US Supreme Court stalls Guantánamo appeal, upholds lethal injections

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Recent decisions by the Supreme Court highlight the ongoing erosion of democratic rights in the United States.

The Supreme Court has been shifting steadily to the right for decades, but that shift has accelerated sharply in recent years. The appointments of Justices John Roberts and Samuel Alito and the rightward shift of "swing" Justice Anthony Kennedy (author of the *Citizens United* decision giving corporations a constitutional right to spend money on elections) have led to the consolidation of a right-wing majority on the Supreme Court hostile to long-held democratic and legal principles.

Over the past two weeks, the Supreme Court has acted to stall the appeal of Guantánamo prisoners, uphold the death penalty, and undermine the so-called "Miranda" rights of people taken into police custody.

Kiyemba, et al., v. Obama

The case of *Kiyemba, et al., v.* Obama, decided Monday, was the only opportunity for the Supreme Court to address the legality of the conditions facing so-called "enemy combatants" during the court's present term. The unanimous decision, which evades addressing the real question on the basis of a technicality, recalls the arcane antics of the English Court of Chancery in the endless fictional case of *Jarndyce v. Jarndyce* in Charles Dickens's *Bleak House*.

Thirteen innocent Chinese Muslim Uighurs were detained as "illegal enemy combatants" by the United States in 2002. Seven of the thirteen are currently detained in the infamous Guantánamo Bay prison camp. The Uighurs have been cleared of any wrongdoing, and the only question is to which country they will be released.

The DC Circuit Court of Appeals earlier ruled in a sweeping decision that the Uighurs could not be released into the US because federal judges lack the authority to make the relevant immigration decision. The authority to make the immigration decision, according to the DC Circuit Court, rests exclusively with President Obama and Congress. The DC Circuit Court, notoriously stacked with right-wing judges, is the only court in which Guantánamo detainees are permitted to challenge their captivity.

On Monday, the Supreme Court declined to review the DC Circuit Court decision in the case. Instead, it sent the case back to the DC Circuit Court for a consideration of "new developments." The "new developments" are invitations to the Uighurs by Switzerland, Palau, and Maldives to settle there.

William Quigley, legal director of the Center for Constitutional Rights, said, "The impact of the delay will be to prolong the indefinite imprisonment of people who have been cleared of any wrongdoing."

Harbison v. Little

The Supreme Court on Monday rejected a challenge to Tennessee's brutal lethal injection procedure. The court's decision, delivered without comment or dissent, makes challenging the death penalty more difficult and clears the way for Edward Jerome Harbison's execution by lethal injection.

Harbison, a death row inmate, successfully challenged Tennessee's lethal injection procedure in federal district court in 2007 on the grounds that the combination of three chemicals employed in the procedure causes excruciating pain and constitutes "cruel and unusual punishment," which is prohibited by the Eighth Amendment in the Constitution's Bill of Rights. The Tennessee District Court held that Tennessee's lethal injection protocol violated the Eighth Amendment because the State knowingly disregarded the procedure's "substantial risk of inflicting unnecessary pain."

"It is undisputed," wrote the Tennessee District Court, "that, without proper anesthesia, the administration of pancuronium bromide and potassium chloride, either separately or in combination, would result in a terrifying, excruciating death. The basic mechanics are that the inmate would first be paralyzed and suffocated (because the paralysis would make him unable to draw breath), then feel a burning pain throughout his body, and then suffer a heart attack while remaining unable to breathe."

The Supreme Court decided the separate case of *Baze v. Rees* in 2008, rejecting the challenge that the Kentucky lethal injection procedure causes extreme pain and constitutes "cruel and unusual punishment," upholding Kentucky's method of lethal injection. (See "US Supreme Court upholds lethal injection, opening way to resumed executions..")

Following the *Baze v. Rees* decision, the Sixth Circuit Court of Appeals reversed the Tennessee District Court decision in its ruling against Harbison. Harbison's petition reveals that the circuit courts have used the *Baze v. Rees* decision to reject challenges to the death penalty in other states. On Monday, the Supreme Court affirmed the Sixth Circuit decision.

In 2009, 52 people were executed in the United States, 15 more than in 2008. Of these, 51 were killed by lethal injection and one by the

electric chair. Since 1976, when the Supreme Court reinstated the death penalty, nearly 1,200 people have been executed.

Maryland v. Shatzer

The Supreme Court on February 24 carved out yet another exception to the so-called *Miranda* rights of arrested persons. The ruling, with only two justices dissenting, weakens the framework of rights designed to protect an arrested person from self-incrimination and from police bullying. The court held that, even after a person asserts his right to remain silent, the police may return and interrogate that person after 14 days without reading him his rights.

In the United States, police have historically been required to advise individuals in custody of their rights before interrogating them. This advice has come to be known as the *Miranda* warning after the case *Miranda v. Arizona* (1966) imposing the requirement on state police. The *Miranda* warning is designed to protect an arrested person against police intimidation before that person has a chance to speak to a lawyer, and in particular against the production by police departments of dubious signed confessions.

The *Miranda* warning, which varies slightly from state to state, is short and familiar to most viewers of American police dramas: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed to you." The Fifth Amendment protects defendants against self-incrimination.

Since the original decision, the Supreme Court has created various exceptions to the *Miranda* requirement, of which *Maryland v. Shatzer* is the latest.

In 2003, prisoner Michael B. Shatzer was being investigated for a different crime than the one for which he was imprisoned. He invoked his *Miranda* right to remain silent and refused to answer questions. Two-and-a-half years later, the police returned to Shatzer's cell, did not give the Miranda warning, and wrung incriminating statements from him. In theory, when a person invokes the right to remain silent, police questioning is supposed to stop.

The Supreme Court decided that police could resume questioning after 14 days without giving the *Miranda* warning, so long as there had been a break in custody. The court found, incredibly, that serving a sentence in state prison is not "custody," and so constituted a break. Justice Antonin Scalia wrote for a seven-justice majority. The new 14-day rule has no basis in the Supreme Court's prior rulings; it was created out of whole cloth by Scalia and the majority.

This decision will open the door to harassment of prisoners on a bi-weekly basis. There is an emerging pattern of cases in which an inmate is awakened in the middle of the night by group of police officers entering his cell and demanding that he waive his *Miranda* rights.

Ongoing cases

Oral arguments in the case of former Enron CEO Jeffrey Skilling (*Skilling v. US)* were heard Monday. Skilling, convicted for fraud in 2006, played a leading role in bankrupting Enron and wiping out tens of thousands of jobs and the retirement savings of thousands of Enron employees. Skilling's lawyers are arguing that the jury was biased against him and that it is unconstitutional to prosecute employees at private companies for fraud where no "private gain" is proven. (See "Supreme Court agrees to hear appeal of Enron's Jeffrey Skilling")

The court has agreed to hear the multi-millionaire Skilling's appeal of lower court rulings upholding his conviction, while it has refused to hear the appeals of numerous death row inmates facing execution. It heard oral arguments—likely the prelude to overturning Skilling's conviction—on the same day that it refused to free the Uighurs being held at Guantánamo.

Also on Monday, the Supreme Court heard oral arguments in the case of *McDonald v. City of Chicago*, to determine whether to strike down Chicago's handgun ban. In June of 2008, the Supreme Court decided *District of Columbia v. Heller*, declaring that the Second Amendment to the US Constitution provides an individual right to gun ownership which the federal government may not violate. (See "The reactionary politics of the Supreme Court's 'gun rights' decision"). In *McDonald v. City of Chicago*, the Supreme Court will decide whether to impose that decision to state, county, and city governments across the country. The oral arguments indicated a majority on the court in favor of overriding state and local laws banning private ownership of handguns.

On February 23, the court heard oral arguments in the case *Holder v. Humanitarian Law Project*, which involves a post-9/11 anti-terror law prohibiting "service, training or expert advice" to organizations designated as "terrorist." The Humanitarian Law Project had offered humanitarian assistance to the Kurdistan Workers' Party (PKK) in Turkey and the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka. Both groups are on a US government list of proscribed organizations. The Humanitarian Law Project argued that the statute is unconstitutionally vague and can be used to sweep-up speech or conduct the government wishes to illegalize.

Decisions in these cases are expected by early summer.