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The Court and Guantánamo

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The Supreme Court took a welcome step when it agreed last week to decide whether the Guantánamo detainees could challenge their status in civilian courts. Over the objections of the Bush administration, the justices will review a lower court's refusal to hear their claims. The Supreme Court should hold that the detainees have a right to a legal proceeding to challenge their confinement.

Hundreds of detainees have been held at a naval base in Guantánamo Bay, Cuba, since their capture in the Afghanistan war, with no idea of when they will be released. Those who may have been captured in error have had no chance to make that case. After more than a year and a half, 16 of the detainees are suing. They are not asking for full-blown civilian trials, but they argue that they should be given a chance to contest their detention before an impartial tribunal.

The administration had urged the Supreme Court not to hear the case, arguing that the detainees' status is "constitutionally committed to the executive branch." The administration contends that the Guantánamo base is not part of the United States, and it invokes a 1950 Supreme Court decision holding that federal courts lack jurisdiction over the military detention of foreigners outside the United States.

When the Supreme Court rules next year, it should vindicate two important legal principles. First of all, it must send a forceful message that the detainees have a right to challenge their confinement before a tribunal. Given the absolute control the United States exerts over the Guantánamo naval base, and the terms of the 1903 lease giving it that control, it is disingenuous for the government to argue that the detainees are outside its jurisdiction.

It is no less important that the court make clear to the administration that it is not above the law when it wages its war on terrorism. Rather than arguing that its detainee policies are lawful, the administration boldly asserted that the courts had no right to review them. The Supreme Court will undoubtedly be hearing similar arguments in the days ahead. Now is the time to say clearly that the court, not the president, has the final word on what the Constitution permits.