



June 13, 2008

COURT OVERRULES CONGRESS, PRESIDENT REGARDING DETENTION OF COMBATANTS

(Boumediene v. Bush, No. 06-1195)

The U.S. Supreme Court yesterday struck down a federal law that barred Guantanamo Bay detainees from filing habeas corpus challenges to their detention and instead channeled any challenges into the U.S. Court of Appeals for the D.C. Circuit. The Court ruled that the Military Commissions Act of 2006 (MCA) unconstitutionally eliminated detainees' habeas corpus rights in violation of the U.S. Constitution's Suspension Clause (which imposes limitations on Congress's power to limit federal courts' habeas jurisdiction).

The decision was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case in support of the federal government and on behalf of seven retired generals and admirals. The seven are Generals John Altenburg, Thomas Hemingway, Michael Marchand, and Michael Nardotti; and Admirals James Carey, Steven Kantrowitz, and William Schachte. Several held critical roles in developing U.S. detention policy prior to their retirements, and four served as either the highest or second-highest ranking lawyer in their branch of the armed services. WLF also filed the brief on behalf of itself, the Allied Educational Foundation, and the National Defense Committee, a group headed by Admiral Carey that supports a strengthened military.

Implicitly overruling numerous prior decisions, the Supreme Court held that even aliens with no ties to the United States and being held in overseas locations are entitled invoke the same protections under the U.S. Constitution enjoyed by U.S. citizens. WLF decried the decision as an inappropriate effort by the judiciary to second-guess the national security decisions of the elected branches of government.

"Yesterday's ruling means that vital decisions regarding the handling of enemy prisoners are now in the hands of the judicial branch, the branch of government least capable of determining how the release of those prisoners will affect national security," said WLF Chief Counsel Richard Samp after reviewing the decision. "It is an undemocratic exercise of power that rejects the national security determinations not only of Congress and the President but of a long line of Supreme Court decisions as well." Samp said.

The American military established the Combatant Status Review Tribunal (CSRT) system for adjudicating detainees' claims that they never fought for either the Taliban or al Qaeda. Those still being detained at Guantanamo have been determined by a CSRT to be enemy combatants who took up arms against the U.S. or its allies. The Supreme Court

determined that those CSRT proceedings were not an adequate substitute for habeas corpus because they did not provide detainees with a meaningful opportunity to establish their innocence. As a result of yesterday's decision, every one of the detainees is expected to renew habeas petitions pending in the U.S. District Court for the District of Columbia.

WLF's brief had argued that the U.S. Constitution does not extend protections to aliens not living in the U.S., and thus that the detainees' claims based on the Constitution are without merit. WLF argued that the protections of the Constitution are reserved for citizens and others, such as resident aliens, who have contributed to American society and thus have a legitimate basis for invoking constitutional protections. The Court disagreed, ruling that the MCA (the statute removing jurisdiction over habeas petitions) violated the detainees' rights under the Constitution's Suspension Clause, which limits Congress's power to suspend the writ of habeas corpus.

"Throughout our history, the courts have never allowed nonresident aliens to invoke the U.S. Constitution as a basis for challenging their detention by American authorities," said WLF's Samp. "To allow enemy combatants to use the U.S. Constitution to challenge their detention is a sure-fire way to undermine American military strength, by diverting the attention of field commanders from the military offensive abroad to the legal defensive at home," Samp said.

In June 2004, the Supreme Court ruled that the federal habeas corpus statute grants federal courts jurisdiction to hear habeas petitions filed by Guantanamo Bay detainees who seek release. It remanded those claims to the lower courts to determine whether any such petitions stated a valid claim for relief. Congress responded by adopting the MCA, which amended the federal habeas statute to eliminate jurisdiction in cases involving Guantanamo Bay detainees. Yesterday's decision overrules that statute.

WLF's brief noted that the admirals and generals it represented have serious concerns that a decision recognizing Petitioners' habeas claims could undermine American military effectiveness. WLF is a public interest law and policy center with supporters in all 50 states. It devotes a considerable portion of its resources to promoting America's national security.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site.