

Restore Justice and the Rule of Law



Last fall, when Congress passed the Military Commissions Act, it included a section that prohibited any non-citizen in U.S. custody that the President designated an "enemy combatant" from going to court and exercising the most **basic human right** – the right to go before a court and ask the government to show that they have a basis for their detention.

This prohibition on filing a writ of habeas corpus has meant that people who have been in U.S. custody for more than five years continue to be held with no meaningful judicial review

With your help we will help to restore justice and the rule of law.



Habeas Delegation Resource Package
Amnesty International USA
June 2007

Did you know that in August 2002, the CIA affirmed in a confidential report that most Guantanamo detainees “didn’t belong there” (Jane Mayer, The New Yorker, July 3, 2006). The former deputy director of Guantanamo was quoted as saying “Most of these guys weren’t fighting. They were running” (Washington Post, October 6, 2004). Restoring habeas corpus is not about extending special rights to individuals in Guantanamo, it’s about establishing that the government has a reason to hold someone, and it is about preventing arbitrary executive detention.

The prohibition on filing a writ of habeas corpus has meant that people who have been in U.S. custody for more than five years continue to be held with no meaningful judicial review. However, you are in a position to help.

In this package, you’ll find materials to help you meet with your Representative and Senators during the week of June 25 - 29 to enlist their help in restoring habeas corpus, reversing the problematic Military Commissions Act of 2006 and seeing that detainees in Guantanamo are charged and tried or released.

In this package you will find:

Part I: Timeline

A timeline for meeting with your Representative and Senators

Part II: Background Information

Part III: Preparing for a Congressional Office Visit

Part IV: Materials to leave with your Congressional Office

Finally, thank you. It takes time and dedication to stand up for human rights and the rule of law. Your efforts are making a difference.

With warm regards,



Chris McGraw
Government Relations
Amnesty International USA

CHECK FOR UPDATES!

VERSION 1.0

Since the situation is often changing we’ll be updating this material package if the need arises. Check the Amnesty International USA website at <http://restorehabeas.amnestyusa.org/training> for updated versions.

In particular check to see if there is an updated version on June 24--the day before your lobby meetings. You’ll find the version number and updated date in the lower left- hand corner.

Part I: Timeline

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| June 11 - 18 | <p>Build your delegation</p> <p>Your delegation should consist of 3 – 5 members who live in the district you are representing (but it is also fine if you conduct the meeting with just yourself!). Contact your prospective delegation members, coordinate a time/place during the week of June 18 for the delegation's advance practice meeting, and collect any missing contact information. Send an email to the whole group confirming they are part of the delegation, the date of the advance meeting, and be sure to include the website address for your delegation leader website.</p> |
| June 11 - 15 | <p>Call or fax your district office (or the legislator's Washington DC office) to ask to schedule a meeting.</p> <p>Let the office know how many people will be attending the meeting and that you want to ask your Representative or Senator to cosponsor legislation to support justice and the rule of law. Remember to post the time on your delegation leader website, and let your delegation members know. Fax a copy of Amnesty International's Issue Briefs</p> |
| June 11 - 15 | <p>Lay the groundwork for your meeting!</p> <p>Encourage friends in your area to send email appeals through Amnesty International USA's online action center. http://takeaction.amnestyusa.org Never lobbied before? Watch our Raise the Roof! Video for tips: http://video.google.com/videoplay?docid=-1743414647410019685&pl=true</p> |
| June 13 | <p>Participate in the Online Training</p> <p>All you have to do is log on! http://restorehabeas.amnestyusa.org/training</p> |
| June 13 (8:30 pm Eastern) | <p>Delegation Leader Conference call</p> <p>Participate in Amnesty International USA's Conference Call for Delegation Leaders on June 13 at 8:30pm Eastern. Before the call, delegation leaders will receive the call in number via email. (This call is for delegation leaders only.)</p> |
| June 18 - 22 | <p>Finalize your advance practice meeting time and place with delegation members.</p> <p>Finalize your practice meeting time and place for your delegation. And remind your delegation members to attend the practice meeting.</p> |
| June 18 - 22 | <p>Meet to practice with members your delegation.</p> <p>During the meeting, assign roles to delegates. Make sure someone is taking notes! Debrief your practice. What went well? What might you improve?</p> |
| June 24 | <p>Download updated materials/And check to see if your legislator has taken supportive action</p> <p>Check the Amnesty International website to download materials to leave with your congressional office. And, check to see if your legislator has taken supportive action. You can find a list of cosponsors (supporters) of legislation at http://Thomas.loc.gov If he or she is cosponsoring a piece of legislation, you can thank his or her office during the meeting and ask the office to do one of the additional 'requests' for elected officials that you will find in this package.</p> |
| June 26 | <p>Attend Washington DC Rally and Lobby Day</p> <p>If you are visiting your elected officials in their Washington DC office (instead of the district office), take part in Amnesty International USA's Washington DC rally with coalition organizations and participate in the training and lobbying on June 26th. Contact Megan Libby in the Washington DC office 202 544-0200 for details.</p> |
| Meetings June 25 - 29 | <p>Meet!</p> <p>Meet with the district offices (or Washington DC office) of your elected officials on the 25th, or during the week of the 25th. Be accurate, brief, and courteous, as well as specific and persistent. Take pictures, use the talking points. Don't forget to schedule a</p> |

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| | good time to follow up with this congressional office. |
| Immediately after your meeting(s) | Report back Report about how your meeting went! Report on your meeting at http://www.amnestyusa.org/debrief |
| July 10th (8:30 pm Eastern) | Participate in Debrief Conference Call for delegation leaders (8:30 pm Eastern) for delegation leaders. Before the call, you will receive the call in number. |
| July 10 | Celebrate! Thanks for helping to press for human rights with your elected officials. Keep an eye out for an evaluation email in your inbox. |

Part II: Background documents

These questions and answers should give you a quick introduction to habeas corpus and our work to restore justice and the rule of law.

About your visits...

It is already the week of June 25-29 and I haven't scheduled a meeting yet with my elected official. Can I still meet?

Yes. It's fine to go ahead and schedule a meeting with your Representative and or Senators now. After the 29th, you will be able to check the status of legislation by visiting: <http://thomas.loc.gov/>

Is it okay if I meet my elected official's office if I don't have additional individuals coming to the meeting with me?

Yes. It's perfectly all-right for the meeting to be just you and the elected official, or the elected official's staff person.

About Habeas Corpus...

What is habeas corpus?

The literal translation of the original Latin means "you shall have the body." Today it gives prisoners the opportunity to contest the fact and conditions of their detention. It has and continues to be an essential principle of law that protects people from torture and arbitrary detention.

The writ of habeas corpus, also known as the "Great Writ," requires the detaining government to prove in an independent court that there are lawful reasons for the detention. It is not by any means a determination of guilt or innocence, but rather a judicial review available to a prisoner if he feels he has been detained unlawfully. By granting the courts this power of review, fundamental liberty and due process rights are preserved. If the courts did not have this authority it would be possible to detain a person indefinitely without charge or trial.

Where does habeas corpus come from?

The origin of the concept of habeas corpus is undetermined, but it is believed to have been a common practice by the time the Magna Carta was established in 1215. The English Parliament eventually wrote into law

What can my U.S. Representative and U.S. Senators do to help?

We are pressing for Representatives and Senators to support justice and the rule of law by cosponsoring and supporting the Habeas Corpus Restoration Act (HR 1416/S. 185), and cosponsoring and supporting the Restoring the Constitution Act (HR 1415 / S 576). We are also asking elected officials to close Guantanamo and ensure that each person is either charged and tried in accordance with fair trial standards or released.

the Habeas Corpus Act of 1679, the precursor to habeas rights found in US law today.

Habeas corpus is in the US Constitution, which states the writ of habeas corpus can be suspended only by the authority of the legislature and only in time of national emergency (such as invasion or rebellion) or when public safety requires it (Article One, Section Nine). It has been said that the inclusion of habeas corpus into the Constitution itself, rather than the Bill of Rights which is considered to be an afterthought to the Constitution, is an indication of its great importance to the founding fathers. Habeas has also since been written into the United States Code under 28 U.S.C. § 2241 allowing for federal justices to grant writs of habeas corpus.

Habeas corpus is also found in international human rights law. The International Covenant on Civil and Political Rights (ICCPR) states that no one shall be subject to arbitrary arrest or detention. Anyone who is deprived of liberty by such detention has the right to go before a court for a determination as to the lawfulness of that detention. If it is determined to be unlawful,

an immediate release is to be ordered. The United States has signed and ratified the ICCPR. By this ratification and as a party to the ICCPR, the United States has accepted its provisions as the law of the land. No nation may, as regards international law, deprive a person of these fundamental rights.

Has habeas corpus ever been suspended?

Habeas corpus has been suspended or reduced a limited number of times in United States history. The most significant incidents were Abraham Lincoln's suspension of the writ in parts of the country threatened by riots and secession during the Civil War; and nearly 150 years later when President Bush signed into law the Military Commissions Act of 2006, suspending habeas corpus for any non-citizen determined to be an "unlawful enemy combatant."

Do detainees in Guantanamo have the right to habeas corpus?

In 2004, the Supreme Court decided in the case of *Rasul v. Bush* that people detained at Guantanamo Bay did have access to federal courts in the United States to challenge their detention. Ever since that decision, the US government has been trying to keep any of the habeas cases filed on behalf of the hundreds of men detained in Guantanamo from being heard on the merits.

The administration first argued in court that detainees in Guantanamo did not have any

rights they could assert in US courts, saying that the detainees had no Constitutional or other rights to claim. In December 2005, Congress passed the Detainee Treatment Act, which stripped the right of habeas from any person who was detained in Guantanamo. While the government argued that the habeas stripping provision was retroactive, the Supreme Court disagreed. Congress then passed the Military Commissions Act (MCA), which retroactively strips the right of habeas corpus from any foreign national in US custody that the President designates an "unlawful enemy combatant."

Since the MCA was signed into law last October, courts have been dismissing various habeas cases from Guantanamo saying that the MCA stripped them of their jurisdiction to hear the cases. This past Spring, the Supreme Court refused to hear an appeal of a federal Appeals Court decision dismissing all pending habeas cases for lack of jurisdiction. The question or whether or not detainees in Guantanamo have been unlawfully denied their habeas rights has not yet been answered by the Supreme Court. However, under international human rights law, everyone in detention has the right to go before an independent court and challenge the basis of their detention. Since the detainees in Guantanamo are in the sole custody and control of the US government, international human rights law requires that the US allows for independent judicial review of the detentions.

Responding to questions about Habeas Corpus...

Question: Wouldn't extending habeas corpus to detainees in the "War on Terror" be unprecedented? We have never before granted habeas rights to prisoners in any previous war, have we?

- This is not about granting new rights to people in US custody. It's about restoring a right that's been around for centuries – until it was removed last year.
- The Habeas Corpus Restoration Act merely removes the prohibition on such cases and allows the courts to exercise their jurisdiction to determine what rights are due to people in US custody. In addition, the Military Commissions Act did not just strip the habeas rights of people detained overseas, it took away rights from any foreign national that the President determined was an "unlawful enemy combatant." This means that even legal permanent residents in the United States could be held indefinitely with no check on the system based on the unreviewable determination of the President. In additions, "enemy combatants" would

have no forum to raise concerns about treatment and their conditions of custody, which increases the risk of torture and ill-treatment.

- The “War on Terror” is not a traditional armed conflict. Prisoners of war detained in previous armed conflicts have been subjected to procedural safeguards and the protections of the Geneva Conventions, including protection from arbitrary detention and torture. Under the “War on Terror” paradigm, however, the entire world has been deemed to be a battlefield in which people can be snatched off the street or from their homes, disappeared into secret prisons, sent to Guantanamo or transferred to other governments that are known to torture, and detained indefinitely. Habeas corpus would not interfere with the government’s ability to detain people under US or international law. It merely requires that the government show it has cause to hold the people in question.
- Allowing detainees to have an independent review of their detention is not a “get out of jail free card.” It is a simple review of the basis for the detention. If the government can show that they have cause to hold a person under US or international law, they will be allowed to do so.

Question: Don't detainees in Guantanamo have no Constitutional rights?

- The Supreme Court has not yet ruled on the question of whether or not people detained in Guantanamo have specific Constitutional rights. Regardless of this fact, the right to habeas corpus exists in other places in US and international law. Title 28 §2241 of the United States Code allows for habeas corpus. In addition, Article 9 Section 4 of the International Covenant on Civil and Political Rights, which the United States has signed and ratified, states “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” The right to challenge one’s detention remains one of the most fundamental protections against arbitrary detention and torture and must be upheld for all people in custody.

Question: If all the detainees were allowed to file habeas petitions, wouldn't their cases clog the courts? Isn't it true that, before Congress eliminated habeas corpus for these individuals by passing the Military Commissions Act, many frivolous habeas petitions had been filed by Guantanamo detainees over minor grievances?

- Fewer than 400 detainees remain at Guantanamo. Many of them had habeas cases already pending when the Military Commission Act was passed and the courts were able to handle the cases without any interruption of their regular caseload. Habeas petitions from these individuals has not imposed an undue burden on the judiciary.
- Although some have argued that detainees are filing frivolous lawsuits, the cases that have been filed do not bear this out. In addition, if someone did file a frivolous case, the court is more than capable of dismissing it.

Question: Why aren't the Combatant Status Review Tribunals (CSRTs), which determine detainees' status as enemy combatants, the military commissions set up by the Military Commissions Act to try detainees on criminal charges, and the appeal rights established under the Detainee Treatment Act an adequate substitute for habeas corpus?

- The CSRTs are fundamentally unfair and do not provide a meaningful opportunity for a person to confront the evidence against him or her. They start from a presumption of guilt, do not allow detainees to have legal representation, prevent people from seeing all the evidence against them, and allow evidence obtained through torture to be used in making the determination.
- By the government’s own admission, only a small percentage of detainees are likely ever to be charged and brought before a military commission. The majority will simply languish in

indefinite detention, without charges or trial. For them, the CSRTs and annual perfunctory reviews by Administrative Review Boards (ARBs) are the only basis for their continued detention.

- Under the Detainee Treatment Act, there is a right to appeal determinations by CSRTs, but this right is extremely limited. Appeals can be filed only with the US Court of Appeals for the D.C. Circuit (and subsequently the Supreme Court), and the Court is confined to an administrative review of the record created by the CSRT, which was flawed to begin with.

Question: To the extent the CSRTs are deficient, why can't their defects be fixed? Can't they be both efficient and fair?

- The CSRTs are too broken to be fixed. They are held at the wrong time and place and are not a replacement for the review of a captive's status that Army regulations require be conducted close to the time and place of capture. Army regulation 190-8 requires that determinations regarding a captive's status be carried out when witnesses and other evidence are still reasonably available and before judgments have been made about the individual by others in the chain of command. CSRTs have been conducted years after the detainees were captured and after countless public statements by officials at the highest levels of the US government that these individuals are the "worst of the worst." This creates the specter of undue command influence, in that it asks low ranking officers to reverse the judgment of the commander in chief and others in their direct chain of command.

Part III: Preparing for a Congressional office visit

In this section you will find:

1. A Sample letter to request a meeting with your legislator (or legislators). Be sure to edit the letter depending on whether it is going to your Representative in the House or one of your Senators.
2. Primary talking points for your meetings with a Congressional district office.
3. The ABC's to remember when you are meeting with the offices of elected officials.
4. A check list to go over before heading to your meeting (or meetings!) with Congressional offices.
5. A 'Contacts sheet' to record contact information for your delegation participants

Sample letter to an appointment secretary or scheduler

[Your Address]

[Your Representative's/Senator's address]

[Date]

Dear Appointment Secretary/Scheduler:

I am writing to request a meeting at the district office to ask [Representative /Senator] [name] to restore justice and the rule of law by cosponsoring and supporting the Habeas Corpus Restoration Act (HR 1416/S. 185), and cosponsoring and supporting the Restoring the Constitution Act (HR 1415 / S 576). We would also like to ask [Representative /Senator] to close Guantanamo and ensure that each person is either charged and tried in accordance with fair trial standards or released.

[I / we] would like to meet in your office with [name of Senator or Representative] or the appropriate staff person at [time of meeting] on [date].

Please contact me to let me know if this meeting time will work for the [Senator/Representative] or if another time might be more suitable for your office. I look forward to speaking with you soon.

Sincerely,

[your name]
[your telephone]
[your email]

Primary Talking points for Legislative Visits

Talking points for the House of Representatives...

I am/we are members of Amnesty International a Nobel Peace Prize winning human rights movement with over 2.2 million members worldwide. We've come here today to ask for the Representative/Senator's to restore justice and the rule of law by cosponsoring and supporting the Habeas Corpus Restoration Act (HR 1416), and cosponsoring and supporting the Restoring the Constitution Act (HR 1415). We would also like to ask [Representative] to close Guantanamo and ensure that each person is either charged and tried in accordance with fair trial standards or released.

The Military Commissions Act (MCA) turned bad policy into bad law, putting the United States on the wrong side of justice and in violation of international law. It created unfair trials that allow evidence obtained through coercion or cruel, inhuman or degrading treatment, took away the right of any foreign national designated by the President to be an "enemy combatant" from challenging their detention in an independent court, and greatly narrowed the scope of activity that could be prosecuted under the War Crimes Act. **I/we ask that you co-sponsor and pass the "Restoring the Constitution Act," (H.R. 1415) introduced by Congressman Jerrold Nadler and Congresswoman Jane Harman, to reverse some of the most problematic provisions of the MCA.**

Although the MCA has many problematic provisions, at a minimum it is critical to restore the right of habeas corpus to people in US custody, some who have been held for more than five years. The right to challenge the fact and conditions of one's detention is a critical protection against arbitrary detention and torture. **I/we ask that you co-sponsor and pass the "Habeas Corpus Restoration Act" (H.R. 1416) introduced by Congressman Jerrold Nadler D- NY 8) and Congresswoman Jane Harman.**

Reversing the MCA is a critically important step, but ultimately Guantanamo must be closed. Everyone currently being held must be charged and given a fair trial, or released unconditionally and not returned to a country where they face torture or persecution. No one should be tried by military commissions, which do not meet international fair trial standards. **I/we ask that you work to close Guantanamo and ensure that each person is either charged and tried in accordance with fair trial standards or released.**

As your constituent/s, I/we encourage you to uphold justice and the rule of law. Thank you for taking the time to meet with us, and please let us know what action you intend to take on these initiatives.

Talking points for the U.S. Senate...

I am/we are members of Amnesty International a Nobel Peace Prize winning human rights movement with over 2.2 million members worldwide. We've come here today to ask for the Representative/Senator's to restore justice and the rule of law by cosponsoring and supporting the Habeas Corpus Restoration Act (S. 185), and cosponsoring and supporting the Restoring the Constitution Act (S 576). We would also like to ask [Senator] to co-sponsor and pass the "Guantanamo Bay Detention Facility Closure Act of 2007" (S 1469) introduced by Senator Tom Harkin.

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As your constituent/s, I/we encourage you to uphold justice and the rule of law. Thank you for taking the time to meet with us, and please let us know what action you intend to take on these initiatives.

The ABCs of Contact with Members of Congress

Amnesty International activists are natural advocates because they are dedicated and well informed. By following a few simple rules, you can achieve great results, just as thousands of other Amnesty International activists like you have. But make no mistake, to change U.S. policy—to do battle with the bureaucracy and the high-priced lobbyists of foreign governments—is hard work. Don't be intimidated or discouraged.

THE ABCs OF CONGRESSIONAL CONTACTS

Once you know what you want your Members of Congress to do and are committed to following up until they do it, remember these ABCs:

Accurate: To build a working relationship and get action, you need to be a credible source of information. Never bluff. If you don't know something, just say so. Tell them you will find out and get back to them. Call Amnesty's Government Relations Program for help finding the answers (in this case, the best person to contact is Chris McGraw, at cmcgraw@aiusa.org or at 202.544.0200 ext. 230). This is a great opportunity to demonstrate to your legislator's staff person that you follow up!

Brief: Members of Congress and their staffs are incredibly busy and so are you. Most Members of Congress represent over 600,000 people. They appreciate it when you get to the point and respect their time. Because your meeting or call might be interrupted, get to your request in the first few minutes.

Courteous: Always, always be courteous. A "How are you?" after the initial hello works wonders! On the other hand, being abrasive is almost always counterproductive, and it provides a good excuse to ignore your request.

In addition to the above ABCs, remember the following:

GAUGE THEIR INTEREST

Make an effort to gauge your Representative's interest and to match your requests to their initial level of interest. You may need to begin with casework. Sometimes it is a good idea to ask them to write a letter about a case you are working on. If they do, write your own letter to the local papers saying how much you appreciated their efforts and call the staff aide to express your thanks. The next time you may be calling to ask them to vote your way on an important amendment. (In this case, of course we are asking them to cosponsor legislation.)

BE SPECIFIC

In your communications with Members of Congress, make a point to mention the specific ask: you want him or her to add his or her name as a cosponsor on legislation, and let them know that you are a constituent.

BE PERSISTENT

If you find that the staff people you need to speak with are out of the office, leave a message for them with your name and number. If they don't return your call within two to three days, then call again. Keep track of your calls, but remember that they are very busy.

The ABCs of Follow-up

After meeting with a Member of Congress or an aide from his or her office, keep in mind the following ABCs

Appreciate: Thank your representatives for listening to your concerns, especially if they take action. Commend them publicly, including letters to the editor or items in newsletters. (Be sure to share them with their staff.)

Build a relationship: Get the name of the staff person you speak to and try to deal with the same person each time. Remember that if your representatives are helpful and you praise them publicly, next time they may help even more. The ultimate goal is to build a positive, long-term relationship.

Coordinate: Work with other Amnesty International groups in your district (or throughout your state if you are contacting a Senate office) and with other non-governmental organizations as appropriate. Make sure to fill out an Amnesty International Member of Congress Meeting Debrief Form (<http://www.amnestyusa.org/debrief>) and return it to the Amnesty International USA Washington DC office so that we know how your meeting went, and can help coordinate future efforts.

Check List To Go Over Before A Congressional District Office Meeting

Be sure to remember the items listed below for your Congressional office meeting (or meetings!). We suggest you go over the list the night before a meeting and put all documents you are taking with you for the visit in one place so you do not forget anything.

What to take with you to your meeting (or meetings):

- Bring with you a couple of copies of the Amnesty International issue brief included in Part IV of this guide.
- Bring with you a couple of copies of the document "Additional Ways Elected Officials can Help"
- Take your camera with you to take pictures of your visit and send copies to Grassroots Advocacy at Amnesty International USA at grassroots@aiusa.org or Grassroots Advocacy at Amnesty International, 600 Pennsylvania Ave SE, 5th Fl, Washington, DC, 20003.
- Bring with you a pen and pad of paper to take notes at your meeting. Be sure to get the contact information of the person with whom you meet so you can report that information back to Amnesty International.

Other items to keep in mind:

- If possible, dress in business attire for any office visit you make. This will create a more professional environment.
- Plan on introducing Amnesty International to the Senator or Representative or his or her staff at the beginning of the meeting. Amnesty International is a worldwide human rights movement of 2.2 million members worldwide and winner of the Nobel Peace Prize.
- Be sure to thank the person with whom you meet for taking time to see you. It is advisable to send a follow up hand written thank you letter, even if the meeting does not go well. This will help build your relationship with the office!
- Consider bringing copies of any meeting agenda you develop for your Congressional office visit (or visits) to keep everyone who is participating on track.
- Finally, once you have completed your meeting, please report it immediately at <http://www.amnestyusa.org/debrief>
- Leave your contact information with the office.



Suggested Meeting Agendas for Congressional District Office Visits

The agenda and structure of your meeting will depend on the amount of time you have been able to schedule with your legislator or one of their staff members. We recommend the following agendas for your meeting depending on the amount of time you have. We have also suggested approximate amounts of time to spend on each item in the agendas.

30 Minute Meeting:

- Introduction: briefly introduce members of the delegation, organizations represented (5 minutes)
- Introduce the issue: we strongly suggest you use the talking points Amnesty International provides you (10 minutes)
- Make the request: Again, refer to the talking points Amnesty International provides you (3 minutes)
- Allow time for questions (10 minutes)
- Thank-you and schedule a time to follow up if needed (2 minutes)

15 Minute Meeting:

- Introduction: briefly introduce members of the delegation (2 minutes)
- Introduce the issue: we strongly suggest you select a few of the talking points Amnesty International provides you (8 minutes)
- Make the request: Again, refer to the talking points Amnesty International provides you (3 minutes)
- Thank-you and schedule a time to follow up if needed (2 minutes)

Keep in mind that these are suggested meeting agendas to optimize your time. Feel free to modify them as you please.

Part IV: Materials to leave with your Representative or Senators

When you meet with your Representative or Senators' offices it is a good idea to leave behind some concise materials. Leave a copy of the following pages with your elected official or his or her staff.



SUPPORT THE RESTORING THE CONSTITUTION ACT

Amnesty International urges Congress to pass the “Restoring the Constitution Act of 2007” with strong bipartisan support. The “Restoring the Constitution Act of 2007” introduced by Senator Chris Dodd (D-CT) in the Senate and Congressman Jerrold Nadler (D- NY 8) and Congresswoman Jane Harman (D-CA 36) in the House, would repeal some of the highly problematic aspects of the Military Commission Act of 2006 (MCA) that weaken constitutional and international legal protections.

The need to reverse the most problematic provisions of the MCA, signed into law by President Bush on October 17, 2006, is imperative in light of the recent decision of the Court of Appeals for the D.C. Circuit. In a 2 to 1 decision, the court stated that due to the MCA, federal courts no longer have jurisdiction over the hundreds of pending habeas cases for detainees in Guantanamo, many in their sixth year of detention. The most troubling aspects of the Military Commission Act of 2006 infringe on the human rights and constitutional protections of US citizens and non-citizens alike and contravene basic protections provided in the U.S. Constitution and various international treaties. Immediate steps should be taken to reverse provisions of the MCA which do not comply with US obligations under US and international law. Senators and Members of Congress should cosponsor and pass the Restoring the Constitution Act of 2007, which would begin to reinstate basic constitutional and international human rights weakened by the Military Commission Act of 2006. Specifically, the Restoring the Constitution Act would:

Restore the writ of habeas corpus for individuals held in US custody;

Prevent the use of evidence in court gained through the unreliable and immoral practices of coercion and cruel, inhuman and degrading treatment;

Narrow the definition of unlawful enemy combatant to individuals who directly participate in hostilities against the United States, including individuals who participated in attacks against the United States on September 11, 2001;

Broaden the scope of violations prosecutable under War Crimes Act;

Provide for expedited judicial review of the Military Commissions Act of 2006 to determine the constitutionality of the process.

Amnesty International firmly believes that any person who is involved in committing war crimes or terrorist acts must be held accountable, as accountability is a cornerstone of human rights enforcement. However, it is imperative that any trials meet basic due process and fair trial standards, and that the human rights of everyone in detention are respected. While it is the responsibility of the United States to protect the country and its citizens from attacks, the tactics it uses must be consistent with human rights and humanitarian law.

AMNESTY INTERNATIONAL USA RECOMMENDATIONS:

- ✓ Congress should act quickly to pass the reforms enumerated in the “Restoring the Constitution Act” (S. 576, H.R. 1415)
- ✓ Congress should also pass the "Habeas Corpus Restoration Act" (S. 185) introduced by Senator Patrick Leahy (D-VT) and Senator Arlen Specter (R-PA) and (H.R. 1416) introduced by Congressman Nadler D- NY 8) and Congresswoman Jane Harman (D-CA 36), which would restore the right to habeas corpus.
- ✓ Congress should hold oversight hearings into the conditions at detention facilities in Guantanamo Bay and work to close the facilities for good.

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CLOSE GUANTANAMO

Amnesty International has been calling for the closure of the detention facilities at Guantanamo for more than two years. By choosing Guantanamo, the Bush Administration sought to send detainees to a place where they believed neither U.S. nor international law applied. This concept is an affront to human rights and the rule of law - no one can be held outside of the law. In 2004, in the case of *Rasul v. Bush*, the Supreme Court ruled that US federal courts did have jurisdiction over detainees in Guantanamo, allowing detainees access to the courts to challenge their detention. In 2006, in the case of *Hamdan v. Rumsfeld*, the Court found that Article 3 common to the four Geneva Conventions did apply to detainees in custody in Guantanamo. With these two court decisions, the Supreme Court has injected some legal framework to the detentions at Guantanamo. However, the Bush Administration has fought any attempts to enforce these rights, going to the courts and later to Congress to prevent detainees from claiming such rights.

More than five years after the first people were transferred to Guantanamo, only one person has ever been convicted of any crime, and only two others have been charged. The vast majority of the approximately 385 others are being held indefinitely in conditions that amount to cruel, inhuman and degrading treatment. Last June, after the apparent suicides of three inmates, many of those still in detention were moved to isolated cells in supermax facilities known as Camp 5 and Camp 6. They lost the ability to eat or exercise communally, have very limited contact with anyone but their jailers, and almost no access to sunlight or fresh air. In addition, last February a federal appeals court ruled that they no longer had jurisdiction to hear habeas appeals on behalf of Guantanamo detainees. For those currently in custody, some now in their sixth year of detention, it is not only their conditions in custody but also the indefinite and arbitrary nature of their detention which has led to a steep decline in their mental state. This has resulted in numerous suicide attempts, hunger strikes, and increasing desperation amongst the prison population.

The detentions in Guantanamo have also impacted the United States' reputation around the world, providing a magnet for criticism from allies and enemies alike. In the years since Amnesty International has called for closure of the detentions facilities, several high ranking US officials, allied governments, and the United Nations have issued calls for the prison's closure. As Senator Harkin stated when introducing his Guantanamo Bay Detention Facility Closure Act of 2007, "The 5-year-old prison at Guantanamo is a stain on the honor of this country. By holding people at Guantanamo without charge, without judicial review, without appropriate legal counsel, and--in the past--subjecting many of them to torture, we have forfeited the moral high ground and we stand as hypocrites in the eyes of the world."

The Harkin bill would give the Bush Administration 120 days to either charge or release anyone currently detained in Guantanamo. It provides protections for those who fear torture or persecution in their home countries, including judicial review of any initial decision. For those who will not be released, they are to be transferred to a high security military facility at Ft. Leavenworth, Kansas to await trial. While Amnesty International supports this proposal to ensure that detainees are either charged or released, no one should be tried in a forum that does not guarantee minimum due process protections. As such, anyone charged should not be tried by a military commission which fall short of international fair trials standards.

AMNESTY INTERNATIONAL USA RECOMMENDATIONS:

- ✓ Senators should cosponsor and pass S. 1469 to close Guantanamo and ensure that anyone not to be charged is released and not returned to a country where they would face torture or persecution.
- ✓ Any trials should meet international fair trial standards. Military commissions should be abandoned and civilians should not be tried by any military tribunal.

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Additional Ways Elected Officials Can Help

Amnesty International USA encourages elected officials to:

- 1) Restore justice and the rule of law by cosponsoring and supporting the Habeas Corpus Restoration Act (HR 1416/S. 185)
- 2) Cosponsor and support the Restoring the Constitution Act (HR 1415 / S 576).
- 3) Encourage appropriate committee chairs to conduct oversight hearings into conditions at Guantanamo, rights to habeas corpus and military commissions.
- 4) Make a statement in the Congressional Record calling for detainees in Guantanamo to be charged and tried in accordance with fair trial standards or released.
- 5) Include information on human rights concerns in Guantanamo in newsletters that are mailed to constituents.