
Supreme Court Rules that Guantanamo Detainees Have Constitutional Right to Habeas Corpus

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In a landmark decision, the Supreme Court ruled today that foreign citizens held at Guantanamo Bay have rights under the Constitution to challenge their detention in US civilian courts.

Justice Anthony Kennedy, providing the fifth and decisive vote, declared that Guantanamo detainees have habeas corpus rights under the US Constitution.

The 5-4 ruling was the Bush Administration's third significant setback since 2004 over the treatment of prisoners who are being held indefinitely and without charges at the US naval base in Cuba.

Kennedy, writing for the court, said, "The laws and Constitution are designed to survive, and remain in force, in extraordinary times."

WilmerHale Partner [Seth Waxman](#), former Solicitor General in the Clinton Administration, made the oral argument to the justices on Dec. 5, 2007, on behalf of six detainees. Many other members of the firm, including Partners Stephen Oleskey and [Robert Kirsch](#) have been involved in the representation of these detainees since 2004. The man who gave the case its name, Lakhdar Boumediene, is one of six Algerians who immigrated to Bosnia in the 1990s and were arrested by Bosnian police at the demand of the United States after the Sept. 11 attacks on suspicion of plotting to bomb the US embassy in Sarajevo. The group was ordered released by a Bosnian court three months later for lack of evidence. Instead of being released however, the United States demanded that the Bosnians turn them over to the US military, which sent them to Guantanamo in January 2002.

The court said that the detainees have habeas corpus rights under the Constitution and that the detention review system put in place by the US government that classifies them as enemy combatants is constitutionally inadequate. The men are entitled under the ruling to seek prompt hearings in the Federal District Court in Washington to demonstrate that they are being held because of an error by the government in applying or interpreting US law. Finally, the court said that if the men are found to be held erroneously, the District Court has the power to order their conditional release.

The Administration opened the detention facility at Guantanamo Bay in the months following the

Sept. 11 terrorist attacks to hold people they deemed "enemy combatants," who were suspected of ties to al Qaeda or the Taliban. Roughly 270 men remain at the island prison.

The Administration argued that the detainees have no rights. But it also said that the classification and review process was a sufficient substitute for the civilian court hearings that the detainees are after. Today's decision rejected both of the Administration's arguments.

Justice Souter filed a separate concurrence, joined by Justices Ginsburg and Breyer. Dissenting opinions were written by Chief Justice Roberts and Justice Scalia, joined by Justices Thomas and Alito.