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May 20, 2011

The Hon. Howard P. "Buck" McKeon
U.S. House of Representatives
2184 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

The legislation you have proposed to update and clarify the Authorization for the Use of Military Force ("AUMF"), passed in September 2001 in the wake of the attacks on the United States that occurred that month, is both timely and constructive.

Since its passage, the AUMF has not been updated to reflect the evolving nature and origin of the Islamist threat against this country. Indeed, there are organizations, including the Pakistani Taliban, that are arguably not within its reach, and although we have fought and detained thousands of enemy fighters captured not only in Afghanistan and Iraq, but also in Somalia, Yemen and Pakistan, and continue to detain hundreds, the AUMF does not even refer to detention, let alone prescribe standards for detention. As a result of this inaction, we have simply allowed policy makers and judges to improvise how we deal with the evolving terrorist threat and how we treat those we encounter on the battlefield. The increased use of remotely piloted aircraft – drones – has allowed us to strike lethally, but because dead men tell no tales and records destroyed in drone attacks cannot be exploited, we may unconsciously be defaulting toward strategies that do not allow us to act as effectively as we might if we captured terrorists instead of killing them.

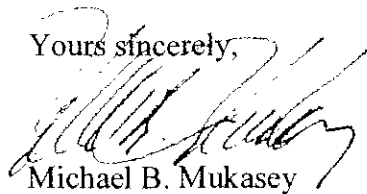
Your new legislation would not confer new powers, but rather would add order and rationality to what has been an improvisational exercise overseen by judges who do not have the fact-finding

resources of Congress, or the accountability that comes from being responsible for protecting the national security.

I cannot for the life of me understand the opposition to this measure that is coming from people who profess to be concerned with civil liberties and the rule of law, and yet seem to prefer an improvisational arrangement that does not make us face up to the fact that we are detaining people. If anything, such a system creates the occasion for offloading our detention responsibility to countries that will treat detainees much less humanely than we would, or killing instead of capturing, which can hardly be said to present a humane alternative or one governed by legal principles.

I would welcome the opportunity to provide whatever help and input I can.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael B. Mukasey", written over the printed name.

Michael B. Mukasey