single hearing on the need for this drastic change. In fact, the sponsor of the amendment, Senator GRAHAM, admitted that some of his comments during the debate were not accurate statements of law. Senator SPECTER, the chairman of the Judiciary Committee, opposed the provision, and spoke eloquently on the lack of appropriate process for its consideration. The provision was adopted by the Senate with less than 2 hours of debate. Since its passage, all negotiations on this provision have occurred in back rooms, without the involvement of the vast majority of Congress, and without even consulting most of the conferees. Such a cavalier treatment of the basic right to habeas corpus is appalling.

The constitutional writ of habeas corpus deserves better than that. Justices Scalia and Stevens, dissenting in the recent case of Hamdi v. Rumsfeld, acknowledged the power of Congress to suspend the writ of habeas corpus, but they noted the limits on that power embedded in the Constitution. In this dissent, they said:

> To be sure, suspension is limited by the Constitution to cases of rebellion or invasion. But whether the attacks of September 11, 2001, constitute an ''invasion,'' and whether those attacks still justify suspension several years later, are questions for Congress.

Here, neither the legislation nor the report language makes any findings that would satisfy the requirements of the Suspension clause. Without such a record, it would be preposterous for Senators to claim that somehow their actions fulfilled the constitutional requirement for suspending habeas corpus. Section 1405, therefore, can be treated only as a modification of the statutory provisions for habeas corpus in the U.S. Code. In Rasul v. Bush, for example, decided last year, the Supreme Court made clear that it was considering the statutory right to habeas corpus, not the constitutional right. They did not determine whether the constitutional right to habeas corpus was reached. Since Congress cannot act in violation of the Constitution to prohibit judicial review, the courts still have the power to determine whether the constitutional right of habeas corpus is available in cases where section 1405 deprives a detainee of the statutory right. So this unseemly action may well not have achieved its purpose.

Some may claim that the right of habeas corpus does not apply to Guantanamo because Section 1405 defines the United States specifically to exclude Guatanamo Bay, Cuba. But as the Supreme Court found in Rasul, the common law right of habeas corpus is not limited to the formal territorial boundaries of a nation, but is defined by ''the practical question of 'the exact extent and nature of the jurisdiction or dominion exercised in fact by the Crown.' '' It is this common law right which our founders enshrined in the Constitution. Thus, the scope of the constitutional right to corpus habeas is the same as the common law right. In Rasul, the Supreme Court stated that the United States ''exercises 'complete jurisdiction and control' over Guanatanamo Naval Base, and may continue to exercise such control permanently. . .''

Supporters of this provision argue that after stripping the courts of jurisdiction for habeas corpus claims, the provision adds back limited appeal rights for detainees in two classes: No. 1, those who have had a Combatant Status Review Tribunal, which serves as an initial designation of enemy combatant status but is not a final judgment; and No. 2, those who have received a final decision from a military commission. Over 500 detainees in the first category, those who have had a CSRT—many of them have already filed a petition to challenge their designation as enemy combatants. We are not aware of any detainees in the second category.

For the first category, section 1405 does not apply the habeas-stripping provision to pending cases, so the courts retain jurisdiction to consider these petitions—in addition to pending military commission cases—consistent with Lindh v. Murphy. During deliberations on the floor for this provision, the Senate specifically rejected language from the original Graham amendment, which would have brought these categories of cases within its reach.

Section 1405 also leaves completely undisturbed a challenge to the military commission process now pending in the Supreme Court in the case of Hamdan v. Rumsfeld. The sponsors of the original amendment made it clear on the floor of the Senate that the provision has prospective application only, which is what my colleagues and I understood to be the drafters' intent.

When Congress authorizes a procedure to challenge military commissions or the tribunals, Congress is clearly not endorsing or authorizing the use of commissions or tribunals themselves. The Senate has numerous bills before it to authorize military commissions, and it has not acted on any of them.

In addition, section 1405 in no way endorses the amorphous and unlimited definition of enemy combatant currently used by the Bush administration. We all hope that the administration will soon provide Congress and the American people with a definition of who is an ''enemy combatant,'' with clear limits on who is subject to such a designation and is subject to indefinite detention as a result.

Sadly, section 1405 also undermines the giant step forward we took in giving such overwhelming support to the McCain amendment and its prohibitions on abusive interrogation techniques. Yet section 1405 appears to undermine that amendment. We have established clear rules, but the Graham amendment is a flagrant attempt to prevent their enforcement. That is not what we intended when nearly all of us voted for Senator MCCAIN's prohibition and that is not the message we intend to send to the world when we did so. In this devious maneuver, Congress has slammed the front door on torture, then surreptitiously opened a back door to it. This legislation obviously raises larger policy concerns in addition to its ambiguous statutory language and the constitutional concerns. America was founded on the principle that no one, especially not the President, is above the law.

Section 1405, however, sends exactly the wrong message. By barring claims from the detainees, it creates a legal black hole in Guantnanamo where detainees can be abused and tortured. We can't continue to turn a blind eye to the treatment of detainees at Guantanamo. The actions of our Government, wherever they are taken, should be limited by the rule of law.

Yet this provision attempts to put Guantanamo above the rule of law. As we try to build democratic societies in Iraq and Afghanistan, how can we possibly prove to them that arbitrary imprisonment is wrong and that all persons are entitled to humane treatment, when Congress so blatantly refuses to practice what it preaches? The hypocrisy is as breathtaking as it is shameful.

It is an outrage that the conferees have included this irresponsible provision in this must-pass bill, and I hope the Senate will do all it can to remove it in the new session that begins in January.

DEFENSE CONTRACTING

Mr. KENNEDY. Mr. President, I commend the House and Senate conferees for their agreement to extend the Defense Department program to prevent defense contracting firms supporting or subsidizing the kind of discrimination that has long been a problem in such contracting. The extension through September 2009 is clearly needed to achieve that important goal.

Defense contracting has long been dominated by old-boy networks that make it very difficult for African-Americans, Latinos, Asians, and Native Americans to participate fairly in these opportunities, or even obtain information about them. Minorities historically have been excluded from both public and private construction contracts in general, and from Federal defense contracts in particular. Since its adoption, the Defense Department's effort, called the 1207 program, has helped level the playing field for minority contractors. Extending the program was a priority, since it's clear there is much more to do.

Since the program was first enacted in 1986, racial and ethnic discrimination has continued to be a substantial obstacle to minority participation in Federal contracts. In some cases, overt discrimination prevents minority-

owned businesses from obtaining needed loans and bonds. Prime contractors, unions, and suppliers of goods and materials have consistently preferred to do business with white contractors rather than minority firms.

Minorities have been consistently underutilized in government contracting. In 1996, the Urban Institute released a report documenting minority firms received only 57 cents in government contracts for every dollar they should have received based upon their eligibility.

For specific racial groups and women, the disparities were even greater. African-American owned firms received only 49 cents on the dollar; Latino-owned firms, 44 cents; Asian-American owned firms, 39 cents; Native American-owned firms, 18 cents.

These statistics are particularly troubling, because they exist despite affirmative action programs in many jurisdictions. Without such programs, the problem would be worse. The Urban Institute report found that disparities for minority- and women-owned firms were greatest in the areas where no affirmative action program was in place. For African Americans, the percentage dropped from 49 percent to 22 percent, for Latinos from 44 percent to 26 percent, for Asians from 39 percent to 13 percent, and for Native Americans from 18 percent to 4 percent. These figures show that affirmative action is not only effective, but still urgently needed.

We've also seen repeated reports of bid shopping and of minority businesses being denied contracts despite submitting the lowest bid.

Also, the Department's decision to award a growing number of defense contracts noncompetitively has excluded minority-owned businesses from a significant number of contracting opportunities. No-bid contracts also hurt white-owned businesses, but they disadvantage minority-owned firms in particular.

These problems affect a wide variety of areas in which the Department offers contracts, and the problems are detailed in recent studies.

A 2002 Dallas study found that minority business enterprises were significantly disadvantaged in obtaining contract work. Evidence in that report also suggests that discrimination takes place in subtle ways, such as by making unrealistic demands on minority contractors, or refusing to pay them on time. A Hispanic-American contractor noted that on several occasions, he and other minority contractors were not informed of bid opportunities with government agencies, even though they performed services in the field. A Native American contractor in goods and other services noted that some customers visit his company and walk out, once they see the owner is not a white man. Many minority firms reported being consistently underestimated by white prime contractors who assume they are not capable of doing the work because they are minority-owned. Minority firms expressed concern that they will never become large enough to compete for larger contracts if they are denied a chance to prove themselves on smaller contracts.

In Cincinnati, a 2002 study found that ''bid shopping'' by prime contractors continues to harm minority firms. The firms also reported numerous obstacles in seeking work in the city, such as denial of opportunities to bid, lack of response to minority presentations for bidding, limited financing, problems obtaining bonds, slow pay, predatory business practices, and stereotypical attitudes that minorities are incapable of performing good work.

A 2003 study of contracting in Ohio found racial prejudice in both the public and private sectors. A State inspector was alleged to have expressed hatred for African Americans in ugly terms. An African-American professional service contractor said that his prime contractor deliberately sabotaged his work by breaking his equipment. A state inspector conceded to an African-American contractor that he was requiring him to do more expensive work than he would have required of a large white-owned contractor doing an identical job nearby. Banks and unions sometimes contribute to the obstacles by discriminating against minorities in awarding financing.

A 2004 study in Alameda, CA, also found significant underutilization of minority-owned firms.

I have received a letter from an African-American business owner, Mr. John McDonald, explaining the difficulties minority firms face in the contracting business and I ask unanimous consent to have it printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 18, 2005.

Senator EDWARD M. KENNEDY,
Senate Armed Services Committee,
U.S. Senate, Washington DC.

DEAR SENATOR KENNEDY: My name is John McDonald and I am an African-American business owner. I understand that the Senate will soon consider the reauthorization of the Department of Defense's 1207 program. I want to urge you to make sure that program continues. As my own experience over the last few years makes clear, discrimination is still a serious and pervasive problem for business owners in America. The unfortunate reality today is that the playing field is still not level for businessmen like me.

I work in the fields of institutional real estate acquisition, development and construction. I am very good at what I do and very proud of the quality of my work. Like most businesspeople. I want to grow my company and succeed. This desire comes both from pride in my business and from my desire to give my family, that includes my five beautiful children the best opportunity to succeed in life. I know that the Department of Defense has spent millions of dollars on contracts for the type of work that I do and while I have not worked for DOD in the past, I would welcome the chance to do so.

The problem for me, and many businesspeople like me, is that discrimination often stands in our way. I would like to share with you just one example of the seriousness of discrimination against minority business people. A few years ago, I entered into four triple net leases with Domino's Pizza to purchase land and build four prototype corporate leased stores in Las Vegas, Nevada. I purchased the sites they selected, and spent hundreds of thousands of dollars towards completing these stores based on a 30 year, triple net lease. The money was from loans and personal funds invested in my company it also included bank financing which I personally guaranteed. The restaurants were beautiful, top of the line establishments and Domino's even featured my work at their convection in Las Vegas that year. I admit that I was startled to find that I was the only African-American in attendance at the convention, but I was so proud of my work that I didn't think much of it at the time. That was soon to change.

Soon after the convention, a senior Domino's official, Debbie Pear called me and told me we had to amend our leases in a way that no businessman in my position could do. She wanted me to give Domino's the right to opt out of the lease with a simple 30 day notice, reneging on the initial 30 year obligation. In my field this is unheard of. When I refused to do this, she made clear tbat she wasn't very concerned at my objections and she said frankly ''I don't like doing business with you people. anyway''. It was her position that I would make the change as I couldn't afford not to. Domino's had more money and could tie the matter up in court and I would either be forced to make the change, or loose my business, either way they would prevail. Sadly, that is exactly what they did.

Domino's stopped paying rent to me on the very profitable stores that were built by my company. They stifled construction on stores by removing my name as landowner with local county municipalities. They blocked financing as well as the sale of these properties, making my company income void. Within months, I had to file for bankruptcy. Domino's slandered my name in an organized effort to have a Trustee appointed to the case. who intentionally settled the company claim with Domino's for a mere $45,000. As you could imagine these tactics hit my business hard, and caused emotional and financial trauma for me and my family. The fact is, big corporate conglomerates such as Domino's Pizza, make fairness in business impossible. As Americans, where free enterprise is suppose to prevail, we cannot allow these businesses to put small business out of business.

I am not a man who stands still in the face of injustice. I have filed a lawsuit and my chum has been litigated all the way to the U.S. Supreme Court which beard oral argument in my case on December 6, 2005. The problem is that I do not want to be in court while I am willing to stand up and fight for my rights, I would rather spend my time building a business, doing high quality work and providing for my family. Unfortunately in my case, ongoing discrimination has made that impossible.

Hopefully my story has made it clear how important these types of programs are. There is such pervasive discrimination in the private markets that we must have assistance from programs like the 1207 program. Help us help all minority and small business survive and fulfill the American dream. Please ensure that this important program is continued.

Sincerely,

JOHN MCDONALD.

Mr. KENNEDY. One of the purposes of this program is to ensure that government contracting does not subsidize—even indirectly—private discrimination. Because discrimination affects contracting by private firms as well as State and local governments, and all contractors bid in for these contracts as well as for Federal defense contracts, it is important to ensure a level playing field in Federal contracting.

Finally, the data in the Department of Commerce benchmark study supports the need to improve contracting opportunities for minority-owned businesses.

The 1207 program helps to correct these pervasive problems of discrimination without imposing an undue burden on white-owned businesses. Small businesses owned by white contractors are eligible to receive the benefits of the program if they are socially or economically disadvantaged.

All of us benefit when recipients of Federal opportunities reflect America's diversity, and I'm proud to support the reauthorization of the 1207 program.

CLIMATE NEGOTIATIONS IN MONTREAL

Mr. JEFFORDS. Mr. President, I rise to speak on behalf of myself and Senators LIEBERMAN, BIDEN, CARPER, FEINGOLD, FEINSTEIN, KERRY, LAUTENBERG, OBAMA, REED, REID, SARBANES, and WYDEN.

Over the last 2 weeks, 189 countries, including the United States, met in Montreal, Canada, to discuss the issue of global climate change. These countries are all signatories to the United Nations Framework Convention on Climate Change. The Montreal talks also included discussions by the 157 countries that are signatories to the Kyoto Protocol.

A key topic of the discussion was whether future talks could include discussions of additional commitments under the Framework Convention or the Kyoto Protocol. The Bush administration's position from the outset was that such discussions were a ''nonstarter'' and that the United States would not engage in any such talks.

On December 5, 2005, 24 members of the Senate wrote to the Bush administration to note that the United States remains a signatory to the Framework Convention and thus is obligated to take actions to ''prevent dangerous anthropogenic interference with the climate system.'' In the view of those Senators and others, blocking such talks would be inconsistent with the international obligations of the United States under the Framework Treaty.

The letter, which I submit for the RECORD, also noted that in June of 2005, a bi-partisan majority of the Senate approved a resolution calling for domestic legislation to achieve mandatory reductions in greenhouse gas, GHG, emissions and recognizing the need for comparable action by major GHG emitters nations worldwide. It urged the Bush administration to be mindful of this fact and to conduct its negotiations accordingly. The signers of this letter hoped that it would be useful in making clear that many in the United States, including a majority of members of the Senate, do not agree with the Bush administration's position.

Despite the letter, the Bush delegation did their best to block and stall the negotiations and to send the message that the United States will not take mandatory action to reduce greenhouse gas emissions for many years to come. When it was time to actually negotiate about further commitment discussions, the chief negotiator of the United States bluntly indicated that such discussions were unacceptable and abruptly walked away from the negotiating table.

The good news is that the rest of the countries involved were not deterred by the U.S. walkout and ultimately reached agreement on a set of decisions that will allow initiation of further talks next year. Only when confronted with this agreement in a public way did the United States ultimately accept a version of those agreements.

This means that we have made progress and that further discussions will take place under both the Framework Treaty and the Kyoto Treaty about additional commitments. The clear message from the rest of the world to the Bush administration is that we are moving forward. Such progress can take place with or without the United States at the table.

The results of these negotiations are encouraging and open a variety of pathways to future U.S. engagement. The developments expand the opportunities available to the U.S. to fulfill its Framework Convention obligations to engage the international community prior to the Framework Convention and Kyoto Protocol meetings in 2006—in meeting the Convention's goal of ''preventing dangerous anthropogenic interference with the climate system.''

Even without the United States, those nations that are parties to the Kyoto protocol have agreed to initiate a process by which commitments will be established for the period following 2012, when the first commitment phase of the Protocol ends. Contrary to the claims of some, the Framework Convention process and the Kyoto process remain as viable legal vehicles for future reductions of greenhouse gases.

It is also worth noting that the parties to the Framework Convention, including the United States, also agreed to initiate a process for considering reductions in greenhouse gas emissions through avoided deforestation. As much as 25 percent of global GHG emissions are generated by tropical deforestation. The avoided deforestation initiative, prompted by the efforts of Papua New Guinea and Costa Rica and endorsed by the G77 Group of Developing Nations and China, means that developing countries are open to ways in which they could reduce their greenhouse gases emissions, consistent with the Framework Convention principle of ''common but differentiated responsibilities and respective capabilities.''

The United States is the largest emitter of greenhouse gases and has been for some time. We have an obligation to be a leader in the fight to reduce greenhouse gases. We have an obligation under the Framework Convention to take actions to ''prevent dangerous anthropogenic interference with the climate system.'' We have not yet honored those obligations, even as other countries, including developing countries, move forward.

A majority of Americans support taking some form of action on climate change. A recent poll by the Program on International Policy Attitudes, sponsored by the Center for International and Security Studies at the University of Maryland, found that 86 percent of Americans think that President Bush should act to limit greenhouse gases in the United States if the G–8 countries are willing to act to reduce such gases. All the G–8 countries except the United States are signatories to the Kyoto Treaty. Finally, the study found that 83 percent of Americans favor ''legislation requiring large companies to reduce greenhouse gas emissions to 2000 levels by 2010 and to 1990 levels by 2020.''

We cannot afford further delay on climate change, which appears to be the desired outcome of the Bush administration policy. The Montreal talks are a positive step forward, but we need to do much more, much faster. Climate change is here and it will accelerate the longer we wait. The time has come for the United States to adopt mandatory legislation to reduce greenhouse gases and for the United States to reengage in the international negotiation process in a constructive way.

I ask unanimous consent that the letter to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, December 5, 2005.

THE PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT, as you know, one of the most pressing issues facing humankind is the problem of human-induced global climate change. Between November 28 and December 9, 2005, 189 countries, including the United States, are meeting in Montreal, Canada to discuss future actions that can be taken under the United Nations Framework Convention on Climate Change (UNFCCC). That conference will be the 11th UNFCCC Conference of the Parties (COP 11). Simultaneously, 157 parties to the Kyoto Protocol, an extension of the UNFCCC, will be meeting and the United States will participate as an observer in that process, which will be the first Meeting of the Parties (MOP1).

The United States is a signatory to the UNFCCC treaty, which the Senate ratified in