

# Revisiting Guantanamo process

## ■ Once again, a divided High Court considers the right of camp's prisoners to challenge detentions

BY JAMES OLIPHANT  
Chicago Tribune

WASHINGTON — In its six years of existence, the prison at Guantanamo Bay, Cuba, has served as a vivid, and divisive, symbol of the government's "war on terror," with other nations condemning it, presidential candidates championing it and the Pentagon simply wanting to get on with the business of emptying it.

The Supreme Court last week took another shot at resolving some of the questions surrounding the prison camp, which for many critics has become an international symbol of unchecked executive power and human rights abuses. The fate of hundreds of prisoners, some suspected of being terrorists, could depend on the court's decision.

### The habeas corpus issue

This is the fourth time the justices have addressed the propriety of the alternative legal mechanism set up by the Bush administration to try suspected terrorists. The main issue is whether detainees have the right to challenge their detention in federal court, through a procedure known as habeas corpus.

"It will be six years without anyone at Guantanamo having a fair hearing before a fair court," said Michael Ratner, president of the Center for Constitutional Rights, a New York advocacy group that rep-

resents some of the detainees. A habeas action allows a prisoner to require the government to provide some basis for continued imprisonment.

The issue appeared settled in 2004, when the Supreme Court ruled detainees were entitled to access to the courts. Congress reacted by passing legislation that stripped detainees of their habeas corpus rights. Now the court must decide whether Congress' action was constitutional.

### Bringing clarity to process

Even if the court sides with the detainees again, it is unlikely much will happen by the end of the Bush presidency next year. Court proceedings can be slow, and if the Bush administration is intent on running out the clock and passing the detentions to its successor, it probably can.

But the goal is to provide some clarity to a muddled process, one that has yet to result in the prosecution of a single detainee. While the Pentagon has sent hundreds of prisoners back to their home countries and elsewhere, those kept have been in their cells for years are scarcely closer to an ultimate adjudication than when they arrived.

Part of the problem has been the string of Supreme Court defeats suffered by the White House. Along with the 2004 habeas ruling, the justices in 2006 invalidated the military commission system the Pentagon intended to use to try the detainees.

The detainees want the habeas option because, for the most part, they haven't seen the evidence against them. Ratner is confident if the habeas claims go forward, the government will drop many cases. "The real goal is . . . to get the people we repre-

sent a day in court, where the government will be unable to demonstrate they have the evidence to hold them," he said.

But John Yoo, a former high-ranking Justice Department official who was involved in crafting legal policy for Guantanamo, said the prisoners don't deserve the same rights as accused criminals in the U.S. justice system.

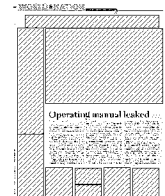
"The detainees are prisoners captured in wartime, and hence can be held because they pose a future threat to the security of the country," he said.

Because of the detainees' lengthy imprisonment and living conditions — they are in solitary confinement 23 hours a day and housed in small cells — many human rights advocates and foreign governments have called on the U.S. to close the prison.

Lawyers for the detainees argue that even though Congress stripped their statutory right to challenge their detention, they may still do so under a separate right granted in the Constitution. The administration contends that the Constitution doesn't extend to foreign nationals held in outposts like Guantanamo. And even if it did, it argues, review procedures in place at the facility provide an adequate substitute for a federal court proceeding.

But Yoo said judges should not be allowed to second-guess military decisions made in wartime. "Reading habeas so broadly would invite a level of judicial micromanagement over military operations that could interfere with the most effective prosecution of a war," said Yoo, a law professor at the University of California, Berkeley.

The justices may be more divided on habeas than they were in 2004, when six of them sided



with detainees. Since then, Chief Justice John Roberts and Justice Samuel Alito have joined the court, which means that, once again, Justice Anthony Kennedy may cast the deciding vote in what could be a 5-4 decision.

*This story was supplemented with an Associated Press report.*



AP PHOTO

**Human rights groups have called for the closing of Guantanamo.**



An issue being assessed is whether detainees may challenge their imprisonment through habeas corpus, a right some say Guantanamo.

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