

Statement of

The Honorable Russ Feingold

United States Senator

Wisconsin

July 16, 2008

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Senate Judiciary Committee Hearing on

"How the Administration's Failed Detainee Policies Have Hurt the Fight Against Terrorism: Putting the Fight Against Terrorism on Sound Legal Foundations"

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Since 9/11, America has faced a great challenge: responding aggressively to those infamous acts of terrorism, and to the very real threat posed by al Qaeda, without abandoning our freedoms and democratic values. Unfortunately, this administration has not successfully met that challenge, and its detention and interrogation policies are a major reason for that failure.

The administration has claimed the right to pick up anyone, anywhere in the world and, by simply labeling him an "enemy combatant," lock him up for the rest of his life. Not only that, it has claimed the right to use abusive interrogation techniques on the people it detains - techniques that the U.S. government has condemned other countries for employing. Such violations of the rule of law can only diminish our credibility abroad and encourage the recruitment efforts of our enemies. In other words, these policies not only undermine the principles on which this country was founded, they are harmful to our national security.

But at last, there may be some light at the end of the tunnel. Our legal system has long relied on review by an independent and neutral decision-maker as a critical safeguard against wrongful detention. In particular, the writ of habeas corpus provides one of the most significant protections of human freedom against arbitrary government action ever created. The Supreme Court last month reiterated exactly that in its decision in *Boumediene versus Bush*.

The Court struck down the provisions in the Military Commissions Act that tried to strip detainees of the long-standing right to challenge their detention via habeas corpus, and reaffirmed that the government

does not have the power to detain people indefinitely and arbitrarily without adequate judicial review. As Justice Kennedy said in his majority opinion, "The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law."

I could not agree more. There were undoubtedly difficult legal issues raised in the case, but the decision is fundamentally sound. I am dismayed by those who attacked the decision. Americans should all be grateful that the Supreme Court has again rejected the extreme arguments put forth by this administration. The decision represents the best of our nation's legal system, and we should celebrate the Court's courage and independence in making it.

I am pleased that the committee is considering today how best to move past the destructive and counter-productive detention and interrogation policies of this administration. We can - and must - combat al Qaeda aggressively while maintaining our principles and our values.