

COURT DENIES GUANTANAMO LEGAL RIGHTS

FRONT PAGE

An appeals panel says
habeas corpus doesn't
apply to detainees.

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WASHINGTON — In a victory for the White House, a U.S. appeals court Tuesday threw out the legal claims brought on behalf of the hundreds of prisoners held at Guantanamo Bay and ruled that they did not have a right to plead their innocence in an American court.

In a 2-1 decision, the judges said the Constitution did not extend the right of habeas corpus to noncitizens held outside the sovereign territory of this country. "Cuba — not the United States — has sovereignty over Guantanamo Bay," Judge A. Raymond Randolph wrote.

The ruling sets the stage for a historic showdown in the Supreme Court over whether the White House and Congress can deny habeas corpus — the right to go before a judge and ask to be released — to terrorism suspects, some of whom have been held for years without charges.

Tuesday's decision by the U.S. Court of Appeals in Washington vindicates, at least for now, a tactical move made by White House lawyers shortly after the U.S. invaded Afghanistan in 2002. The Bush administration wanted the military to be able to indefinitely hold and intensively interrogate foreign fighters and suspected terrorists without interference from the federal courts. They chose the naval base at Guantanamo Bay, Cuba, because it was close but outside U.S. territory.

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Detainee ruling favors White House

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In the years since then, civil libertarians and advocates for the detainees have been trying to win a hearing before an independent judge. There, they could argue that at least some of these men were not terrorists and were being wrongly held.

The Bush administration has fought to prevent the detainees from having their claims heard in court. Meanwhile, across Europe and throughout much of the world, Guantanamo Bay has come to symbolize what the administration's critics say are harsh tactics and contempt for international opinion.

Though former Defense Secretary Donald H. Rumsfeld once referred to the Guantanamo detainees as the "worst of the worst," none has been tried and hundreds have been released and sent back to their home countries.

Late last year, the then-Republican-controlled Congress passed the Military Commissions Act, which made it clear that "enemy combatants" held outside the U.S. may not file claims in U.S. courts. Tuesday's ruling upheld that law.

Lawyers plan appeal

Lawyers for the detainees condemned the ruling and said they would take their case to the Supreme Court.

"This decision empowers the president to do whatever he wishes to prisoners without any legal limitation so long as he does it offshore," said Shayana Kadidal, an attorney for the Center for Constitutional Rights in New York. Kadidal added that the decision encouraged "such notorious practices as extraordinary rendition and contempt for international human rights law."

But Navy Cmdr. J.D. Gordon, a Pentagon spokesman, said: "We are pleased with the deci-



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CAMP DELTA: A prisoner in December in a maximum-security area at Guantanamo. This ruling leaves about 230 detainees in something of a legal limbo.

sion." The detainees at Guantanamo "include some of the world's most vicious terrorist operatives. We are continuing to work with Congress to bring un-

lawful enemy combatants to justice via the military commissions," Gordon said.

Last year, Congress also set rules for the upcoming military

Back story

In January 2002, the U.S. military sent the first group of detainees to **Guantanamo Bay, Cuba**. President Bush decided these terrorism suspects were not entitled to be treated as prisoners of war under the Geneva Convention.

A month later, lawyers for the **Center for Constitutional Rights** filed a habeas corpus petition on behalf of Shafiq Rasul and several others who sought a court hearing. In June 2004, the **Supreme Court** ruled the detainees were entitled to go to court. But the decision did not spell out how judges were to handle these cases.

The **Pentagon** agreed to give detainees "status review" hearings to decide whether to hold them as "enemy combatants." Separately, the military moved ahead with plans to try some of the detainees as war criminals, but in June the Supreme Court rejected the rules for these tribunals.

Then in October, **Congress** passed the Military Commissions Act. This measure authorized the military trials and said enemy combatants could not go to court. That law was upheld in Tuesday's decision.

Source: *Los Angeles Times*

trials. About 395 detainees are being held at Guantanamo Bay. Pentagon officials say they expect about 80 to be put on trial. About 85 of the men are due to be released or transferred to other countries.

That leaves about 230 detainees in something of a legal limbo. They have no right to appeal the military's decision to continue

holding them. At the same time, military officials do not plan to put them on trial.

The high court dealt the Bush administration's detainee policies a blow three years ago, when the justices ruled that the long-standing federal law on habeas corpus gave all people a right to go to court.

But last year, Congress closed the courthouse door to the Guantanamo prisoners by passing the Military Commissions Act. With Democrats now in control of Congress, several senators have vowed to amend the law to restore the traditional right to habeas corpus for all. But their efforts would face an almost certain veto by Bush.

Sen. Lindsey Graham (R-S.C.), who played a key role in drafting the Military Commissions Act, applauded Tuesday's ruling. "The determination of enemy combatant status belongs with the military," he said. "Civilian judges are not trained to determine who presents a threat to our nation."

Shortly after World War II, the Supreme Court ruled that German military prisoners who had been tried for war crimes and were being held near Berlin could not appeal their imprisonment by filing writs of habeas corpus in the U.S. But the justices have not ruled squarely on whether Congress can restrict habeas corpus for people who are held for years by the U.S. without being charged with a crime.

The Constitution says the "privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Although this provision makes it clear that Congress cannot lightly strip the right to go to court for people who are held within the U.S., it is not clear whether this right extends

to foreign prisoners who are held by U.S. officials outside the nation's borders.

In Tuesday's decision, Randolph and Judge David Sentelle said the right to habeas corpus was limited to sovereign U.S. territory. "The Constitution does not confer rights on aliens with property or presence within the United States," they said. "We are aware of no case" in the past that says habeas corpus is "available to aliens held at an overseas military base leased from a foreign government."

Randolph was appointed by President George H.W. Bush, and Sentelle was an appointee of President Reagan.

All three judges who heard the case agreed that Congress had denied writs of habeas corpus to the detainees at Guantanamo Bay.

Dissenting opinion

However, Judge Judith Rogers, a Clinton appointee, dissented and said it was unconstitutional for Congress to deny habeas corpus to the detained men. In her view, the Constitution presumes that habeas corpus exists for all people held in U.S. custody, and that Congress' power to suspend this right is "strictly limited to circumstances where the peace and security of the nation were jeopardized."

Because this is not a time of national emergency, she wrote, Congress had no authority to restrict the right to habeas corpus through the Military Commissions Act. "The MCA is therefore void and does not deprive this court or the district courts of jurisdiction" to hear claims from the detainees, she concluded.

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Times Staff Writer Julian E. Barnes contributed to this report.