



# the facts about the military commissions act

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The Military Commissions Act of 2006 (MCA) is a massive legislative assault on fundamental rights, including the right to habeas corpus - the right to challenge one's detention in a court of law. Signed into law on October 17, 2006, the MCA contains sweeping provisions that serve to shelter the Bush Administration from the legal consequences of their actions, while stripping away the fundamental rights of those held in U.S. custody.

While the Supreme Court's decision in June 2008 in *Boumediene v. Bush* overturned as unconstitutional the provision of the MCA that attempted to suspend the right of habeas corpus - the right to challenge one's detention in a court of law before a real judge in a fair hearing - many of the MCA's most troubling provisions remain intact.

## why the MCA?

In large part, the Military Commissions Act was the response of the Bush Administration to a major Supreme Court decision of 2006 - *Hamdan v. Rumsfeld*. In *Hamdan*, the Supreme Court rejected the President's creation of military commissions by executive order, upheld the right of detainees held by the U.S. in Guantánamo Bay to challenge their detention in the U.S. federal courts, and held that the protections of the Geneva Conventions applied to the war in Afghanistan. In response, the Bush Administration, with Congress, passed the Military Commissions Act into law, attempting to strip those detainees entirely of their right to challenge their detention in court while shielding the Administration from accountability for their actions.

## what does the MCA do?

**Creates a broad definition of "unlawful enemy combatant."** The MCA's definition of "unlawful enemy combatant" - a term which, prior to the MCA, had no meaning in U.S. or international law - applies to both citizens and non-citizens, and is broad, with the potential for constant expansion. It leaves in the hands of the President or Defense Secretary a nearly unrestricted authority to declare people "unlawful enemy combatants."

**Grants U.S. officials immunity for their illegal actions.** The MCA attempts to grant immunity upon officials who engaged in and authorized the abuse of detainees at Guantánamo, Abu Ghraib, Bagram, and other US detention facilities, granting immunity from prosecution under the War Crimes Act for actions committed after November 1997 and attempts to prohibit civil suits relating to any aspect of detention, treatment or conditions of confinement for non-citizens detained by the US as "enemy combatants" or "awaiting such determina-

tion" - even those who were later freed, as nearly half of the men and boys held at Guantánamo Bay have been.

**Protects the U.S. government and U.S. officials from accountability** for their actions against detainees.

The Military Commissions Act attempts to block any legal actions by current or former detainees for damages for abuses suffered during their detention, despite the fact that such actions are often a critical brake upon illegal activities by government officials. The law blocks the application of the Religious Freedom Restoration Act, civil rights laws, or the Alien Tort Statute, by current or former detainees after September 11, 2001 who were determined to be "enemy combatants" or while "pending such determination" - no matter what the final status of those detainees.

**Furthermore, the Military Commissions Act narrows the definition of torture** to allow U.S. officials

to legally engage in practices that amount to torture, allows the use of statements obtained through coercion in prosecution, authorizes military trials that provide little protection for the accused and permit secret evidence, narrows the definition of "sexual assault" to allow for sexualized abuses in interrogation and detention, and attempts to limit the use of international law in U.S. courts.

## what can we do?

The MCA is a frightening and dangerous law that attempts to suspend the right of habeas corpus while protecting U.S. officials engaged in war crimes and torture. It is imperative that citizens and residents of the U.S. act to ensure that its odious provisions are repealed and overturned.

The Center for Constitutional Rights is engaged in legal challenges to the Military Commissions Act. The Supreme Court ruling in *Boumediene v. Bush* was an important defeat for the provision of the MCA that attempted to strip the right of habeas corpus. In addition, CCR filed a case in November 2006, seeking damages on behalf of 2 released detainees who suffered physical, psychological and sexual abuse at the hands of their U.S. captors. Our court challenges are significant and important. However, it is equally critical - and perhaps more so - that many people join in opposing the MCA and calling for its repeal.

\* **DOWNLOAD THIS LEAFLET**, make copies, and pass it to others at your workplace, school, place of worship and community. Educate yourself and others about the MCA.

\* **CALL AND WRITE** your Congressional representatives and demand they support legislation that would repeal the MCA.

\* **SEND LETTERS** to the editor of your local newspaper about the MCA. Speak out, and encourage others.

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