

**From:** Goldstein, Jordan A  
**Sent:** Wednesday, February 14, 2007 1:05 PM  
**To:** Engel, Steve; 'Michael\_Y.\_Scudder@who.eop.gov'  
**Subject:** RE: WP - Senate Democrats Propose Giving Detainees Access to U.S. Courts  
**Attachments:** S. 4060.pdf

**Tracking:**

Recipient	Read
Engel, Steve	Read: 2/14/2007 1:10 PM
'Michael_Y._Scudder@who.eop.gov'	

Here's a copy of the earlier bill.

-----Original Message-----

**From:** Engel, Steve  
**Sent:** Wednesday, February 14, 2007 13:04  
**To:** 'Michael\_Y.\_Scudder@who.eop.gov'  
**Cc:** Goldstein, Jordan A  
**Subject:** Fw: WP - Senate Democrats Propose Giving Detainees Access to U.S. Courts

Here's what I got this am.

Jordan: do you have a copy of the earlier bill that we can send Mike?

-----Original Message-----

**From:** Warwick, Brian  
**To:** Engel, Steve  
**Sent:** Wed Feb 14 11:22:23 2007  
**Subject:** RE: WP - Senate Democrats Propose Giving Detainees Access to U.S. Courts

Still looking for the actual text, but if you scan the attached document, it goes over what the bill purports to do.

-----Original Message-----

**From:** Engel, Steve  
**Sent:** Wednesday, February 14, 2007 9:03 AM  
**To:** Warwick, Brian  
**Subject:** Fw: WP - Senate Democrats Propose Giving Detainees Access to U.S. Courts

Can you send me the latest version of the Dodd bill? (Is it the same as what we have seen before?)

Thanks.

-----Original Message-----

**From:** Scudder, Michael Y. <Michael\_Y.\_Scudder@who.eop.gov>  
**To:** Engel, Steve  
**Sent:** Wed Feb 14 08:21:53 2007  
**Subject:** FW: WP - Senate Democrats Propose Giving Detainees Access to U.S. Courts

Give me a call on this if you have a few minutes.

10/14/2009

DOJ OLC 001369

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From: White House News Update [mailto:News.Update@WhiteHouse.Gov]  
Sent: Tuesday, February 13, 2007 7:06 PM  
To: Scudder, Michael Y.  
Subject: WP - Senate Democrats Propose Giving Detainees Access to U.S. Courts

## Senate Democrats Propose Giving Detainees Access to U.S. Courts

By Josh White, Washington Post

WASHINGTON - A group of Senate Democrats introduced legislation Tuesday that would restore habeas corpus rights to all detainees in U.S. custody and would narrowly define what it means to be an "enemy combatant" against the United States, a measure designed to challenge laws ushered in by the Republican-controlled Congress last year.

The bill, titled the "Restoring the Constitution Act of 2007," strikes at the core of the Military Commissions Act of 2006 by giving detainees access to U.S. courts. It was introduced by Sen. Christopher Dodd, Conn., a candidate for the Democratic presidential nomination.

The bill would also prevent the executive branch from making blanket determinations about who is an enemy combatant and would restrict the president's authority to interpret when certain human rights standards apply to detainees. The legislation would limit the label "enemy combatant" to a person "who directly participates in hostilities in a zone of active combat against the United States" or who took part in the terrorist attacks of Sept. 11, 2001.

Should such language become law, it could change the status of numerous detainees who were picked up in U.S. counterterrorism efforts.

The bill would also restore to the detainees numerous rights they lost under the Military Commissions Act, including the right, under a habeas corpus petition, to challenge their detention in federal court.

"I take a backseat to no one when it comes to protecting the country from terrorists," Dodd said in an e-mail statement Tuesday. "But there is a right way to do this and a wrong way to do this. ... In taking away their legal rights, the rights first codified in our country's Constitution, we're taking away our own moral compass, as well."

The Military Commissions Act was originally designed to fix problems in the wartime trial process for detainees in U.S. custody after the Supreme Court struck down the Bush administration's first set of rules. But the act also denied access to U.S. courts to those accused of being foreign enemy combatants.

In a panel discussion Monday night after the screening of an HBO movie about the Abu Ghraib prison abuse, Sen. Lindsey Graham, R-S.C., a leading proponent of the Military Commissions Act, said he stands behind the existing law and believes that it will stand up to Supreme Court scrutiny.

The newly proposed legislation, however, has the potential to undercut last year's law before challenges reach the Supreme Court. There is bipartisan support in Congress for restoring the habeas corpus rights of detainees, many of whom have filed court cases with the help of civilian lawyers.

Elisa Massimino, Washington director of Human Rights First, said the new bill would remedy several legal problems her organization has identified in the Military Commissions Act, particularly in the area of habeas corpus rights. She said the definition of "enemy combatant" is "hugely important" because it would draw a line between actual combat and the Bush administration's ambiguous "global war on terror."

"It would go to the question of whether the whole of our counterterrorism effort is going to be considered an actual and legal war," Massimino said. "Congress hasn't taken that issue head-on."

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