

Testimony of
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National Religious Campaign Against Torture,
Before the
Senate Judiciary Committee
Subcommittee on The Constitution
Hearing on Restoring the Rule of Law
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Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of the National Religious Campaign Against Torture (NRCAT). One of the most important tasks at hand for the new President and Congress following the November election is to demonstrate dramatically, effectively, and immediately to the American people and the world at large that the United States reaffirms its commitment to the rule of law, to our international treaty obligations, and to our most basic moral principles. Our testimony to you today concerns the issue of torture, more specifically, the policy and practices of torture and cruel, inhuman or degrading treatment by the United States with respect to detainees in its counter-terrorism efforts since 9-11.

Let us first introduce our organization. The National Religious Campaign Against Torture is a coalition of religious organizations joined together to ensure that the United States does not engage in torture or cruel, inhuman or degrading treatment of anyone, without exception. Since its formation in January 2006, over 230 religious organizations have joined NRCAT, including representatives from the Catholic, Protestant, Orthodox Christian, evangelical Christian, Buddhist, Hindu, Quaker, Unitarian, Jewish, Muslim, and Sikh communities. NRCAT member organizations

include denominations and faith groups, national religious organizations, regional religious organizations, and congregations.

NRCAT's goal is to stop -- without exception -- all U.S.-sponsored torture and cruel, inhuman and degrading treatment of detainees. To accomplish this goal we seek to:

- end the CIA "enhanced interrogation techniques" program;
- close secret prisons;
- allow the International Committee of the Red Cross timely access to all detainees;
- end the use of rendition for torture;
- prohibit the use of evidence obtained by torture;
- investigate and make public the full account of the use of torture and cruel, inhuman or degrading treatment by the United States.

We believe that torture violates the basic dignity of the human person that all religions, in their highest ideals, hold dear; that it degrades everyone involved -- policy-makers, perpetrators, and victims; and that it contradicts our nation's most cherished values. We believe that nothing less than the soul of our nation is at stake in our decisions and actions with respect to the use of torture.

As you already know, the universally recognized definition of torture is in the United Nations Convention Against Torture and Cruel, Inhuman or Degrading Treatment adopted by the U.N. General Assembly in 1984, signed by the United States in 1988 and

ratified by the United States in 1994. It defines torture as any act by which "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Torture and ill treatment are also prohibited by the Geneva Conventions -- the treaties that set international standards for humanitarian concerns. In fact, torture has special status in international law. Like genocide and slavery, under the principle of *jus cogens*, the prohibition against torture is binding on all countries -- whether or not they ratify the conventions -- and the prohibition cannot be overruled by any other law, custom or circumstance. Under international law every act of torture is a crime -- there are no exceptions.

Yet human rights organizations have documented as of 2006 hundreds of cases in which U.S. military and civilian personnel are credibly alleged to have abused, tortured, or killed detainees in the war against terrorism. In at least eight of these cases, it is likely the detainees were literally tortured to death. And these are just the cases that the human rights community knows about. There are undoubtedly many others.

We have also heard numerous detailed accounts of torture from persons who have been released from U.S. detention facilities and from attorneys for persons still detained - - Maher Arar, Khalid el Masri, and Murat Kurnaz, to name a few. And the CIA itself has publicly admitted to at least three cases where it used waterboarding -- a well-known form of torture going back to the Spanish Inquisition and for which we have prosecuted both Japanese and our own soldiers in years past. We also know of numerous cases in which the CIA has used stress positions, sleep deprivation, exposure to severe cold temperatures, slapping, and refusal of pain medication on detainees.

There is no question but that the use of torture and cruel, inhuman or degrading treatment-- President Bush and Administration officials call it "enhanced interrogation techniques" -- has been and apparently continues to be an approved policy by the United States.

The purpose of our testimony here today, however, is not to prove that torture has been a policy of the United States. There are other persons and organizations more expert than ours to provide that information. We refer you, for one, to the recently published book by Jane Mayer, "The Dark Side" -- which is an excellent exposition on the subject. And we are confident you know much of this already. We are here, today, instead, to speak about what steps we think the next President and the next Congress should take to reverse this heinous policy. We have several recommendations.

First, we believe it is imperative for the next President -- as quickly as possible upon taking office -- to issue an Executive Order banning torture and cruel, inhuman or

degrading treatment and terminating any program or policy that would suggest otherwise. Specifically, NRCAT has joined with two other nonprofit organizations, the Center for Victims of Torture (CVT) and Evangelicals for Human Rights (EHR) in drafting six principles that we believe should be embodied in such an Executive Order. We call it the "Declaration of Principles for a Presidential Executive Order On Prisoner Treatment, Torture and Cruelty."

The Declaration, a copy of which we have attached to our statement, has been endorsed by hundreds of distinguished leaders in the fields of national security, foreign policy, and faith. A list of those endorsers is also attached to our statement. We have also received thousands of endorsements from individuals and organizations across the country and are in the process of securing more. Mr. Chairman, we believe the issuance of an Executive Order by the next President banning torture and cruel, inhuman or degrading treatment and undoing all the elements through which these practices have been carried out is the single most important step our government can take to definitively and transparently change our policy on torture. Anyone interested in joining us in this effort by endorsing the Declaration can go to our website, www.tortureisamoralissue.org.

Second, we believe it is critical for Congress to establish a Select Committee to investigate our country's torture policy and practices these past seven years. The United States' decision to engage in torture and cruel, inhuman or degrading treatment and our country's actions based on that decision are not only a dramatic departure from our history and our values, but also violate U.S and international law. The American people

need to know -- and deserve to know -- how, when, and why this happened, the scope of the wrongdoing, the number of people involved -- both victim and perpetrator, and who is responsible and accountable for what happened. Uncovering and making public this information is the only hope we have to make sure that we never again allow the use of torture or cruel, inhuman or degrading treatment on behalf of the United States. Without such an investigation, historians will be left to guess at the complete story. There will be no accountability and little likelihood for lessons learned and reform. We believe a Select Committee is the best way to carry out this investigation, because it is the most immediate, has enforceable subpoena authority, and directly engages the Members of Congress who are the ones -- at the end of the day -- who must make the decisions on any proposed legislation that may result from the investigation. We, along with several human rights organizations, sent a letter several months ago to the Democratic and Republican leadership of the House and Senate urging the creation of such a Select Committee, and a copy of that letter is attached to this statement.

Third, Mr. Chairman, we strongly support legislation that would address the key elements of the torture program. This includes legislation that would:

- close all secret prisons and give the International Committee of the Red Cross timely access to all detainees;
- require the Central Intelligence Agency to use the same standards for interrogation that are used by the military, resulting in one clear standard for interrogations all agencies of the federal government;

- prohibit the transfer of any detainee to any country that is likely to use torture or for the purpose of subjecting the detainee to torture or cruel, inhuman or degrading treatment; and
- provide an ironclad prohibition on the use of evidence obtained by torture in any hearing conducted by any agency of the federal government for any purpose.

Mr. Chairman, Members of the Committee, the National Religious Campaign Against Torture believes strongly that the United States should do everything it can -- within the law and within the moral foundation of this country -- to defeat terrorism. We support that mission wholeheartedly. We do not believe, as Vice President Cheney said shortly after 9/11 that we need to go to the "dark side" to do it. The United States has from its inception tried to live up to the vision of its role in this world as the "shining city on the hill." Our light has been dimmed by the destructive, counterproductive, immoral policy of torture. We need to clearly, strongly, irreversibly and emphatically end torture and thoroughly investigate and make public what we have done. Your hearing today is a very important effort toward doing that, and we thank you for the opportunity to contribute our views.