

# US high court to hear Guantanamo appeal

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The US Supreme Court announced November 10 that it will hear a case challenging the Bush administration's indefinite detention without charges and in violation of US constitutional protection and international law of nearly 700 prisoners held at the US naval base at Guantanamo Bay, Cuba.

The high court has made it clear it will limit its decision to the narrow but key legal question of whether the Guantanamo detainees—all of them non-US citizens and mostly Muslims seized in Afghanistan nearly two years ago—have a right to seek redress in US courts to their being held incommunicado by the US government.

The Bush administration has claimed that by labeling the prisoners as “enemy combatants” and holding them on an overseas US military base it may deny them both the rights they would be entitled to as prisoners of war under the Geneva Conventions and the constitutional rights afforded criminal defendants in the US courts.

The Supreme Court is considering two appeals that have been joined together in the case. The first was filed on behalf of two Australian—David Hicks and Mamdouh Habib—and two British detainees—Safiq Rasul and Asif Iqbal—by attorneys from the New York City-based Center for Constitutional Rights. The second appeal was filed on behalf of 12 Kuwaiti citizens held at the Guantanamo prison camp.

The US government has based its argument in both cases on the claim that US courts have no jurisdiction over Guantanamo because it remains technically sovereign Cuban territory. The US seized the territory during the Spanish-American War and has occupied the base for a century under a lease that specifically grants Washington “complete jurisdiction and control.”

A federal District Court and the US Court of Appeals for the District of Columbia ruled that the courts lack jurisdiction over the military detention of non-citizens outside US territory. It accepted the government's hyper-technical argument that because Guantanamo is not recognized as sovereign US territory, even though Washington exercises de facto sovereignty there, the US

Constitution does not apply to the detainees.

The government has attempted to rest its argument on a 1950 case that stems from wildly different circumstances, involving convicted German war criminals captured in wartime China and held at a prison in Germany.

The detainees at Guantanamo have been neither charged with nor convicted of any crimes. Those whom the appeals cover have emphatically denied that they were either combatants in Afghanistan or had any ties whatsoever to Al Qaeda.

Both released detainees and lawyers representing some of those still held at Guantanamo have accused the US of subjecting the prisoners there to intense interrogation and torture. They, together with the International Committee of the Red Cross, have also charged that the conditions of prolonged solitary confinement have led to mental health problems among many of the detainees, reflected in a growing number of suicide attempts. US authorities have reported 32 such attempts, but the number is believed to be significantly higher.

Prisoners are held in 6-by-8-foot cells 24 hours a day with the exception of three weekly half-hour exercise periods in which they are led out of the cells in shackles to a 25-by-30-foot concrete slab cage.

The brief filed on behalf of the two British and two Australian citizens charges that the US military has initiated plans to expand the camp and build a more permanent facility capable of housing over 1,100 detainees as part of the US government's “global war on terrorism,” a war that the Bush administration has vowed will last for decades.

Both the case involving the British and Australian detainees and that dealing with the Kuwaitis began in early 2002 with the filing of petitions of habeas corpus in federal court challenging the claim by the administration that Bush's status as commander-in-chief gave him the power to hold prisoners without regard to constitutional rights or international law.

In their petition to the Supreme Court, attorneys from the Center for Constitutional Rights charged that the Bush

administration has created “a prison ... that operates entirely outside the law. Within the walls of this prison, foreign nationals may be held indefinitely, without charges or evidence of wrongdoing, without access to family, friends or legal counsel, and with no opportunity to establish their innocence.”

The legal document argues that the central issue in the case is “whether the United States Government is constrained by the Constitution and international law in its treatment of foreign nationals imprisoned outside the ultimate sovereignty of the United States, and if so, whether the nationals may enforce those constraints in a federal court.”

Michael Ratner, president of the center, commented that the issues in the case go well beyond the immediate fate of the detainees at Guantanamo: “One of the most fundamental democratic principles is at stake in this case: whether the government may detain people without charge and deny them the right to test the legality of their detention in open court.... If the government is permitted to evade all scrutiny by the federal courts, then the most arbitrary type of executive detention has been sanctioned.”

The Bush administration has declared two US citizens “enemy combatants”— Jose Padilla and Yaser Esam Hamdi—and is holding them incommunicado in a Navy brig without charges, hearings or access to legal counsel. The administration has fought a ferocious legal battle to prevent the courts from reviewing either case and to assert the president’s right to invoke the “war on terrorism” to effectively strip US citizens of their constitutional rights as well.

A decision by the US Supreme Court is not expected until next June. If it were to overturn the federal appellate panel’s decision, the cases would be sent back to the federal district court to rule on the legality of the Guantanamo detentions.



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