

March 23, 2022

The Honorable Dick Durbin
Chair, Senate Judiciary Committee

The Honorable Chuck Grassley
Ranking Member, Senate Judiciary Committee

Dear Chairman Durbin and Ranking Member Grassley:

We write in response to the criticisms directed at Judge Ketanji Brown Jackson regarding her past representation of individuals detained at the U.S. detention center at Guantanamo Bay. The signatories to this letter are attorneys who proudly served on both sides of the Guantanamo litigation, and former government officials and policy specialists who took differing views on U.S. detention policy. Some represented or held policymaking positions in the United States Government; others were counsel for one or more detainees or advocated for changes to detention policy. But we are united in the view that *pro bono* legal service to the men detained at Guantanamo is in the highest ethical tradition of the legal profession.

After the Supreme Court's decision in *Rasul v. Bush*, 542 U.S. 466 (2004), which authorized detainees at Guantanamo to challenge their detention in federal court, Judge Jackson, then a federal public defender in Washington, DC, where legal claims were being exclusively litigated, was assigned to represent one detainee. At the time, Judge Jackson's brother was an enlisted U.S. Army infantryman who was deployed outside of Mosul, Iraq. She has made clear that she was "keenly and personally mindful of the tragic and deplorable circumstances that gave rise to the U.S. government's apprehension and detention of the persons who were secured at Guantanamo Bay." Nevertheless, consistent with her duties as a member of the Bar, she joined hundreds of other distinguished members of the Bar in providing such representation.

Later, while in private practice, Judge Jackson filed an *amicus curiae* brief on behalf of The Cato Institute, The Constitution Project, and the Rutherford Institute, in *Al-Marri v. Spagone*, 555 U.S. 1220 (2009), arguing that Congress's authorization for the use of military force did not permit lawful residents of the United States to be detained indefinitely as enemy combatants. The Supreme Court vacated the lower court's decision which had upheld such detention authority. Judge Jackson also represented a group of distinguished former federal judges in an *amicus curiae* brief to the Supreme Court in *Boumediene v. Bush*, 533 U.S. 723 (2008), arguing that detainees' ability to challenge their detention through a writ of habeas corpus was secured by the Constitution. The Supreme Court ultimately agreed with Judge Jackson's position, writing, "Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law. The Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law." *Id.* at 798.

The Guantanamo litigation has long attracted the best of the Bar. For the detainees, this includes many of the largest and most prestigious law firms in the country; for the Government, it includes some of the most experienced attorneys in the Department of Justice. This is as it should

be, since the detentions at Guantanamo presented novel and complex constitutional questions at the heart of our system of government.

Reasonable minds can differ about how these questions should have been answered. But securing these answers by orderly litigation in the federal courts, brought and defended by able and zealous advocates on both sides, including in multiple cases heard by the Supreme Court, is the process the Constitution envisions. Judge Jackson's involvement in this litigation has demonstrated a commitment to the Nation's most cherished ideals—a commitment that makes her more, rather than less, qualified for the federal Bench.

Sincerely,*

John B. Bellinger III
Former Legal Adviser to the National Security Council
Former Legal Adviser, Department of State

Robert Loeb
Former Acting Deputy Director, Appellate Staff, Civil Division, Department of Justice;
Special Appellate Counsel for National Security, Civil Division, Department of Justice

Peter Keisler
Former Acting Attorney General;
Former Assistant Attorney General, Civil Division

Matthew Waxman
Former Deputy Assistant Secretary of Defense for Detainee Affairs

Jennifer R. Cowan
Pro Bono and Litigation Counsel
Debevoise & Plimpton

Joshua Colangelo-Bryan
Of Counsel
Dorsey & Whitney LLP

Mark Fleming
Partner
WilmerHale

Katya Jestin
Co-Managing Partner
Jenner & Block LLP

William J. Murphy
Partner
Zuckerman Spaeder

* All affiliations or former affiliations are listed for identification purposes only.

Sabin P. Willett
Partner
Formerly of Bingham McCutchen LLP/Boston

Thomas B. Wilner
Of Counsel
Shearman & Sterling

Muneer I. Ahmad
Deputy Dean for Experiential Education and
Sol Goldman Clinical Professor of Law
Yale Law School

Baher Azmy
Legal Director, Center for Constitutional Rights

John G. Baker
Brigadier General, U.S. Marine Corps (Retired)

Charles Carpenter
Carpenter Law Firm PLC

Eugene Fidell
Senior Research Scholar in Law, Yale Law School
Adjunct Professor of Law, NYU School of Law

Eric M. Freedman
Siggi B. Wilzig Distinguished Professor of Constitutional Rights
Maurice A. Deane School of Law at Hofstra University

Jonathan Hafetz
Professor
Seton Hall University School of Law

Oona Hathaway
Gerard C. and Bernice Latrobe Smith Professor of International Law
Yale Law School

Aziz Huq
Frank and Bernice J. Greenberg Professor of Law
University of Chicago School of Law

Jameel Jaffer
Columbia University
Former Deputy Legal Director, ACLU

* All affiliations or former affiliations are listed for identification purposes only.

Ramzi Kassem
Professor of Law and Founding Director of CLEAR
CUNY School of Law

Joseph Margulies
Professor of the Practice of Law and Government
Cornell University

Stephen I. Vladeck
Charles Alan Wright Chair in Federal Courts
University of Texas School of Law

* All affiliations or former affiliations are listed for identification purposes only.