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Protect Habeas Corpus at Guantanamo

Letter to the Editor

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The House-Senate armed services conference committee is considering the Graham-Levin-Kyl amendment to the Senate defense authorization bill ["Rules for Our War," op-ed, Dec. 6]. This amendment has not been brought before any House or Senate committee or been the subject of hearings. Yet it threatens to strip federal courts of their jurisdiction in order to foreclose consideration of habeas corpus petitions filed by prisoners detained at Guantanamo Bay Naval Base in Cuba. We strongly oppose the amendment.

The habeas corpus petitions filed by detainees at Guantanamo are proceeding through the lower courts, and the Supreme Court just agreed to hear Hamdan v. Rumsfeld, which centers on a former aide to Osama bin Laden held at Guantanamo. The writ of habeas corpus has been at the heart of U.S. law for as long as there has been a United States. Creating exceptions to it should be done, if at all, with the utmost care, debate and attention to the practical effects of such a limit -- not as an amendment tacked onto the defense authorization bill without consideration by the appropriate committees in the House and the Senate. Further, this amendment would increase the likelihood that U.S. troops could be subject to ad hoc justice.

If Congress is determined to enact some form of an amendment to curtail habeas corpus law, the application of any such amendment, at the least, must be prospective so as not to require the dismissal of Guantanamo-related cases pending in the courts. Stripping the courts of jurisdiction to hear pending cases would suggest that our government is manipulating the jurisdiction of the courts to avoid subjecting its actions to judicial review. That would be a terrible message and would damage our standing in the world.

It is critical to the well-being of military personnel and the success of the war on terrorism that the defense authorization bill be passed. It is likewise critical that the issues raised by the Graham-Levin-Kyl amendment be subject to hearings and be given the kind of consideration and debate that any amendment regarding habeas corpus deserves. We urge Congress to reject the Graham-Levin-Kyl amendment and to refer the issues raised by that amendment to the House and Senate judiciary panels.

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1997 through 2000. Retired Brig. Gen. David M. Brahms was senior legal adviser for the Marine Corps from 1985 through 1988.

The Dec. 8 editorial "Policy Is Not Enough" called on Congress to enact legislation sponsored by Sen. John McCain (R-Ariz.) that would outlaw the "cruel, inhuman and degrading" treatment of detainees. Unfortunately, the Graham-Levin-Kyl amendment to the defense reauthorization bill would make Mr. McCain's legislation unenforceable.

The amendment says that no court may hear any application for a writ of habeas corpus filed by an alien detained by the Defense Department at Guantanamo Bay Naval Base. It also says that any alien whose enemy-combatant status has been rubber-stamped by the military will be able to obtain a highly cursory form of court review.

As long as the military does not give detainees even that much due process, it can hold them indefinitely. They will never see lawyers, their plight will never become public -- much less reach a court -- and the editorial dream that prisoners in U.S. custody will be legally entitled to humane treatment will remain just that, a dream.

The writer serves as a legal consultant to the Guantanamo detainees.