

Has Guantanamo's final chapter been written?

Detainees allowed challenge: U. S. ruling; Constitution Cited

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Brennan Linsley, AFP, Getty Images "Enemy combatants" at the U. S. military detention centre in Guantanamo Bay, Cuba, have been granted the right to challenge their incarceration in civilian courts, the U. S. Supreme Court ruled yesterday, ...

NEW YORK - In a setback for the Bush administration's policy on holding foreign terror suspects, the U. S. Supreme Court ruled yesterday that foreign detainees at Guantanamo Bay have a right under the U. S. Constitution to challenge their detention in U. S. civilian courts.

In a 5-4 ruling, the court said the prisoners at the U. S. naval base in Cuba "have the constitutional privilege of habeas corpus," allowing them to petition a court to determine if they are being held illegally.

Canadian Omar Khadr was one of 37 Guantanamo detainees whose lawyers had petitioned the court. His military-assigned attorney, Lieutenant-Commander Bill Kuebler, said the ruling strengthens arguments for intervention by the Canadian government on behalf of Mr. Khadr, who was captured in Afghanistan in 2002 at the age of 15.

"It's a strong repudiation of the administration's policy on Guantanamo Bay," said Lt.-Cmdr. Kuebler, who has called on Ottawa to press Washington for Mr. Khadr's repatriation.

The ruling is the third against the military commissions system the Bush administration launched just after the Sept. 11, 2001, attacks to deal with non-state foreign fighters in the war on terrorism.

While the Bush administration had argued special measures were needed to cope with a new kind of war, Justice Anthony Kennedy, writing for the majority, said: "The laws and Constitution are designed to survive, and remain in force, in extraordinary times."

Among the dissenters, Justice Antonin Scalia said the ruling will "almost certainly cause more Americans to get killed," and Chief Justice John Roberts said the majority had left itself open to accusations of "judicial activism."

Travelling in Rome yesterday, President George W. Bush said he strongly disagreed with the decision and said new legislation might be needed to override its effect.

"We'll abide by the court's decision," he said. "That doesn't mean I have to agree with it."

Mr. Bush has said he wants to eventually close the Guantanamo camps, which administration critics say have tainted America's reputation around the world. Closure is also a part of the platforms of both candidates to succeed him, Democrat Barack Obama and Republican John McCain.

"Today's Supreme Court decision ensures that we can protect our nation and bring terrorists to justice, while also protecting our core values," Mr. Obama said. "This is an important step toward reestablishing our credibility as a nation committed to the rule of law, and rejecting a false choice between fighting terrorism and respecting habeas corpus."

In separate rulings in 2004 and 2006, the court found Guantanamo detainees had a statutory legal -- but not constitutional -- right to contest their detention before an independent judge.

Urged by the Bush administration, a Republican controlled Congress then passed the 2006 Military Commissions Act, which forbade detainees from seeking justice in a federal court before they had been judged by a Guantanamo war-crimes commissio

For some, the new ruling opens the way for the remaining 270 Guantanamo detainees, including five suspects accused of involvement in the 9/11 terror attacks who were formally charged last week, to petition the U. S. federal courts on the full gamut of commission rules.

In particular, there would be a focus on rules that allow admission of certain types of evidence that civilian or traditional military courts disallow, such as statements obtained through any type of coercion.

"Many provisions of the Military Commissions Act are now unconstitutional," said Brian Mizer, who represents one of the main defendants accused of plotting 9/11, as well as a former driver for al-Qaeda leader Osama bin Laden.

"This ruling has turned the system on its head. Any protections that an individual would be afforded in a U. S. court are now to be granted to these detainees -- so that means hearsay evidence is inadmissible; the use of coerced testimony is inadmissible; these defendants [now] have the right to remain silent."

But Lt.-Cmdr. Kuebler expressed skepticism that the commissions edifice was about to fall and called for Mr. Khadr to be repatriated to Canada.

"The administration hasn't let the law stop it in the past," he said.

"They will drive on and there is no reason to let more time pass in order for the U. S. courts to come to the same conclusion that just about everyone in Canada has -- Omar is a child soldier, his prosecution by military commission is illegal and he should face justice under Canadian law."

The New York-based Center for Constitutional Rights, which has filed hundreds of briefs on behalf of Guantanamo detainees claiming they've been unlawfully detained, said the latest ruling does not apply to charged prisoners.

So far, charged detainees number about 20, including Mr. Khadr, who is accused of five war-crimes offences under the Military Commissions Act, including the murder of a U. S. serviceman in a grenade attack during the 2002 firefight in Afghanistan that led to his capture.

The Pentagon says it intends to eventually prosecute about 80 detainees. While Mr. McCain supported the Military Commissions Act and, therefore, trials by the war-crimes commissions, Mr. Obama, who voted against the Act, has said detainees should be tried by U. S. civilian and traditional military courts.

More than two-thirds of the almost 800 detainees that have passed through Guantanamo have been freed without charge or compensation. The Pentagon has cleared an additional 70 for release but continues to hold them because the prisoners' home countries either don't want them back or have failed to provide adequate assurances they won't face abuse. It's unclear what the Pentagon intends to do with the rest.

GUANTANAMO RULINGS

June 30, 2004

Cases: Rasul v. Bush, Hamdi v. Rumsfeld

The court rules in two cases that foreign nationals detained without charge can bring legal action challenging their captivity in U. S. federal civilian courts, and that the military tribunals established by the Bush administration in November, 2001, are illegal.

In response, the Bush administration sets up secret military review panels, known as combatant status review tribunals, to determine if the detainees have been correctly designated as "enemy combatants." In 2005 Congress passes the Detainee Treatment Act limiting detainees' access to the courts.

June 29, 2006

Case: Hamdan v. Rumsfeld

The court rules that military tribunals are not authorized by federal law or required by military necessity and contravene the Geneva Conventions. The court confirms the right of Guantanamo detainees to pursue their cases in civilian courts.

In October, 2006, President George W. Bush signs the Military Commissions Act authorizing the president to establish military commissions to try unlawful enemy combatants suspected of engaging in or planning hostile acts against the U. S. The legislation is aimed at keeping such cases out of court by stripping the prisoners of habeas corpus rights under federal law.

June 12, 2008

Case: Boumediene v. Bush

The court finds the Military Commissions Act unconstitutional and rules that foreign terrorism suspects at Guantanamo have a constitutional right to challenge their detention in U. S. courts.

The ruling resurrects nearly 200 detainee cases on hold in Washington, D. C., federal courts

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