

The Military Commissions Act of 2006 (MCA) includes a provision that strips judicial review of habeas corpus claims for detainees in U.S. custody. **The ABA supports legislation that restores the jurisdiction to courts to hear habeas corpus petitions from non-citizen detainees.**

The writ of habeas corpus is one of the pillars of our constitutional system. It serves as an important check on the power of executive detention and embodies the fundamental principle that one should not be imprisoned by the government without the opportunity for a fair and impartial determination that there is a reasonable basis in law and in fact for the detention. The U.S. Supreme Court, in *Rasul v. Bush*, ruled that the federal courts have jurisdiction to consider petitions for writs of habeas corpus from Guantanamo detainees under the federal habeas statute. But with the adoption of the habeas-stripping provision in the MCA, such habeas claims have been dismissed from the federal courts pending appeal.

In the Senate, Senators Arlen Specter (R-PA) and Patrick Leahy (D-VT) have introduced S. 185, the “Habeas Corpus Restoration Act,” bipartisan legislation that repeals the MCA language barring federal courts from hearing habeas corpus petitions of detainees. In the House, a group of lawmakers led by Rep. Jerrold Nadler (D-NY) introduced a similar bill, H.R. 1416. **The ABA urges Members of Congress to support this legislation because:**

- **Every person that is detained by our government should have the opportunity for a fair hearing that examines the basis for his/her detention.** Executive Branch officials have acknowledged that most of the approximately 385 Guantanamo detainees will not be charged and tried before a military commission. Instead, they face indefinite lengthy detention as “enemy combatants.” The writ of habeas corpus entrusts the judiciary to ensure that the detention of an individual has legal and factual support.
- **The federal courts provide an important safeguard to ensure a fair result.** Without habeas corpus review for non-citizen detainees, we are left with the perverse result that those who are more likely to be innocent are being denied the due process opportunity to challenge their detention in the courts. While the, the few alleged terrorists who have been charged criminally are provided greater access to U.S. courts to challenge their convictions.
- **Habeas corpus review does not overburden the federal courts.** A habeas hearing does not require the full findings of guilt or innocence required by a trial. It only seeks to identify a reasonable and factual basis for the detention of an individual. It provides individuals with a single opportunity to question whether they are being legitimately held.
- **The Combatant Status Review Tribunal (CSRT) process is flawed and is not an adequate replacement for habeas corpus review.** The CSRT process places the burden on the on the detainee to disprove his “enemy combatant” status, permits ex parte classified information to be used, and do not allow for access to counsel.