

Combatant Status Review Tribunal, a process where detainees may challenge their status designations.

Congress passed and the President signed the Detainee Treatment Act on December 30, 2005, which included the Graham-Levin amendment to eliminate the Federal court statutory jurisdiction over habeas corpus claims by aliens detained at Guantanamo Bay.

After a full and open debate, a bipartisan majority of Congress passed the Military Commissions Act just last fall. The MCA amended the Detainee Treatment Act provisions regarding appellate review and habeas corpus jurisdictions by making the provisions of the DTA the exclusive remedy for all aliens detained as enemy combatants anywhere in the world, including those detained at Guantanamo Bay, Cuba. The MCA's restrictions on habeas corpus codified important and constitutional limits on captured enemies' access to our courts.

The District of Columbia Circuit upheld the MCA's habeas restrictions in *Boumediene v. Bush* earlier this year. The Supreme Court, in a rare move, reconsidered their denial of certiorari and will make a decision on this case in the near future. In the meantime, Congress should not act hastily.

Before the Supreme Court decision in *Rasul v. Bush* in June 2004, the controlling case law for over 50 years was set out in the Supreme Court case of *Johnson v. Eisentrager*, a 1950 case which held that aliens in military detention outside the United States were not entitled to judicial review through habeas corpus petitions in Federal courts. The Court recognized that extension of habeas corpus to alien combatants captured abroad "would hamper the war effort and bring aid and comfort to the enemy," and the Constitution requires no such thing.

The *Rasul* case changed the state of the law for detainees held at Guantanamo Bay, Cuba, due to the unique nature of the long-term U.S. lease of that property. The Supreme Court reasoned that the habeas corpus statute and the exercise of complete jurisdiction and control over the Navy base in Cuba were sufficient to establish the jurisdiction of U.S. Federal courts over habeas petitions brought by detainees.

The Supreme Court ruled that the status of a detainee as an enemy combatant must be determined in a way that provides the fundamentals of due process—namely, notice and opportunity to be heard. The executive branch established Combatant Status Review Tribunals, or CSRTs, to comply with this mandate. Judicial review of CSRT determinations of enemy combatant status by article III courts is provided by the Detainee Treatment Act. Under the DTA, appeals of CSRT decisions may be made to the U.S. Court of Appeals for the DC Circuit.

In his dissent in the *Rasul* case, Justice Scalia wisely pointed out that at the end of World War II, the United States held approximately 2 million

enemy soldiers, many of whom no doubt had some complaint about their capture or conditions of confinement. Today, approximately 25,000 persons are detained by the United States in Iraq, Afghanistan, and at Guantanamo Bay.

Restoring jurisdiction over alien enemy combatants could result in providing the right of habeas corpus to all those detainees held outside the United States so long as their place of detention is under the jurisdiction and control of the U.S. Armed Forces.

In fact, habeas challenges on behalf of detainees held in Afghanistan have already been filed.

The Supreme Court recognized in *Johnson v. Eisentrager* that allowing habeas petitions from enemy combatants forces the judiciary into direct oversight of the conduct of war in which they will be asked to hear petitions from all around the world, challenging actions and events on the battlefield. This would simply be unworkable as a practical matter and could greatly interfere with the Executive's authority to wage war. As the Supreme Court revisits these issues, Congress should not undue what it has done.

Federal courts have ruled twice—in December 2006 at the district court level on the remand of the Hamdan case from the Supreme Court and again in February 2007 at the DC Circuit Court level in the consolidated cases of *Boumediene* and *Al Odah*—that the Military Commissions Act is constitutional and that alien enemy unlawful combatants have no constitutional rights to habeas corpus.

The Supreme Court, at the end of June, decided it would hear these cases on expedited appeal this fall. It is appropriate for Congress to allow the Supreme Court to review the decision made by the DC Circuit Court of Appeals, applying the standards of review enacted in the DTA and the MCA before granting habeas rights to and opening the Federal courts to thousands of detainees held outside the United States.

For these reasons, and simply because it represents extremely bad policy, I urge my colleagues to oppose the Leahy-Specter amendment.

Mr. President, I had also intended to talk a little while today about Senator GRAHAM's amendment seeking to strike section 1023 of the underlying bill. It is my understanding now that there are discussions ongoing relative to the possibility of trying to work that amendment out. So if that amendment does come to the floor for consideration, I will be back to talk about the support of that amendment at that time.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MENENDEZ). The clerk will call the roll. The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. The Senate is now proceeding under a previous order in a period of morning business, with Senators being recognized for up to 10 minutes.

The Senator from Alabama is recognized.

Mr. SESSIONS. I thank the Chair.

#### DEFENSE AUTHORIZATION AND APPROPRIATIONS

Mr. SESSIONS. Mr. President, I would just say that we have a limited amount of time in this body—and we all know that—before the end of the fiscal year will be coming up on September 30. We have to pass some sort of appropriation to fund our defense and our military by that date. We need to pass the Defense authorization bill, which has been voted out of the Armed Services Committee. Senator LEVIN, our Democratic chairman, has moved that bill forward, and it had strong bipartisan support. It is on the floor today, and it provides quite a number of valuable and critically important benefits for our defense on which we need to vote. For example, it increases the number of persons in the Army, the end-strength of the Army, by 13,000, and 9,000 for the Marine Corps. We have a lot of people talking about the stress on the military, so we need to authorize the growth of the military. It is something we know we need to do, and I think we have a general agreement on that. It is in this bill. We need to move this bill. It authorizes numerous pay bonuses and benefits for our warfighters and their family members. It allows a reservist to draw retirement before age 60 if they volunteer under certain circumstances for active mobilizations. It directs studies on mental health and well-being for soldiers and marines. It establishes a Family Readiness Council. It authorizes funding for the MRAPs, which are those vehicles which are so much more effective against even the most powerful bombs and IED-type attacks.

So this bill, this authorization bill, is not an unimportant matter. Our soldiers are out there now in harm's way, where we sent them, executing the policies we asked them to execute, and we need to support them by doing our job. We complain that Iraq can't pass this bill or that bill; we need to pass our own bill.

Not only do we need to get this authorization bill passed, but we have to get on next week to the appropriations bill to actually fund the military because if we do not do so, the funding stops. Under American law, if Congress does not appropriate funds, nobody can spend funds. It is just that simple.

We have to do our job, and I hope we will. I am troubled to see a lot of things beginning to occur that indicate there is an agenda afoot here, at least by some, that would make it difficult, if not impossible, for us to get this work done.

For example, the first amendment brought up on the Defense bill—not a part of the committee bill but on the floor here—is to provide to enemy terrorists habeas corpus rights they have never been provided by any nation in history during a time of war and certainly not our own Nation. It is frustrating for me to hear people say we want to restore habeas rights to captive enemy combatants. If we did it, we should at least perhaps give priority to lawful enemy combatants. Most of these are unlawful enemy combatants who have not in any way followed the rules of war and therefore are not provided, in normal circumstances, the full protections of the Geneva Convention. So I am worried about that.

The President has said if that amendment passes, he will veto the bill. So what will we have done then? Are people in here going to have a good feeling about that—they made the President veto the bill—that we provide unprecedented rights to captives who are setting about to attack and kill Americans? We are releasing people from Guantanamo and have released quite a number of them. Quite a number of them have been recaptured on the battlefield trying to kill our sons and our daughters who are out there because this Congress sent them out there. So I think we need to get our heads straight.

Now, in addition to that, we have Senator DURBIN offering the DREAM Act amendment, an immigration bill, to this bill.

Senator KENNEDY says he intends to offer hate crimes legislation. These are controversial pieces of legislation, unrelated, really, to the Defense Department. They ought not be passed. They have been rejected before. Certainly the DREAM Act was.

Let me talk about this DREAM Act. It is something Senator DURBIN points out that I have objected to before. I have objected to it before when it came up in the Judiciary Committee, not in the Armed Services Committee.

The Durbin amendment, as filed as of the end of July, would do a number of things. It will, indeed, provide amnesty, the full panoply of rights we give to any citizen who comes here lawfully. It provides a full citizenship track and full rights for quite a number of illegal aliens, putting them on a direct path to citizenship. A conservative estimate done by the Migration Policy Institute suggests that at least 1.3 million will be eligible for amnesty. It will also allow current illegal aliens, those who would be provided amnesty under this bill, and future illegal aliens who come here after this day, illegally—hopefully, I thought we decided when the comprehensive bill was voted

down, the American people were saying let's end illegal immigration—it would provide for them to be eligible for in-State tuition at public universities, even when the university denies in-State tuition to U.S. citizens and legally present aliens.

It would reverse 1996 law that quite rationally said let's not reward people who are here illegally by giving them a discounted rate of tuition. How much more simple is it than that?

It would provide Federal financial aid in the form of student loans and work/study programs, subsidized by Federal money. It is unclear, it appears, whether Pell grants, direct Federal grants, are going to be provided to people in our country illegally, with which to go to college, whereas hard-working Americans, many of them, don't qualify for Pell grants—and we need to expand Pell grants. Why would we then be providing them to persons who would come into our country illegally?

They say they may have come when they were younger. Maybe they did. But if you have a limited number of persons to whom you can provide Pell grants or subsidized loans, I suggest they should be given to those who are lawfully here, not those who are unlawfully here.

There is an old slogan: If you are in a hole, the first thing you should do is stop digging. I suggest if you have a problem with people coming into the country illegally, the first thing you should do is stop subsidizing that illegal behavior by giving them discounted tuition.

The DREAM Act establishes a seamless process to take illegal aliens directly from illegal status to conditional permanent resident status, then to legal permanent resident status, and then the next step, of course, is citizenship. First, illegal aliens who came here before age 16 and have been here illegally for the past 5 years will be given "conditional" permanent residence, or green cards, if they have been admitted to an institution of higher education or have a GED, or have a high school diploma. The "conditional" green card, which is good for 6 years, will be converted to a full green card. A green card means you have a legal permanent residence status in America. In this case it would be a direct result of an illegal entry into the United States, or an illegal overstay. It will be converted to a full green card if the alien completes 2 years of a bachelor's degree or serves 2 years in the uniformed services. This is broader than the term "military service," as people have said. "Uniformed services," as defined by title 10, includes the National Oceanic and Atmospheric Administration Commissioned Corps and the U.S. Public Health Service Commissioned Corps, in addition to the military. Or they would qualify if they can't do those because of hardship.

After 5 years of "conditional," or full green card permanent status, the

aliens amnestied under the DREAM Act will be eligible for citizenship.

We are also expanding, through this amendment, if it is to be adopted, immigration into the country based on an illegal action in a number of ways. There is nothing in the DREAM Act that limits the ability of the illegal aliens who are being provided permanent status and citizenship here to bring in their family members. Once an illegal alien becomes a legal resident under the act, they can immigrate their spouses and their children. As soon as the illegal alien becomes a citizen, he or she will be able to bring in, to immigrate their parents to the country as a matter of right. So there is no numerical limit to the number of parents a citizen can immigrate into the United States. I think that is one of the flaws in our current law.

The reason that is important is because we are generous in immigration. We allow a million or more a year to come legally into our country. We do provide quite a number of generous provisions that allow people to come. But if you are allowing those limited number of slots—in effect, we have only so many that the country does allow and would desire to allow to come—we are providing parents of those who have been illegal to be able to come as a guaranteed right, whereas another who may have a master's degree, may have a high skill, may have learned English in Honduras and is valedictorian of their school or college—they can't get in. But they have an automatic right for a parent, who may have done far less in the scheme of things to justify taking one of those limited slots the country has to offer. That is why I am concerned about that.

We don't think about it in correct terms. We have to understand we cannot accept everybody in the world. We should create a generous system of immigration that allows people to come to America, but we ought to set up a legal system that we are proud of and that sets good standards, that allows a person to have the greatest opportunity to be successful here, to have more precedence in entry—which is exactly what Canada does, and Canada is quite proud of it.

In 1996, Congress passed this law:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration and scope) without regard to whether the citizen or national is such a resident.

The DREAM Act eliminates this provision that has been offered on the Defense bill. It would reverse this current Federal law. The result is that States will be able to offer in-State tuition to illegal aliens.

The PRESIDING OFFICER. The Chair advises the Senator from Alabama he has consumed his 10 minutes.

Mr. SESSIONS. I thank the Chair and ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I will conclude by saying there are a host of reasons why we need not, ought not pass the DREAM Act itself. But that is a matter of debate that we have had several different times now. What we need to be doing now is providing support for the soldiers, sailors, airmen, marines, and guardsmen we sent in harm's way by passing the Defense authorization bill and the Defense appropriations bill. We don't need to be talking about the DREAM Act. We don't need to be talking about hate crimes. We don't need to be offering the first amendment out of the chute, an amendment that provides habeas benefits to unlawful combatants, legal rights that have never been given by the United States in the history of the Republic, nor any other nation in the history of the world.

We need to get serious and get some work done here that is important and not be distracted with amendments that are going to be politically controversial and can only make it more difficult for us to do our duty as a Congress.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

#### FIGHT TO END HATE CRIMES

Mr. CARDIN. Mr. President, only 2 weeks ago this Nation marked the 50th Anniversary of the Civil Rights Act of 1957. That landmark legislation, signed into law on September 9, 1957, was Congress' first civil rights bill since the end of Reconstruction.

It established the Civil Rights Division of the Justice Department and empowered Federal prosecutors to obtain court injunctions against interference with the right to vote. It also established a Federal Commission on Civil Rights with authority to investigate discriminatory conditions and recommend corrective measures.

In the Judiciary Committee, under the leadership of my distinguished colleague, the senior Senator from Vermont, we held a hearing to commemorate this milestone, to talk about our Nation's progress over the past half century and how we must move forward if we are to live up to the ideals enumerated in the Constitution. My former colleague from the House and an American hero, JOHN LEWIS, shared his recollections and his hopes for the future with us.

Today, however, it is with great sadness that I come to the Senate floor to talk about a rash of incidents that have occurred over the past month in this region of the country. These incidents are a painful reminder of just how far we have to go.

At the College Park Campus of the University of Maryland, fewer than 10

miles from here, students found a noose hanging in a tree near the University's African-American Cultural Center. It is believed that the noose had been hanging there for almost 2 weeks before the assistant editor of the school's African-American newspaper noticed it and notified the police.

University President C.D. Mote has denounced the incident, as have student leaders and faculty. It is under investigation as a possible hate crime and may be connected to the trial of six African-American teenagers in Jena, Louisiana. In that case, three nooses were placed in the so called "white-only" tree on campus after black students sat under it. The ensuing altercations led to charges of attempted murder against only the black teenagers, charges that have since been dismissed.

In Montgomery County, Maryland, three separate acts of vandalism were reported at Jewish centers in Rockville, Gaithersburg, and Silver Spring.

In two of those cases, vandals defaced banners declaring the synagogues' support for the State of Israel, scrawling anti-Semitic slurs on them. Police are investigating all three acts as possible hate crimes.

Then, in the hills of Big Creek, West Virginia, a 20-year-old African-American woman was held captive in a shed for more than a week. During her ordeal, she was beaten, choked, stabbed, sexually assaulted, and forced to perform inhumane acts. Throughout, she was called racist slurs and was told she was being victimized because of her skin color. She was rescued by police responding to an anonymous tip. A local Sheriff described this as "something that would have come out of a horror movie." Six people, all white, have been arrested in connection with the assault and kidnapping, and police are still searching for two more. The young woman is recovering in a hospital from her ordeal.

In Gaithersburg, Maryland, a Muslim family was again the victim of vandalism. Over the years, the family had been victimized multiple times, beginning in 1994 when they moved to the area. Their house and automobiles were broken into, garbage and dead animals were strewn in their yard, and racist notes were taped to their door.

This time, on September 11, tires on both of the family's vehicles were slashed. The mother has worked hard to counteract anti-Muslim and anti-Arab sentiment in America, speaking at schools and libraries about Islam and Arab-American culture and teaching a cultural sensitivity class. Police are continuing to investigate this incident as a possible hate crime.

In Manassas, Virginia, the Ku Klux Klan recently began distributing leaflets urging "white Christian America" to stand up for its rights. The neighborhood has recently begun a demographic shift as older residents moved out and younger Latino families moved in.

Finally, Mr. President, last Friday, it was reported that the Metropolitan Police Department here in Washington is investigating a series of hate crimes targeting gay and transgender people. The latest attack happened seven blocks from here near the Verizon Center, where reportedly a group of young men threw a 16-year-old male-to-female transgender person through a plate glass window. Police reports indicate that the suspect had been arrested twice before for similar attacks against gay men.

The Federal Bureau of Investigation has reported that in 2005 there were approximately 7,100 incidents classified as hate crimes. The FBI uses voluntary reports from local law enforcement agencies across the country to determine the totals, but the actual number could be far higher.

The Southern Poverty Law Center has analyzed data compiled and reported by the federal Bureau of Justice Statistics. That November 2005 report, based on data from the biannual National Crime Victimization Survey (NCVS), found that fewer than half of hate crimes are reported to the police and others are not counted by the FBI. This is because they are not recorded as hate crimes, or because some police departments do not report statistics to their State offices. The NCVS estimates that the United States averages about 191,000 hate crimes each year.

The report also found that hate crimes involve violence far more than other crimes. The data showed that four out of five hate crimes were violent—involving a sexual attack, robbery, assault or murder, as compared to 23 percent of non-hate crimes.

Mr. President, the situation is even more dire than most Americans imagine. The Southern Poverty Law Center's Intelligence Project counted 844 active hate groups in the United States in 2006.

Hate crimes' tentacles reach far beyond the intended targets. They bring a chill to entire neighborhoods and create a sense of fear, vulnerability, and insecurity in our communities. They poison the well of our democracy and strike at the very heart of the American spirit.

Our local law enforcement agencies need help in investigating and prosecuting these crimes, and this help must come from the United States Attorney General and the Department of Justice.

I am a cosponsor of the Mathew Shepard Local Law Enforcement Hate Crimes Prevention Act, S. 1105, to strengthen existing Federal hate crime laws. I want to thank Senator KENNEDY for his leadership on this issue.

While the responsibility for prosecuting hate crimes primarily rests with the individual States, this new measure will give local law enforcement additional tools to combat violent hate crimes. It also will provide Federal support through training and assistance to ensure that hate crimes