

# COMMENTS ON MUKASEY'S CALL FOR AN ELECTION-SEASON SHOWDOWN

Just as a follow-up to this post, a couple of official comments.

From DC District Court Chief Judge Royce Lamberth, who has already set into motion an expedited process for the detainees:

I am pleased that Attorney General Mukasey said that our 'court should be commended for the preliminary steps it has taken thus far to provide for the fair, efficient, and prompt adjudication of these cases.' Guidance from Congress on these difficult subjects is, of course, always welcome. Because we are on a fast track, however, such guidance sooner, rather than later, would certainly be most helpful.

From Harry Reid:

As a result of its repeated efforts to circumvent the requirements of the Geneva Conventions and the Constitution, the Bush administration has yet to bring to justice the perpetrators of the terrorist attacks of September 11. If legislation is needed, it is important that Congress proceed in a deliberate and thoughtful way to write rules that will not be thrown out by the courts yet again. Congress must hold public hearings, consult with national security and legal experts, and take the time to get this right. It is hard to imagine that Congress can give this complex issue the attention it deserves in the closing weeks of this legislative session.

The courts are well equipped to handle this situation, and there is no danger that any detainee will be released in the meantime.

From Patrick Leahy:

The Supreme Court's 5-4 decision in *Boumediene v. Bush* last month reaffirmed our core American values by concluding that detainees at Guantanamo have the right to bring habeas corpus claims in federal court. I applauded that decision because I have maintained from the beginning that the provisions of the Military Commission Act that purported to strip away those rights were unconstitutional and un-American.

The Judiciary Committee has held a wide range of hearings on issues of detainee rights and procedures. Attorney General Mukasey's call today for Congress to create new rules for these habeas proceedings is the first I have heard from the Administration on this issue. Given the Judiciary Committee's long interest in this subject, it is regrettable that the Attorney General neither consulted with nor informed the Committee about this request before his speech.

The Courts have a long history of considering habeas petitions and of handling national security matters, including classified information. I have great confidence in our system of justice and its ability to handle these issues. The Administration made this mess by seeking to avoid judicial review at all costs, causing years of delay and profound uncertainty. It has been rebuked four times by the Supreme Court. Habeas Corpus is the ultimate guarantee of fairness and a check on executive excess. The Congress must not rush to

pass yet another piece of ill conceived legislation. The Judiciary Committee will continue to address issues related to detainees and will review and consider any proposal from the Administration on these matters. With so little time left in this legislative session and the complexity of these issues, it may be an issue more responsibly addressed in the next Congress with a new President.

And the only one without a trace of snark, from Center for Constitutional Rights Executive Director Vincent Warren (CCR is representing a number of the detainees awaiting habeas hearings):

What Mukasey is doing is a shocking attempt to drag us into years of further legal challenges and delays. The Supreme Court has definitively spoken, and there is no need for congressional intervention. The Supreme Court explicitly said in *Boumediene* that the two prior attempts by Congress to intervene to prevent detainees from having access to the courts were unconstitutional.

For six and a half years, Congress and the Bush Administration have done their level best to prevent the courts from reviewing the legality of the detention of the men in Guantanamo. Congress should be a part of the solution this time by letting the courts do their job.

The strength of this country rests on our willingness to embrace a system of justice, to allow courts to consider the facts and interpret the law. As the most senior lawyer in the government, the Attorney General should allow justice at long last to proceed.

Well, let's hope that settles that.

Update: Russ Feingold piles on:

The Attorney General's comments today appeared to be an attempt to create an election-year security issue where there isn't one. Our federal courts are capable of handling these cases, and no dangerous detainees held at Guantanamo will be released anytime soon. By repeatedly mishandling these cases, the administration has delayed justice from being served. If congressional action is needed to clean up the mess the administration created at Guantanamo, it should be taken alongside a new administration that doesn't have such contempt for the rule of law.

Golly, I seem to detect some message discipline from the Democrats, huh?