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Forsaken at Guantánamo

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It has been 14 months since the first prisoners from the Afghanistan war were taken to a naval base at Guantánamo Bay in Cuba. The Bush administration says it can hold the detainees indefinitely, without allowing them access to family or legal counsel. Yesterday, a federal Court of Appeals threw out a challenge by some of those detainees to their confinement. The administration and the court are wrong. The detainees may not have the same rights as American citizens, but they are entitled to more due process than they are being given.

The United States military is holding hundreds of prisoners accused of Taliban or Al Qaeda ties at Guantánamo. Many were seized in the heat of battle, but others were turned over in exchange for rewards or bounties. Advocates for the prisoners maintain that one-third or more are being held on the basis of bad intelligence, or simply for being in the wrong place at the wrong time.

The Guantánamo detainees are in legal limbo. The Bush administration refuses to designate them prisoners of war, a label that would entitle them to immunity from prosecution for acts committed during a lawful war, among other things. Nor is the administration treating them as ordinary criminal defendants, entitled to know the charges against them and allowed to contest their confinement in court. The government's position is that the detainees are "unlawful combatants" who can be held incommunicado indefinitely.

Whatever their legal status, the Guantánamo detainees must be given a chance to contest their confinement. Those who were wrongly caught up in the military's net must have an opportunity to make their case.

As noncitizens captured in wartime, they may not have the right to have their claims heard in United States courts. But they must be given some forum, like a military tribunal, in which to contest their continued imprisonment. The rules of evidence, and the standard of proof for holding them, may be different from those in ordinary criminal trials. But there must be rules, and at least some individualized proof, for the detentions to be proper.

The ruling, from the United States Court of Appeals for the District of Columbia Circuit in a suit filed by Kuwaiti, British and Australian detainees, said that the court lacked jurisdiction to hear claims by the Guantánamo prisoners who contend that they are being wrongfully held. It is a disturbing decision that gives the administration essentially unchecked power to imprison foreigners. The court abdicated its role by not exercising any oversight in this important matter.

In refusing to let the Guantánamo detainees challenge their confinement, the administration is trampling on their rights. It is also damaging America's reputation for fairness. The administration should rethink its policies, and the Supreme Court should reverse yesterday's unfortunate decision.