

Bush administration seeks dismissal of Guantánamo habeas corpus suits

Kate Randall
6 January 2006

The Bush administration is seeking the dismissal of all habeas corpus lawsuits brought by detainees at the Guantánamo Bay prison camp. On Tuesday, the Justice Department informed federal judges that they would be asked to dismiss more than 160 cases involving at least 300 Guantánamo detainees who are challenging the legality of their imprisonment.

The Justice Department's action is based on an amendment attached to the Defense Appropriations Act passed by Congress and signed into law by President Bush last Friday, which strips the federal courts of jurisdiction over the habeas corpus petitions. In essence, the amendment deprives the Guantánamo detainees—designated by the Bush administration as “enemy combatants”—of any legal right to challenge their detention in the US court system. (See “US Senate moves to ban court review of Guantánamo detentions”)

The government's move—and the Congressional amendment that provides its justification—constitutes not only an affront to basic democratic rights, but stands in opposition to the June 2004 US Supreme Court rulings upholding the right of so-called enemy combatants to file habeas corpus petitions in federal court. (See “The meaning of the US Supreme Court rulings on ‘enemy combatants’”)

It is the latest instance in which Bush—in his role as “commander-in-chief” in a perpetual “global war on terrorism”—has seized unprecedented powers for the executive branch, in this case trampling on the legal rights of prisoners who have been detained in violation of the Geneva Conventions and international law.

While limited at this stage to so-called enemy combatants, the Bush administration is likely to seek extension of this abrogation of the centuries-old legal right to habeas corpus to all non-citizens held by the government, both within the US and abroad. It poses a

profound danger to the democratic rights of US citizens as well.

The Bush administration pressed actively in Congress for passage of the amendment. It was sponsored by Republican Senators Lindsey Graham (South Carolina) and John Kyl (Arizona) and Democratic Senator Carl Levin of Michigan. The senators pushed the Bush line that the legal challenges brought by the Guantánamo detainees—many of whom have been held for nearly four years without charges, and subject to torture and abuse—were frivolous and clogging the federal courts.

A key role was played by Levin—the ranking Democrat on the Senate Armed Services Committee and a consistent supporter of Bush's military policy—who won broad support for the provision denying any further federal review of the Guantánamo detentions after assuring Congress that the bill had been altered to apply only to new cases, not those pending in federal courts. Levin acted three times to remove language the Bush administration sought to insert in the amendment declaring it “shall apply to any [habeas] application or other action that is pending on or after the date of the enactment of this Act.”

In any event, although the final amendment to the Defense Appropriations Act did not include such a phrase, this did not deter Justice Department officials, who within four days of the measure's passage notified federal judges of their intention to seek dismissal of all pending habeas corpus suits. Formal notices to this effect were to be filed this week. Attorneys for the detainees are expected to challenge the Bush administration's request to dismiss the petitions.

According to the Graham-Levin amendment, in place of habeas corpus petitions detainees will have the “right” to have their cases heard before the US Court of Appeals for the District of Columbia. These

proceedings will be limited to a review of the results of military tribunals held at Guantánamo to determine whether they have been properly designated as “enemy combatants” or convicted of military crimes.

Tasia Scolinos, a Justice Department spokesperson, claimed that such reviews would provide ample opportunity for detainees to have their cases heard. “We are aware of no other country that has provided their enemies with such extensive legal review during an ongoing conflict,” Scolinos commented. Such statements are laughable given the rigged nature of the legal proceedings concocted by the Bush administration and the Pentagon to hear the Guantánamo prisoners’ cases.

These military tribunals have been universally denounced by civil liberties advocates and legal counsel for the detainees. They are undisguised kangaroo courts in which panels composed of three military officers determine whether a prisoner is an “enemy combatant.” The detainees are not represented by legal counsel and are often denied access to evidence against them if the tribunal finds this would compromise “national security.” The panels are empowered to hand down death sentences, with the sole proviso that they rule unanimously.

Bush administration efforts to deny all pending and future habeas corpus suits for the Guantánamo prisoners—and the reaffirmation of the military tribunals’ fitness to judge their fate—comes at a time of renewed international criticism of the US prison facility. Manfred Nowak, the United Nations special rapporteur on torture, says there are credible allegations that hunger strikers at the prison in Cuba are being force-fed in a cruel manner.

The number of detainees participating in the hunger strike at Guantánamo has reportedly doubled since December 25, with some 84 inmates now refusing food. Nowak told the BBC that he had received reports of hunger strikers having thick tubes roughly inserted through their noses and forced down their stomachs, resulting in bleeding and vomiting. He cited reports that this procedure was performed at times by prison guards rather than medical personnel.

“If these allegations are true, then this definitely amounts to an additional cruel treatment,” Nowak said.

There are reports that the US may attempt to defuse international criticism over Guantánamo by transferring

a number of the 500 detainees at the camp to a refurbished prison in Afghanistan. The *Financial Times* reports that the US is planning to build a high-security prison near Kabul at the Pol-e-Charkhi jail, a run-down facility dating from the 1980s Soviet occupation.

Citing Western diplomats, the newspaper said that the UN and the European Union have been resisting US plans to turn the facility into a prison for Afghan terror suspects as well as transferred prisoners from Guantánamo, many of whom were captured in Afghanistan in the fall of 2001. The detainees—undoubtedly still denied prisoner of war status by US authorities—would be outside of US jurisdiction and remain in legal limbo.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact