration, would deprive any non-citizen labeled “enemy combatant” of this centuries-old right. A vote to protect the habeas rights of detainees in US military custody lost in the Senate by just three votes in September. Restoring habeas corpus to ensure judicial review of detentions and provide an important independent check on executive power should be a first order of business for the new Congress.

(2) Stop Renditions to Torture

The United States made great strides when, in 2005, it enacted the McCain Amendment prohibiting the use of torture or cruel, inhuman, and degrading treatment by any US official acting anywhere in the world. Now the United States needs to get out of the business of outsourcing torture and ill- treatment to other countries. Congress should pass legislation to protect detainees in US custody from being transferred to abuse.

(3) Abolish Secret Prisons

Although the US has long criticized other nations for engaging in forced disappearances – imprisoning people in secret – the Bush administration continues to assert the right to do so. While the administration claims to have emptied its secret CIA prisons for the time being, it has not ruled out their future use nor accounted for all the prisoners who are believed to have been secretly detained. Congress should pass legislation to ensure that the secret detention centers are shut down permanently and that no one in US custody is forcibly disappeared or otherwise held incommunicado. Congress should also demand an accounting of the whereabouts of all those formerly held in secret locations.

(4) Hold Abusers Accountable

Although more than six hundred US military and civilian personnel have been implicated in hundreds of known instances of detainee abuse, including 25 cases where the detainee ultimately died, very few have been prosecuted. Only eleven service members have been sentenced for more than a year – all low-ranking; no one has been convicted on the basis of

command responsibility; and only one civilian – a contractor to the CIA – has been prosecuted. Congress should demand that the Pentagon and Department of Justice vigorously prosecute those responsible for engaging in, authorizing or condoning detainee mistreatment, including those up the chain of command. This would deter future abuse and demonstrate to the world the US's condemnation of such ill-treatment.

(5) *Hold Fair Trials*

In October, the Congress authorized the use of military commissions to try non-citizen detainees in US military custody. The rules for these commissions raise serious concerns about the integrity and fairness of such trials. Of particular concern, the rules allow the use of coerced evidence and evidence obtained through cruel, inhuman, and degrading treatment if obtained before January 2006 and found “reliable” by a military judge, and also allow the government to withhold from defense lawyers information about how the evidence was obtained. As a result of these provisions, defendants could be convicted based on the wide array of so-called “enhanced” interrogation techniques allegedly employed by the CIA – techniques including extended exposure to extreme cold, prolonged sleep deprivation, and “waterboarding” (mock drowning). Congress should amend these rules to ensure that detainees are not convicted – and possibly executed – based on evidence obtained through torture or other abusive treatment, are provided a fair opportunity to confront their accusers and are given a meaningful chance to gather and present evidence and witnesses.

(6) *Prohibit Abusive Interrogations*

In the Military Commissions Act, Congress amended the War Crimes Act of 1996, specifying a list of eight “grave breaches” of the humane treatment requirements of the Geneva Conventions that constitute war crimes. Two of the primary authors of the Military Commissions Act, Senators John Warner and John McCain, have publicly stated that they intended to criminalize the abusive interrogation techniques allegedly used by the CIA in the past. But the administration continues to imply that it could continue the CIA secret detention program – and presumably the abusive interrogations that go with it. Congress should clarify that the full range of abusive interrogation techniques that have been prohibited for use by the military's new field manual on interrogations are similar prohibited – and criminalized – if used by the CIA.

(7) *Close Guantánamo Bay*

The US continues to hold close to 400 detainees in Guantánamo Bay, many of whom have been held for five years without charge and without

access to court to challenge the legality of their detention. Those detainees who have engaged in terrorism-related crimes should be charged and held accountable; those who are not charged with criminal acts should be released. The administration should work with its allies to develop appropriate procedures in accordance with U.S. and international human rights and humanitarian obligations to ensure that detainees are not returned to countries where they face torture or abuse. Congress should hold oversight hearings about the future of Guantanamo, and push the administration to put forth a plan for its closure.

(8) *Respect the Laws of War*

The US's unilateral reinterpretation of the Geneva Conventions to support its questionable detention policies undermines respect for the rule of law around the world and puts US service members and civilians at risk if US's policies and practices are adopted by others. Of particular concern, the US Congress in October enacted (in the Military Commissions Act) an overbroad definition of "unlawful enemy combatant" that turns a civilian munitions worker, a mother who provides food to her combatant son, and a US resident accused of giving money to a banned group into "combatants" who can be detained without charge in military custody or tried by a military court. The new Congress should strike this definition of "unlawful enemy combatant" and reaffirm the US's longstanding commitment to the civilian – rather than military – courts to prosecute civilians who violate the law.

(9) *Protect Victims of Persecution From Being Defined As Terrorists*

The United States will never be able to effectively fight terrorism if it cannot distinguish between terrorists and victims. Yet, overbroad terrorism-related bars in US immigration law are now being used to define innocent victims as terrorists – and denying them entry to the United States. Hmong and Montagnards are being labeled as terrorists solely because they took up arms alongside the United States during the Vietnam War. Rape victims who were forced into sexual slavery by West African rebel groups are being labeled "material supporters" of terrorism because they performed household chores while enslaved. Congress should adopt a reasonable definition of terrorism that does not equate victims with terrorists and define any armed group as terrorist, even if it does not target civilians.

(10) *End Indefinite Detention Without Charge*

Ever since 9/11, the Bush administration has relied on a variety of means to detain individuals indefinitely and without charge. The material witness

warrant law – a law that allows the government to temporarily detain key witnesses who pose credible flight risks – has been misused to detain dozens of terrorism-related suspects, some of whom were held for months without charge. Now, the administration is improperly invoking the “enemy combatant” label to justify the indefinite detention without charge of Ali Saleh Kahlah al-Marri, a lawful US resident who since the eve of his trial for credit card fraud in 2003 has been held in a military brig in South Carolina. Congress should use its oversight authority and pass legislation that will prevent the administration from evading basic due process protections, and, in so doing, undermine respect for fundamental human rights and the rule of law.

Alliance for Justice

American Civil Liberties Union

Amnesty International

Center for American Progress Action Fund

Center for Constitutional Rights

Center for Financial Privacy and Human Rights

Concerned Foreign Service Officers

Friends Committee on National Legislation

Holy Name Province Franciscan, Office for Justice, Peace & Integrity of Creation

Human Rights First

Human Rights Watch

Japanese American Citizens League

Liberty Coalition

Maryknoll Office for Global Concerns

National Religious Campaign Against Torture

Open Society Policy Center

Physicians for Human Rights

Presbyterian Church, (USA), Washington Office

Rutherford Institute

Unitarian Universalist Service Committee

United Church of Christ, Justice and Witness Ministries

United Methodist Church, General Board of Church and Society