

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

Terrorism, Rights and Unlearned Lessons

Editorial
Washington Post
January 11, 2005

In crafting a long-term plan for holding terrorism suspects [front page, Jan. 2], the Bush administration should read the Supreme Court's decision in *Rasul v. Bush*. The court ruled 6 to 3 in April that federal courts have jurisdiction to consider challenges to the detention of foreigners. Specifically, the court said that the noncitizen detainees at Guantanamo Bay have the right to file petitions for habeas corpus (the fundamental right of any imprisoned citizen to go to a federal court and have the government prove the lawfulness of his incarceration).

Justice John Paul Stevens, writing for the majority, pointed out the unique circumstances of the petitioners (two Australians and 12 Kuwaitis):

"They are not nationals of countries at war with the United States, and they deny that they have engaged in or plotted acts of aggression against this country; they have never been afforded access to any tribunal, much less charged with and convicted of wrongdoing; and for more than two years they have been imprisoned in territory over which the United States exercises exclusive jurisdiction and control."

Because the courts of the United States have traditionally been open to nonresidents, the federal courts have jurisdiction to determine the legality of the executive's potentially indefinite detention of individuals who claim to be innocent of wrongdoing.

Given that the *Rasul* majority opinion found that nothing in any of the petitioners' cases "categorically excludes aliens detained in military custody outside the United States from" the "privilege of litigation in U.S. courts," it is surprising that the administration thinks it can sidestep this ruling by outsourcing Guantanamo detainees to U.S.-built prisons in other countries.

History teaches us that an unbridled military power to detain people without charges, counsel or judicial review will not forever be deployed only against suspected terrorists.

JESSELYN A. RADACK

Washington