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To Bush, courts don't matter

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Last term, the U.S. Supreme Court drew some lines in the sand. The court said that the president, despite his claims to the contrary, could not hold Americans as enemy combatants without giving them a range of due process rights. And, it said that noncitizen prisoners being held at Guantanamo Bay have a right to go to court to challenge the legality of their confinement.

While the rulings were technically narrow, many of the justices expressed alarm over the breadth of the Bush administration's posture, almost pleading with it to start playing fair.

"(A) state of war is not a blank check for the president when it comes to the rights of the nation's citizens," snapped Justice Sandra Day O'Connor in the case involving Yaser Esam Hamdi, an American enemy combatant who had been held without charge and incommunicado for years. The administration had claimed it could hold him this way indefinitely.

But it appears that President Bush and his Justice Department minions care little about the court's admonitions. In filing after filing in the enemy combatant cases currently wending their way through the lower federal courts, the Bush administration has taken positions almost identical to its prior stance.

"The government has been completely unrepentant since Rasul, almost as if it was never decided," said Erwin Chemerinsky, professor of law at Duke Law School, referring to the Guantanamo case decided last term. He is currently representing a Libyan national held at Guantanamo.

In cases such as Chemerinsky's, where Guantanamo prisoners are challenging their indeterminate status and other aspects of their confinement, the administration asserts that the prisoners have "no cognizable constitutional rights."

Essentially the government's stance is that no court can intervene in the situation at Guantanamo for any reason, even to bar torture (a condition that is, sadly, plausible). This was the precise claim that was defeated in the Supreme Court last term.

The hubris is so breathtaking that it would be comic if so much wasn't at stake. Just as the administration has refused to adhere to the Geneva Conventions in Afghanistan and now in Iraq, calling them "quaint," it now says that the Supreme Court's ruling granting Guantanamo detainees habeas corpus rights should have no substantive meaning.

This is not going over well in the legal trenches. Earlier this month, U.S. District Court Judge Colleen Kollar-Kotelly in Washington, D.C., rejected the Justice Department's extreme position and granted a group of Kuwaiti detainees access to counsel and the right to confer with their attorneys without being monitored by the government. There are at least a dozen more cases like this, and in each one the administration is fighting to deny the prisoners any and all due process.

In the case of Jose Padilla, the sole remaining American enemy combatant, the administration is again impenitent, purposely disregarding the spirit of the Supreme Court's rulings.

Padilla, the so-called "dirty bomber," was arrested at Chicago's O'Hare Airport in May 2002 and has been imprisoned as an enemy combatant in a military brig in South Carolina since June of that year. His case was dismissed by the high court last term on the grounds that he should have filed his complaint in South Carolina, not New York, which he has since done.

At the time, four justices dissented, saying they should have ruled on the merits. "At stake in this case is nothing less than the essence of a free society," Justice John Paul Stevens wrote.

But the Hamdi case, which was decided, also involved an American enemy combatant, and in that case O'Connor wrote: "We reaffirm today the fundamental nature of a citizen's right to be free from involuntary confinement by his own government without due process of law."

Still, the administration claims that Padilla can be held without charge until "the conflict against al-Qaida has ended." And, it says, the president's designation of Padilla or any American as an enemy combatant cannot be set aside by a court except in "exceptionally narrow situations."

Additionally, the administration says, Padilla has no right to end interrogations, no right to have a lawyer present while being questioned and no right to claim that any harsh interrogations or detention conditions are cruel and unusual punishment. (Although the government claims it won't be questioning him again.)

Bush is fighting hard to keep his extralegal theories of executive power intact. It is no surprise that an administration willing to toss aside the laws of war and the Bill of Rights when they are impediments would disregard lines drawn by the nation's high court too.