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# ARNOLD & PORTER LLP

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September 25, 2006

To United States Senators and Members of Congress

Dear Madams/Sirs:

This letter is written in the name of the former members of the diplomatic service of the United States listed below.

We urge that the Congress, as it considers the pending detainee legislation, not eliminate the jurisdiction of the courts to entertain habeas corpus petitions filed on behalf of those detainees.

There is no more central principle of democracy than that an officer of the executive branch of government may restrain no one except at sufferance of the judiciary. The one branch is vital to insure the legitimacy of the actions of the other. Habeas corpus is the "Great Writ." It is by habeas corpus that a person – any person – can insure that the legality of his or her restraint is confirmed by a court independent of the branch responsible for the restraint. Elimination of judicial review by this route would undermine the foundations of our democratic system.

We are told that the central purpose of our engagement in that "vast external realm" today is the promotion of democracy for others. All nations, we urge, should embrace the principles and practices of freedom and governance that we have embraced. But to eliminate habeas corpus in the United States as an avenue of relief for the citizens of other countries who have fallen into our hands cannot but make a mockery of this pretension in the eyes of the rest of the world. The perception of hypocrisy on our part – a sense that we demand of others a behavioral ethic we ourselves may advocate but fail to observe – is an acid which can overwhelm our diplomacy, no matter how well intended and generous. Pretensions are one thing; behavior another, and quite the more powerful message. To proclaim democratic government to the rest of the world as the supreme form of government at the very moment we eliminate the most important avenue of relief from arbitrary governmental detention will not serve our interests in the larger world.

This is the first and primary reason for rejecting the proposal. But the second is almost as important, and that is its potential for a reciprocal effect. Pragmatic considerations, in short, are in this instance at one with considerations of principle. Judicial relief from arbitrary detention should be preserved here else our personnel serving abroad will suffer the consequences. To deny habeas corpus to our detainees can be seen as prescription for how the captured members of our own military, diplomatic and NGO personnel stationed abroad may be treated.

As former officials in the diplomatic service of our nation, this consideration weighs particularly heavily for us. The United States now has a vast army of young Foreign Service officers abroad. Many are in acute and immediate danger. Over a hundred, for example, are serving in Afghanistan. Foreign service in a high-risk post is voluntary. These officers are there willingly. The Congress has every duty to insure their protection, and to avoid anything which will be taken as justification, even by the most disturbed minds, that arbitrary arrest is the acceptable norm of the day in the relations between nations, and that judicial inquiry is an antique, trivial and dispensable luxury.

We urge that the proposal to curtail the reach of the Great Writ be rejected.

Respectfully submitted,

William D. Rogers, former Under Secretary  
of State

Ambassador J. Brian Atwood  
Ambassador Harry Barnes  
Ambassador Richard E. Benedick  
Ambassador A Peter Burleigh  
Ambassador Herman J. Cohen  
Ambassador Edwin G. Corr  
Ambassador John Gunther Dean  
Ambassador Theodore L. Eliot, Jr.  
Ambassador Chas W. Freeman, Jr.  
Ambassador Robert S. Gelbard  
Ambassador Lincoln Gordon  
Ambassador William C. Harrop  
Ambassador Ulric Haynes, Jr.  
Ambassador Robert E. Hunter  
Ambassador L. Craig Johnstone  
Ambassador Robert V. Keeley  
Ambassador Bruce P. Laingen  
Anthony Lake, former National Security  
Advisor

Ambassador Princeton N. Lyman  
Ambassador Donald McHenry  
Ambassador George Moore  
Ambassador George Moose  
Ambassador Thomas M. T. Niles  
Ambassador Robert Oakley  
Ambassador Robert H. Pelletreau  
Ambassador Pete Peterson  
Ambassador Thomas R. Pickering  
Ambassador Anthony Quainton  
Helmut Sonnenfeldt, former Counselor of  
the Department of State  
Ambassador Roscoe S. Suddarth  
Ambassador Phillips Talbot  
Ambassador William Vanden Heuvel  
Ambassador Alexander F. Watson