

October 23, 2007

Dear Senator:

We are writing to you with respect to the nomination of Michael B. Mukasey to serve as Attorney General of the United States. Specifically, we are writing to raise serious concerns about Judge Mukasey's responses to Senators' questions on the vital issues of torture and the President's obligation to obey the law. We urge you to withhold judgment on Judge Mukasey's nomination until he has responded in writing to additional questions on these issues in order to clarify his views. We understand that Chairman Leahy has announced that no vote will be taken in the Judiciary Committee until Judge Mukasey has responded to written questions. We welcome that decision.

We respect the desire of the Senate to confirm an Attorney General who can begin to repair the damage that has been done to the Justice Department over the last several years. We appreciate Judge Mukasey's intellect and experience, qualities that are essential to an effective Attorney General.

However, we believe that the position of the Attorney General as the nation's chief law enforcement official is unique. The view of the Attorney General on whether the President is bound to obey duly enacted legislation signed into law is of transcendent importance. Likewise, the issue of torture rises to the level of those few core issues on which there must be some basic agreement. Specifically, we believe that the Attorney General of the United States should be able to identify certain practices as constituting torture, especially when there is a substantial record of U.S. prosecution of and opposition to such practices.

Judge Mukasey's answers on these issues were, as one Senator noted, deeply disappointing. We will not attempt to catalogue his problematic answers. A few illustrations are sufficient to demonstrate why Senators must withhold judgment on this nomination:

- (1) Judge Mukasey refused to denounce 'waterboarding' as torture. The core issue concerning waterboarding – that it induces in a victim the perceived threat of imminent death by asphyxiation – is well understood regardless of the precise details by which this overwhelming fear of death is generated. Judge Mukasey's claim to be unable to comment on the legality of this technique is wholly unconvincing. The four currently serving Judge Advocates General of the armed forces told the Senate Judiciary Committee unequivocally and on the record that waterboarding is a form of torture and constitutes a war crime.

(2) Judge Mukasey gave deeply troubling answers on the question of whether or not the President can, in the exercise of his Commander in Chief powers, authorize an individual to commit what would otherwise be illegal acts. Disturbingly, he seemed to espouse many of the same arguments of the infamous “torture memos.”

(3) Taken together, Judge Mukasey’s answers suggest that methods that do not fall within the Administration’s extraordinarily narrow definition of torture can be authorized. It is precisely this view that has led to the authorization of techniques such as waterboarding, prolonged sleep deprivation, extended exposure to extreme cold – interrogation techniques that have long been prosecuted and condemned by the United States as torture.

Judge Mukasey may be reluctant to provide a straightforward answer stating that waterboarding is unlawful given reports that U.S. personnel have engaged in this practice. Indeed, he indicated that he thought it would be irresponsible to do so “simply ... to be congenial.” But this is not a question of congeniality. Rather, it is a critical test of his central claim to be worthy of confirmation: that he will apply the law fairly even if his conclusions cause great discomfort within the Executive Branch. A nominee who cannot say simply and without hesitation that waterboarding is a form of torture does not deserve to be Attorney General.

Likewise, Judge Mukasey must state clearly and without qualification that the President cannot authorize interrogation methods that would be otherwise illegal because they constitute torture or cruel, inhuman or degrading treatment. If Judge Mukasey cannot make that statement without equivocation he does not deserve to be the chief law enforcement official of the United States. We hope that Judge Mukasey provides the Senate with clear written answers on these and other critical points – answers which he did not provide during his confirmation hearings. At the same time, we hope that Senators will withhold judgment on his nomination until they receive those answers.

Sincerely,

Amnesty International USA

Center for American Progress Action Fund

Evangelicals for Human Rights

Human Rights First

Human Rights Watch

Open Society Policy Center

Physicians for Human Rights