



**NEW YORK
CITY BAR**

BETTINA B. PLEVAN
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
bplevan@nycbar.org
www.nycbar.org

November 9, 2005

Hon. Bill Frist
Majority Leader
509 Hart Senate Office Building
Washington, DC 20510

Dear Senator Frist:

We understand that an amendment is being considered to the military appropriations bill that would remove from the United States courts the authority to consider a habeas petition from any alien detainee being held by the Secretary of Defense as an enemy combatant, and that indeed the amendment may well cover all detentions of aliens.

The Association urges rejection of this bill in the strongest terms. The Great Writ has for centuries been recognized in Anglo-American law as the ultimate protection against executive abuse and wrongful detention. It may be suspended only in the direst of circumstances. Nothing in the circumstances warrants its suspension as to these detainees. To do so in the name of the War on Terror would be counterproductive. It would undermine the United States' image as a civilized society governed by the rule of law and amount to a surrender of our most cherished values, something our enemies most desire. The need to preserve--not abolish-- the Writ's protection for these detainees--could not be greater.

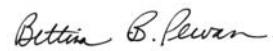
Although Congress has the power to limit the application of the writ of habeas corpus, eliminating habeas relief for these detainees is precisely the wrong action at the wrong time. The Executive, asserting extraordinary wartime powers, has created a whole new structure, based on tenuous legal ground, to indefinitely detain any person anywhere whom the President claims to be an enemy combatant (a term for which there is still no settled definition in law), and argues that he may do so without judicial review. The Executive has fought every attempt to require it to justify its actions with regard to the capture and treatment of detainees, to great international opprobrium. Should any of these detainees ever have an opportunity to be tried on charges – and only a handful have been so charged – the Executive has established a military commission system, the legality of which is still being tested in the courts, the Supreme Court only Monday having granted certiorari in a case challenging the commissions. Despite growing evidence that there is widespread abuse of detainees which may amount to violations of United States law and its treaty obligations, the Executive has refused to permit an

effective examination of either its policy or its methods regarding the treatment of detainees.

Only the existence of the habeas remedy provides the detainees with access to due process. To remove that small window of opportunity consigns the detainees to indefinite detention without the expectation of being able to press any claims in a judicial forum that they are being wrongly detained.

We urge you to oppose this amendment.

Very truly yours,



Bettina B. Plevan