

The following text may be printed, copy/pasted, or downloaded and emailed.

Ashcroft vs. Supreme Court

St. Petersburg Times - Editorial
3 November 2004

At the end of its last term, the U.S. Supreme Court brought some much-needed balance into America's handling of terrorism suspects.

It roundly rejected the Bush administration's claims that the president had sole authority to handle so-called enemy combatants however he saw fit. The prisoners held at Guantanamo Bay were entitled to at least some constitutional rights, according to the court. In particular, access to the courts to assert their claims of wrongful imprisonment. And, as to Americans held as enemy combatants, they would be entitled to significant due process, including the right to counsel, said the court.

But as the enemy combatant cases - in which the full contours of the prisoners' rights are being determined - wend their way through the lower federal courts, the Bush administration is essentially acting as though the Supreme Court has not spoken. In filings by the Justice Department, the administration is making some of the very arguments expressly rejected by the court.

Most notably, in the cases involving Guantanamo detainees, the administration is arguing that the prisoners have "no cognizable constitutional rights," including no right to a lawyer, on the grounds that they are noncitizens held off American soil. On that basis, the administration says, they should not even be allowed to challenge the constitutionality of their detentions.

But in the case of *Rasul vs. Bush*, the court clearly recognized the rights noncitizens held in Guantanamo to challenge the legality of their continued confinement. "Aliens held (in Guantanamo), no less than American citizens, are entitled to invoke the federal courts' authority," Justice John Paul Stevens wrote for the majority.

Either the department under Attorney General John Ashcroft is incompetent or it is purposely dissembling in its court filings.

Also, in the case involving the sole remaining American enemy combatant, Jose Padilla, the department is asserting that he has no right against self-incrimination, no right to have an attorney present during interrogations, and no right to challenge as "cruel punishment" any abuses that might occur during questioning.

This posture runs sharply contrary to our constitutional values. Last term, the high court was clearly deeply troubled at the lack of due process afforded Americans held as enemy combatants. "A state of war is not a blank check for the president when it comes to the rights of the nation's citizens," Justice Sandra Day O'Connor wrote. But the administration is pretending otherwise.

The Bush administration has demonstrated contempt for the Constitution, international law and the separation of powers in its handling of the war on terrorism. Its current disregard for Supreme Court admonitions is little surprise.