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## **Habeas corpus attack undermines courts**

OUR OPINION: WAR ON TERROR CAN BE WON WITHOUT GIVING UP OUR VALUES

Editorial  
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In the last few weeks, the U.S. Senate finally abandoned its see-no-evil approach to controversial policies used by the Bush administration to pursue the war on terror. Over threats of a White House veto, senators voted to ban the use of torture, a step in the right direction. It is all the more surprising, then, to watch the same Senate turn around and try to strip "enemy combatants" at Guantánamo Bay of the right to obtain judicial review of their status. This is an erratic step in the wrong direction that makes little legal or practical sense.

### **Detainees' ultimate fate**

After 9/11, Congress virtually abdicated its oversight responsibilities on the war on terror, allowing President Bush to exercise unchecked power by executive order. Inevitably, the U.S. Supreme Court stepped into the breach and ruled 6-3 that the Guantánamo Bay prison was not outside the jurisdiction of U.S. law. This meant that the detainees could challenge their status in the courts. But even though hundreds of habeas-corporus petitions have been filed, not one single combatant has been released by virtue of judicial action since the court made its ruling on June 28, 2004.

Clearly, federal judges are in no rush to release detainees at Guantánamo Bay. Just as clearly, however, the courts fulfill a necessary and meaningful constitutional duty by ensuring that the military adhere to a lawful process when deciding the detainees' fate.

Sen. Lindsey Graham, R.-S.C., who led the move to deny detainees the right of habeas corpus, says it's not fair for the administration to be sued in the middle of a war on terror by the enemy. But no one has shown how retaining the right of habeas corpus for detainees has weakened the administration's ability to defend U.S. interests. It hasn't.

The right of habeas corpus is a bedrock principle of common law and should not so easily be forsaken. Sen. Arlen Specter, the Republican who heads the Judiciary Committee where such legislation would normally be considered, voted against Sen. Graham's proposal. He pointed out that no hearings on the issue have been held. The Senate should delve deeply into all the issues concerning the war on terror, but it must not act in a cavalier manner.

### **What is happening?**

One negative consequence of Sen. Graham's proposal would be to deepen the secrecy surrounding activities at Guantánamo Bay. Habeas-corporus petitions have become one of the few ways in which the public and the media can learn about what is happening in that isolated camp. But Sen. Graham's proposal would put an end to that. Opponents of the measure will try to overturn this wrongheaded vote when the Senate reconvenes today. They deserve broad public support. The war against terror must be won, and can be won, without having to surrender cherished American values.