

United States Senate

August 29, 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Grassley:

I am writing on behalf of my constituents and all Americans who deserve access to vital documents that will provide critical insight into the character of Judge Brett Kavanaugh, President Trump's nominee to be the next Associate Justice on the Supreme Court of the United States. The next Supreme Court Justice will cast votes and author opinions that could reshape American life and either protect, or weaken, the constitutional rights of my constituents.

The American people should be empowered to review for themselves the full record of any Supreme Court nominee, particularly when it comes to our nation's fundamental values. That is why I am requesting that you make public, with minimal redactions, all documents related to Judge Kavanaugh's involvement in programs and activities related to detention, rendition and interrogation of enemy combatants during the Bush Administration. Such transparency is especially important since it appears that during his confirmation process to the United States Court of Appeals for the District of Columbia Circuit, Judge Kavanaugh at best misled the United States Senate about his involvement in these programs and activities.

This request transcends political partisanship. We must be unequivocal in denouncing torture and cruel, inhuman and degrading treatment, which violate our fundamental constitutional protections and basic human decency. My experience being shot down behind enemy lines in Iraq provides an elevated understanding of the threat of torture by those who may capture and hold you prisoner. How you are treated is affected by how your own nation treats individuals in its custody. That is why it is so important that the United States be a leader in recognizing that torture and cruel, inhuman or degrading treatment are illegal under Federal law and the law of armed conflict that our country agreed to follow decades ago.

That is why I am deeply troubled by statements dismissing the need to review records from Judge Kavanaugh's time in the Bush White House when polices were developed to justify the use of torture and unlawful detention of enemy combatants. In recent years, decisions made by the U.S. Supreme Court, including opinions authored by former Justice Anthony Kennedy, have established significant constitutional and statutory limitations governing the detention and treatment of suspected enemy combatants.

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The Supreme Court clarified the legal basis upon which detainees may challenge their imprisonment before the Federal Judiciary, and the successor to Justice Kennedy may very well determine the fate of these landmark decisions. That is why it is critically important for the American public and their United States Senators to have access to Judge Kavanaugh's full records on torture and detention of enemy combatants before he is considered—much less confirmed—for a lifetime appointment on the Supreme Court.

It is also equally important to vet Judge Kavanaugh's full records on torture and detention because the last time he was a nominee seeking confirmation by the Senate in 2006, Judge Kavanaugh provided, at best, a misleading account of his work in the Bush Administration. For example, in response to Senator Durbin's question about whether Judge Kavanaugh helped prepare a Bush era judicial nominee who had worked on detention and interrogation policies, Judge Kavanaugh responded under oath, "Senator, I did not—I was not involved and am not involved in the questions about the rules governing detention of combatants or—and so I do not have the involvement with that."

Yet, a year later public reports were released that noted Judge Kavanaugh did participate in Bush Administration discussions concerning the rules governing detention of combatants, specifically whether detainees should have access to counsel. Judge Kavanaugh has never fully explained why he testified that he had no involvement in questions concerning detention of combatants nor explained why he failed to respond to Senator Durbin's oversight inquiry sent 11 years ago requesting additional information about his testimony.

We are a nation of laws. We believe that all people, no matter how hateful or harmful, are entitled to human dignity. The United States Senate must always be clear: torture is illegal and immoral. Judge Kavanaugh appears to have participated in a dark chapter of our history that endangered national security, put our troops at greater risk and undermined our standing in the world. The American people and their elected representatives deserve a full and transparent accounting of Judge Kavanaugh's role in torture and a clear description of his action, or inaction, in the face of cruel, unusual and inhumane treatment of individuals in the custody of the United States Government.

Thank you in advance for considering my request.

Sincerely,



Tammy Duckworth
United States Senator