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U.S.: License to Abuse Would Put CIA Above the Law

Congress Should Reject Proposed Exemption From Ban on Inhumane Treatment

(New York, October 26, 2005) – The Bush administration is now the only government in the world to claim a legal justification for mistreating prisoners during interrogations, Human Rights Watch said today.

““ The administration is setting a dangerous example for the world when it claims that spy agencies are above the law ””

**Tom Malinowski, Washington
director of Human Rights Watch.**

The administration recently approached members of the U.S. Congress to seek a waiver that would allow the CIA to use cruel, inhumane, or degrading treatment on detainees in U.S. custody outside the United States.

While many other governments practice torture and other forms of mistreatment and have records of abuse far worse than the United States, no other government currently claims that such abuse is legally permissible, Human Rights Watch said.

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“The administration is setting a dangerous example for the world when it claims that spy agencies are above the law,” said Tom Malinowski, Washington director of Human Rights Watch. “Congress should reject this proposal outright. Otherwise, the United States will have no standing to demand humane treatment if an American falls into the hands of foreign intelligence services.”

Earlier this month, in a 90-9 vote, the U.S. Senate approved a measure sponsored by Republican Sens. John McCain and Lindsey Graham that would prohibit the military and CIA from using “cruel, inhumane, or degrading treatment” in the case of any detainee, anywhere in the world.

But last week, Vice President Dick Cheney and CIA director Porter Goss met with Sen. McCain to propose a presidential waiver for the proposed legislation. The proposed [waiver](#) states that the measure “shall not apply with respect to clandestine counterterrorism operations conducted abroad, with respect to terrorists who are not citizens of the United States, that are carried out by an element of the United States government other than the Department of Defense. . . if the president determines that such operations are vital to the protection of the United States or its citizens from terrorist attack.”

The waiver, which by its own terms applies to non-military counterterrorism operations against non-citizens overseas, states that such operations need to be “consistent with the Constitution and laws of the United States and treaties to which the United States is a party.” But the Constitution does not robustly curtail the conduct of the CIA overseas, and relevant domestic laws contain numerous jurisdictional loopholes. Moreover, administration officials have previously told Congress that they do not consider CIA personnel operating outside the United States to be bound by legal prohibitions against “cruel, inhumane, or degrading treatment” under treaties to which the United States is party.

“This exception contains code language that could give the CIA a green

light to treat prisoners inhumanely,” said Malinowski. “If allowed to stand, it will render President Bush’s past pledges about humane treatment meaningless.”

Human Rights Watch said the waiver would also open the door for outright torture, as interrogators would find it impossible to draw lines between illegal and “allowable” mistreatment. Bush administration officials, under questioning from members of Congress in the past, have failed to clearly define differences between torture and lesser forms of mistreatment. They have also made inaccurate statements about the definition of torture; for instance, administration officials have claimed that “waterboarding” (suffocating a person until he believes he is about to drown) is not a form of torture.

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