

# US Supreme Court refuses to hear Guantánamo appeals

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The US Supreme Court decided in a 6-3 vote Monday not to hear appeals from two groups of prisoners seeking to challenge in federal court their incarceration in the Guantánamo Bay prison camp. The prisoners have been held for as many as five years at the notorious prison and been placed outside the protection of both US and international law.

On February 20 of this year, the District of Columbia appeals court upheld a provision of the Military Commissions Act of 2006 that denies so-called “alien enemy combatants” the right to challenge their detention in US courts and orders that all such pending habeas corpus petitions be dismissed. (see “US appeals court upholds denial of habeas corpus rights to Guantánamo detainees”) The prisoners’ lawyers subsequently appealed to the Supreme Court.

The right of habeas corpus—an individual’s right to challenge his incarceration and have the charges against him presented in court—is a fundamental democratic right originating as far back as the Magna Carta of 1215, and is protected by the US Constitution. The “great writ” of habeas corpus has historically served as a legal bulwark against arbitrary imprisonment, but has come under increasing attack as the US government attempts to assert police-state powers in the name of the “war on terror.”

Omar Khadr, a Canadian, is among those prisoners whose appeal was denied. He is accused of killing a US medic in Afghanistan in 2002, when he was 15 years old, and awaits a hearing before a Guantánamo military tribunal, officially called a Combatant Status Review Tribunal (CSRT).

Of the nearly 400 inmates at the Guantánamo Bay prison, only 10 have ever been charged with a crime.

Supreme Court justices Stephen G. Breyer, David H. Souter and Ruth Bader Ginsburg voted in favor of

allowing the court hear the two cases, *Al Odah v. USA* and *Boumediene v. Bush*, and urged the court to hear them on an expedited basis, given the extraordinary circumstances of the prisoners.

“I believe these questions deserve this court’s immediate attention,” argued Breyer. “Immediate review may avoid an additional year or more of imprisonment.”

However, the generally more liberal Justice John Paul Stevens and the “swing” Justice Anthony M. Kennedy, citing procedural reasons, joined the right-wing faction of Samuel Alito, Clarence Thomas, Antonin Scalia and Chief Justice John Roberts to prevent a review of the cases. Only four votes are necessary to require the court to hear the merits of a case.

“Despite the obvious importance of the issues raised in these cases,” Stevens and Kennedy wrote in a joint statement justifying the decision, “we are persuaded that traditional rules governing our decision of constitutional questions...and our practice of requiring the exhaustion of available remedies as a precondition to accepting jurisdiction over applications for the writ of habeas corpus...make it appropriate to deny these petitions at this time.” In other words, they will compel the prisoners to go through the military drum court system at Guantánamo, which denies defendants basic due process rights, before they will hear appeals.

Stevens, the most senior justice on the court, recently authored two important Supreme Court decisions—*Rasul v. Bush* in 2004 and *Hamdan v. Rumsfeld* in 2006—which rejected the legal framework invented by the Bush administration to place prisoners outside the protection of existing US and international law. The profoundly anti-democratic Military Commissions Act, passed with the help of the congressional Democrats in October 2006, was an

attempt to counter those rulings.

Regarding Monday's ruling, Stevens and Kennedy wrote that if "the government has unreasonably delayed proceedings" or the detainees are the victims of "some other and ongoing injury," the Supreme Court would be willing to hear these cases.

Lawyers for the prisoners expressed frustration and outrage following the court's decision not to hear the case, pointing to the centuries-old due process rights being trampled at Guantánamo.

"This is a perfect example of justice delayed is justice denied," said Washington lawyer Tom Wilner.

"It's disgraceful," Canadian lawyer Dennis Edney told the Canadian press. "The court should comply with the rule of law and come in line with various other legal jurisdictions and international bodies."

"It's a lawless country with lawless rules," he continued. "It doesn't take any great common sense to recognize that this is a court that's given undue deference to the commander-in-chief."

The Bush administration praised the ruling. "I think that, on first glance, we're very pleased with the decision," White House spokesperson Dana Perino said.



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