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Mukasey to Congress: Defy the Rule of Law

By Stephen Lendman
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Along with other past and present administration officials, Attorney General Michael Mukasey supports lawlessness and police state justice. Weeks after the Supreme Court's landmark (June 12) Boumediene ruling, he addressed the conservative, pro-war American Enterprise Institute (on July 21) and asked Congress to overrule the High Court – for the third time. His proposal:

— subvert constitutional and international law;

— authorize indefinite detentions of Guantanamo and other "war on terror" prisoners (including US citizens designated "enemy combatants"); and

— deny them habeas rights, due process, and any hope for judicial fairness.

Since June 2004, the (conservative) High Court made three landmark rulings. Twice Congress intervened, and Mukasey wants a third time. In Rasul v. Bush (June 2004), the Court granted Guantanamo detainees habeas rights to challenge their detentions in civil court. Congress responded with the Detainee Treatment Act (DTA) of 2005 subverting the ruling.

In June 2006, the Supreme Court reacted. In Hamdan v. Rumsfeld, it held that federal courts retain jurisdiction over habeas cases and that Guantanamo Bay military commissions lack "the power to proceed because (their) structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions (of) 1949."

In October 2006, Congress responded a second time. It enacted the Military Commissions Act (MCA) – subverting the High Court ruling in more extreme form. In its menu of illegal provisions, it grants the administration extraordinary unconstitutional powers to detain, interrogate, torture and prosecute alleged terrorist suspects, enemy combatants, or anyone claimed to support them. It lets the President designate anyone anywhere in the world (including US citizens) an "unlawful enemy combatant" and empowers him to arrest and detain them indefinitely in military prisons. The law states: "no (civil) court, justice, or judge shall have jurisdiction to hear or consider any claim or cause for action whatsoever….relating to the prosecution, trial or judgment of….military commission(s)….including challenges to (their) lawfulness…."

On June 12, 2008, the High Court again disagreed. In Boumediene v. Bush, it held that Guantanamo detainees retain habeas rights. MCA unconstitutionally subverts them, and the administration has no legal authority to deny them due process in civil courts or act as accuser, trial judge and executioner with no right of appeal or chance for judicial fairness.

On July 21, Mukasey responded, and immediately the ACLU reacted in a same day press

release headlined: “Attorney General Wants New Declaration of War Allowing Indefinite Detention and Concealment of Torture.” It called Mukasey’s speech “an enormous executive branch power grab….authoriz(ing) indefinite detention(s) through a new declaration of armed conflict.” He asked Congress to redefine habeas through legislation “that will hide the Bush administration’s past wrongdoing – an action that would undermine the constitutional guarantee of due process and conceal systematic (lawless) torture and abuse of detainees.”

Like his two predecessors, Mukasey mocks the rule of law and supports harsh police state justice. He wants Congress to “expand and extend the ‘war on terror’ forever” and let the president detain anyone indefinitely without charge or trial. ACLU’s Washington Legislative Director, Caroline Fredrickson, called this “the last gasp of an administration desperate to rationalize what is a failed legal scheme” – that the Supreme Court thunderously rejected three times.

Mukasey proposes lawlessness and cover-up, “but there is no reason to think that Congress will assist him.” It “won’t fall for this latest (scheme) to (suppress) its wrongdoing.” Besides, the House Judiciary Committee is now investigating whether high-level administration officials authorized torture and abuse. Mukasey wants to hide it and is asking Congress to “bury the evidence.”

The ACLU is righteously outraged by this latest attempted power grab. It rejects Mukasey’s lawlessness and states there is “no need to invent yet another set of legal rules to govern the detention and trial of prisoners held on national security grounds, and the rules that (Mukasey) is proposing are fundamentally inconsistent with” constitutional and international law.

The Center for Constitutional Rights (CCR) Responds

After Mukasey’s September 17, 2007 nomination for Attorney General, CCR issued the following November 1, 2007 statement:

“Michael Mukasey is not fit to be Attorney General because he supports torture, illegal spying on Americans, and limitless powers for the Executive Branch.” As the “country’s highest law enforcement official,” he’s obligated “to enforce the law” – not make excuses for the government when it’s in violation. CCR stands “firmly against Mukasey’s nomination….Our country cannot afford to make compromises to our laws, our morals, and our humanity any longer.” The Senate must reject Attorney General candidates who’ll “undermine American justice and shred the Constitution.”

CCR expressed equal outrage on July 21. Its Executive Director, Vincent Warren, denounced Mukasey’s proposal in the following excerpted statement:

“What Mukasey is doing is a shocking attempt to drag us into years of further legal challenges and delays. The Supreme Court has definitively spoken” in Boumediene v. Bush and its two prior rulings. “For six and a half years,” the administration and Congress “have done their best to (deny due process) and prevent the courts from reviewing the legality of the detention of the men in Guantanamo. Congress should be a part of the solution this time by letting the courts do their job.”

For the past six years, CCR litigated for Guantanamo detainee rights and continues to do it.

It organized and coordinated over 500 pro bono lawyers for everyone held there illegally. Most recently, it represented plaintiffs in the landmark Boumediene v. Bush case – argued on December 5, 2007 and ruled on June 12, 2008.

The Wall Street Journal Reports and Editorializes

Its July 22 article states: "Mukasey Seeks Law on Detainees – Congress Is Urged to Limit Rights of Terror Suspects….in light of a rebuke by the Supreme Court." It quotes Mukasey wanting:

— legislative "principles" for "practical" limits on the right of detainees to challenge their incarceration;

— Congress to give the administration freedom to detain combatants "for the duration of the ('war on terror') conflict;"

— a "reaffirmation of something that was enacted in legislation after September 11, 2001" (a menu of harsh repressive laws);

— no "enemy combatants" released in (or brought to) the US (even to appear in civil court);

— no intelligence (or harsh interrogation) methods revealed (so evidence of torture and abuse is suppressed), and

— military officers (and intelligence officials) to be excused from testifying (because what they know is damning).

On its editorial page, the Journal is supportive. It called Mukasey's proposal "modest" on a "difficult" issue over which "different judges even on the same court will disagree." Mukasey wants congressional "guidance" because there's risk of "inconsistent rulings and considerable uncertainty."

According to the Journal, Mukasey "was right in stepping forward to say that someone has to take responsibility for the consequences of the Supreme Court's 5 – 4" Boumediene ruling. It wants "Congress (to) give one court jurisdiction over (all detainee) cases" and not let the process "bog down into a Babel of conflicting procedural and legal rulings." Mukasey is "right" to ask Congress to settle the issue, (regardless of three landmark High Court rulings). In other words:

— constitutional and international laws don't apply;

— judicial fairness is a dead letter;

— presidential power is supreme; and

— Congress must support the executive and overrule the highest court in the land….A "modest (police state) proposal" according to the Journal and one it clearly supports.

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