

March 16, 2022

The Honorable Dick Durbin
Chair, Senate Judiciary Committee
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Senate Judiciary Committee
Washington, DC 20510

Dear Senators Durbin and Grassley:

We write to respond to concerns raised about Judge Jackson's representation of several Guantanamo detainees in the period 2005-2009. As lawyers who have shared the responsibility for protecting and defending the Nation, we have no such concerns.

In *Rasul v. Bush*, 542 U.S. 466 (2004), the Supreme Court held that Guantanamo detainees had a legal right to bring habeas corpus actions in federal court challenging their capture and detention. In the finest tradition of the American legal profession – going back to John Adams' defense of soldiers accused of the Boston Massacre, and his son John Quincy Adams' defense of African slaves accused of the seizure of the *Amistad* -- hundreds of the best and brightest lawyers and law firms in the country then stepped forward to provide legal representation for Guantanamo detainees. Ketanji Brown Jackson was one of those lawyers.

In each case in which Judge Jackson represented a Guantanamo detainee, she was part of a team at either the Federal Defender's Office in Washington, DC or at the large corporate law firm she joined subsequent to that. In each case it appears that Judge Jackson and her colleagues provided a very capable defense, putting forth arguments well within the state of the law at the time. Indeed, one of her legal arguments against the system of military commissions at Guantanamo was eventually adopted by the Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

The debate now about Judge Jackson's representation of Guantanamo detainees is reminiscent of the criticism in 2009 of those who had represented Guantanamo detainees and then went on to join the Department of Justice as part of the Obama Administration. Notably, a number of Republican lawyers – ranging from Michael Mukasey, Ted Olson, Viet Dinh to Lindsey Graham – publicly defended them. At the time, Senator Graham said it best:

I've been a military lawyer for almost 30 years. I represented people as a defense attorney in the military that were charged with some pretty horrific acts, and I gave them my all ... This system of justice that we're

so proud of in America requires the unpopular to have an advocate and every time a defense lawyer fights to make the government do their job, that defense lawyer has made us all safer.”

We agree with Senator Graham’s statement in 2009. From our perspective as lawyers in national security, the representation of Guantanamo detainees by high caliber lawyers such as Judge Jackson provided strength and credibility to the system. For its integrity, both internally and abroad, the American system of justice depends upon strong advocacy on both sides of the courtroom. Capable advocates willing to defend the most reviled in society, without endorsing the crime, is a pillar of our system that distinguishes us from other notions of justice around the world.

There is strength in diversity. Judge Jackson’s experience as a practicing attorney will add that strength to the Supreme Court. If confirmed, not only will Judge Jackson be the first black woman on the Court; she will be the only member of that nine-person Court to have been a Public Defender of the indigent and unpopular, upholding the Sixth Amendment right to counsel for those accused of crimes by the State.

We enthusiastically support her confirmation.

Respectfully,

Jeh Charles Johnson
Secretary of Homeland Security (2013-2017)
General Counsel, Department of Defense (2009-2012)

Loretta E. Lynch
U.S. Attorney General (2015-2017)

J.W. Crawford III
Vice Admiral, JAGC, USN (Ret)
Judge Advocate General of the Navy (2015-2018)

Rajesh De
General Counsel, National Security Agency (2012-2015)

Mary B. DeRosa
Deputy Counsel to the President and National Security
Council Legal Adviser (2009-2011)

Brian J. Egan
Deputy Counsel to the President and National Security
Council Legal Adviser (2013-2016)
Legal Adviser to the Department of State (2016-2017)

Robin E. Jacobsohn
Deputy General Counsel, Department of Defense (2009-2012)

Bruce MacDonald
Vice Admiral, JAGC, USN (Ret)
Judge Advocate General of the Navy (2006-2009)
Convening Authority, Office of Military Commissions (2010-2013)

Stephen W. Preston
General Counsel, Department of Defense (2013-2015)
General Counsel, Central Intelligence Agency (2009-2013)