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### **3 GOP Senators Blast Bush Bid to Bypass Torture Ban**

Reject assertion he has right to waive rules to protect US security

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WASHINGTON -- Three key Republican senators yesterday condemned President Bush's assertion that his powers as commander in chief give him the authority to bypass a new law restricting the use of torture when interrogating detainees.

John W. Warner Jr., a Virginia Republican who chairs the Senate Armed Services Committee, and Senator John McCain, an Arizona Republican, issued a joint statement rejecting Bush's assertion that he can waive the restrictions on the use of cruel, inhuman, and degrading treatment against detainees to protect national security.

"We believe the president understands Congress's intent in passing, by very large majorities, legislation governing the treatment of detainees," the senators said. "The Congress declined when asked by administration officials to include a presidential waiver of the restrictions included in our legislation. Our committee intends through strict oversight to monitor the administration's implementation of the new law."

Separately, the third primary sponsor of the detainee treatment law, Senator Lindsey O. Graham, Republican of South Carolina, told the Globe in a phone interview that he agreed with everything McCain and Warner said "and would go a little bit further."

"I do not believe that any political figure in the country has the ability to set aside any . . . law of armed conflict that we have adopted or treaties that we have ratified," Graham said. "If we go down that road, it will cause great problems for our troops in future conflicts because [nothing] is to prevent other nations' leaders from doing the same."

The White House did not return calls yesterday about the senators' statements. On Friday, in signing the ban on torture, Bush issued a "signing statement," saying he would interpret the restrictions in the context of his broader constitutional powers as commander in chief. A "signing statement" is an official document in which a president lays out his interpretation of a new law.

A senior administration official later confirmed that the president believes the Constitution gives him the power to authorize interrogation techniques that go beyond the law to protect national security. But in enacting the law, Congress intended to close every loophole and impose an absolute ban on all forms of torture, no matter the circumstances, Graham said.

David Golove, a New York University law professor who specializes in executive power issues, said the senators' statements "mean that the battle lines are drawn" for an escalating fight over the balance of power between the two branches of government.

"The president is pointing to his commander in chief power, claiming that it somehow gives him the power to dispense with the law when he's conducting war," Golove said. "The senators are saying: 'Wait a minute, we've gone over this. This is a law Congress has passed by very large margins, and you are compelled and bound to comply with it.' "

Elisa Massimino, Washington director of Human Rights First, said the senators' statement should send a clear warning to military and CIA interrogators that they would be subject to criminal prosecution if they abuse a detainee.

"That power [to override the law] was explicitly sought by the White House, and it was considered and rejected by the Congress," she said. "And any US official who relies on legal advice from a government lawyer saying there is a presidential override of a law passed by Congress does so at their peril. Cruel inhuman and degrading treatment is illegal."

But Golove said that it is politically unlikely that Attorney General Alberto R. Gonzales would prosecute an official for taking an action Bush ordered him to take. Still, he said, Congress has a number of tools for compelling the president to obey the law. Congress can withhold funds for programs. It can subpoena administration officials to testify under oath. It can pass stricter laws or block legislation Bush needs. In an extreme and politically unlikely scenario, it can impeach the president.

Bush's interpretation of another detainee-related provision in the new law sparked further friction yesterday with some lawmakers.

The provision stripped courts of the jurisdiction to hear most lawsuits from detainees held at the US naval base at Guantanamo Bay, Cuba.

Citing that provision, the administration said this week that it would ask courts to dismiss more than 180 Guantanamo lawsuits.