

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
June 7, 2007

STATEMENT OF SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE
ON S. 185, THE HABEAS CORPUS RESTORATION ACT OF 2007
EXECUTIVE BUSINESS MEETING
JUNE 7, 2007

Today, the Judiciary Committee turns its attention to a top legislative priority: restoring the Great Writ of habeas corpus, and the accountability and balance it allows.

Earlier this week, two military judges threw out charges against Guantanamo detainees because the system set up in last year's Military Commissions Act was, once again, deemed inadequate. Time and again, the Administration has set up legally suspect systems for addressing detainees, and time and again, these cramped systems have been found to be flawed.

Every time they are called upon to create a workable and fair system, the Administration responds by seeking to remove judicial review and discretion and narrow the procedures even further. I hope this time the Administration will work with us to create a better system. The place to start is by restoring that hallmark of justice, the Great Writ of habeas corpus, so that there will be a check by an independent court to guarantee that basic safeguards and the rule of law are followed.

Last month's hearing on this important issue illustrated the broad agreement among people of diverse political beliefs and backgrounds that the mistake committed in the Military Commissions Act of 2006 must be corrected. I thank Senator Specter again for his constant commitment to this issue. Senator Specter and I together introduced the Habeas Corpus Restoration Act of 2007 on the first day of this Congress. This bipartisan bill has 16 co-sponsors, and I hope this Committee will pass it expeditiously.

Habeas corpus was recklessly undermined in last year's legislation. I hope that the new Senate will reconsider this historic error in judgment and set the matter right. Like the internment of Japanese Americans during World War II, the elimination of habeas rights was an action driven by fear and another stain on America's reputation in the world.

This Great Writ is the legal process that guarantees an opportunity to go to court and challenge the abuse of power by the Government. The Military Commissions Act rolled back these protections by eliminating that right, permanently, for any non-citizen labeled an enemy

combatant. In fact, a detainee does not have to be found to be an enemy combatant; it is enough for the Government to say someone is "awaiting" determination of that status.

The sweep of this habeas provision goes far beyond the few hundred detainees currently held at Guantanamo Bay, and includes an estimated 12 million lawful permanent residents in the United States today. These are people who work and pay taxes, people who abide by our laws and should be entitled to fair treatment. Under this law, any of these people can be detained, forever, without any ability to challenge their detention in court. At last month's hearing, Stanford Professor Mariano-Florentino Cuellar called this an issue about which the Latino community, which encompasses so many of the nation's legal permanent residents, must be concerned.

Since last fall, I have been talking about a nightmare scenario surrounding a hard-working legal permanent resident in the United States picked up on at best a tenuous factual basis, who can now be held with no ability to go to court to plead his or her innocence - for years, for decades, forever.

Last November, just after enactment of these provisions, the Department of Justice confirmed this sad scenario in a legal brief submitted in federal court in Virginia. They asserted that the Military Commissions Act allows the Government to detain any non-citizen designated as an enemy combatant, even someone arrested and held in the United States, without giving that person any ability to challenge his detention in court.

This is wrong. It is unconstitutional. It is un-American. We all want to make America safe from terrorism. But I implore those who supported this change to think about whether eliminating habeas truly makes America safer in the world, and whether it comports with the values, liberties, and legal traditions we hold most dear.

Top conservative thinkers like Kenneth Starr, Professor Richard Epstein, and David Keene, head of the American Conservative Union, agree that this change betrays centuries of legal tradition and practice. Professor David Gushee, head of Evangelicals for Human Rights, submitted a declaration calling the elimination of habeas rights and related changes "deeply lamentable" and "fraught with danger to basic human rights."

Perhaps most powerful for me at last month's hearing was the testimony of Rear Admiral Donald Guter, who was working in his office in the Pentagon as Judge Advocate General of the Navy on September 11, 2001, and saw up close the effects of terrorism. His credibility is unimpeachable when he says that denying habeas rights to detainees endangers our troops and undermines our military efforts.

In his written testimony to this Committee, Admiral Guter wrote, "As we limit the rights of human beings, even those of the enemy, we become more like the enemy. That makes us weaker and imperils our valiant troops, serving not just in Iraq and Afghanistan, but around the globe." The elimination of basic legal rights undermines, not strengthens, our ability to achieve justice. It is from strength that America should defend our values and our way of life. It is from the strength of our freedoms, our Constitution, and the rule of law that we can prevail.

Just yesterday in answers former Deputy Attorney General James Comey provided to our questions, we saw more disturbing examples of this Administration twisting the law to sustain its unilateral agenda of expanding Government power at the expense of the rule of law. In this case, it was the Vice President secretly insisting on warrantless wiretapping of Americans years after 9/11. What gives America its special standing in the world has been its dedication to the rule of law. Let us stop sacrificing our values to expediency. I hope all members of this Committee will join me in supporting the Habeas Corpus Restoration Act today.

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
On the Authorization for Subpoenas for Bradley Schlozman
June 7, 2007

On the Committee's agenda today is an authorization for subpoenas for Bradley J. Schlozman in connection with our investigation into the mass firings of U.S. Attorneys around the country and the unprecedented politicization of the Department of Justice. I seek this authority in light of Mr. Schlozman's equivocation at our hearing earlier this week about whether he would make available to the Committee these materials we need for our investigation.

During Mr. Schlozman's appearance before our Committee on Tuesday, he testified about his preparation for the hearing, the unprecedented U.S. attorney replacements, the use of partisan considerations in career hiring, and his role as the interim U.S. Attorney and while at the Civil Rights Divisions in pressing certain cases in connection with recent elections. His answers to questions made clear the importance of certain emails and other documents the Committee has not received from the Department of Justice. I told Mr. Schlozman that he could give us these documents voluntarily or we could subpoena him. The choice is his and the Departments, but we must have the ability to ensure that we have access to the information we need to get to the truth about the unprecedented erosion of independence at the Justice Department.

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