

## SUPREME COURT

# Detainee rights are debated

■ Several Supreme Court justices cast doubt on Bush administration efforts to deny Guantánamo Bay detainees traditional legal rights.

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WASHINGTON — Supreme Court justices sounded skeptical Wednesday about the Bush administration's treatment of foreign-born prisoners held at Guantánamo Bay, raising questions about the future of White House war-on-terrorism tactics.

In a potentially landmark case, at least four justices cast doubt on administration efforts to deny Guantánamo Bay detainees traditional legal rights.

The justices repeatedly noted in oral argument that alleged enemy combatants held since 2001 have been barred from challenging their detentions through the centuries-old courtroom tool called habeas corpus.

"It's been six years, and habeas is supposed to be speedy," Justice Stephen Breyer said. "It's a serious problem."

But if questions are any guide, the unusually long oral argument Wednesday is setting up the court for another closely divided opinion, as conservative justices aligned themselves with the Bush administration's arguments about wartime necessities.

"We had 400,000 German prisoners — 400,000 — in our country in World War II," Justice Antonin Scalia noted, "and there was not a single habeas petition."

Justice Anthony Kennedy, who is considered a swing vote, didn't appear to favor either side and asked few questions.

The cases argued for more than an hour Wednesday present the highest-profile terrorism dispute to arise since Chief Justice John Roberts and Justice Samuel Alito joined the high court. Although a decision may be months away, the cases already come with great ceremony.

Demonstrators arrayed in orange prison-style jumpsuits stood silently outside Wednesday as snow began falling. Inside, lawmakers including Republican Sen. Lindsey Graham of South Carolina and Democratic Sen. Edward Kennedy of Massachusetts listened closely. Public relations specialists aggressively touted the availability of various professors and lawyers.

"We're very hopeful and optimistic," said Michael Ratner, the president of the Center for Constitutional Rights, which has been representing foreign-born prisoners.

The combined cases called *Boumediene v. Bush* and *Al-Odah v. United States* question whether the Constitution extends habeas corpus rights to the Guantánamo Bay prisoners, none of them U.S. citizens.

If the answer is yes, the court also will address

whether a military tribunal established by Congress and the Bush administration is a reasonable alternative to civilian courts.

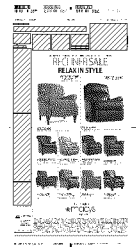
Through a petition for a writ of habeas corpus, prisoners can demand the legal and factual basis for their imprisonment.

The Constitution declares that habeas corpus rights can't be suspended "unless when in cases of rebellion or invasion the public safety may require it."

argues that the Constitution doesn't cover the approximately 304 men detained at Guantánamo Bay. Algerian native Lakhdar Boumediene, Kuwaiti native Fawzi Khalid Abdullah Fahad Al Odah and the other detainees were seized abroad and have never been held on the U.S. mainland.

"Do you have a single case in the 220 years of our country . . . in which habeas was granted to an alien in a territory that was not under the sovereign control of the United States?" Scalia asked the detainees' attorney, Seth Waxman, adding later that "there's not a single one in history."

Save for Scalia, other justices didn't seem to question whether constitutional rights extended to Guantánamo Bay. The Supreme Court previously held that Guantánamo was tantamount to U.S. property for legal purposes, and



justices devoted relatively little time to rearguing the territorial question Wednesday.



LAWRENCE JACKSON/AP

**GUANTANAMO ISSUE:** A demonstrator, in prison-like jumpsuit, protests outside the Supreme Court.