



The Center for Victims of Torture

Restore Habeas Corpus

The United States must allow detainees held as “enemy combatants” to invoke their right to habeas corpus to challenge their detention and treatment.

BACKGROUND The Military Commissions Act (MCA) of 2006 revoked the right of prisoners designated as “enemy combatant” to habeas corpus (judicial review). The legislation was proposed by the Bush Administration in reaction to a June 2006 Supreme Court decision that ruled even those classified by the administration as enemy combatants must have access to U.S. courts to challenge their detention and treatment. After the MCA passed, the administration informed the U.S. Court of Appeals for the District of Columbia Circuit that it no longer had jurisdiction to consider 196 pending *habeas corpus* cases filed by inmates at the Guantanamo Bay prison in Cuba. According to the MCA, no court, justice, or judge “can consider these petitions or other actions related to treatment or imprisonment filed by anyone designated as an “enemy combatant,” now or in the future.

ANALYSIS

Habeas corpus is a necessary tool to bring transparency to the conditions of detention.

Habeas corpus allows torture victims to challenge the legality of their detention and conditions of treatment, including violations of the Geneva Conventions, before an independent court. If our laws prohibit torture but we don’t provide the tools to examine allegations of abuse, torture can continue unchecked.

Habeas corpus is our only protection against the arbitrary exercise of executive power.

Current policy prohibits detainees imprisoned for prolonged periods of time under abusive conditions from discussing where they were held, challenging the conditions of their interrogations, or confronting those responsible for their detention and treatment. The MCA allows prosecutors to withhold classified sources and methods of interrogations from defendants and their lawyers, making it impossible to establish whether evidence against them was obtained through torture.

Habeas corpus protects innocent persons from false or arbitrary imprisonment.

Habeas corpus is a fundamental American value written into the Constitution. It protects individuals from the arbitrary abuse of government power. Detainees at Guantanamo have been held for up to 5 years, yet only a small percentage of them were captured by U.S. forces on the battlefield or were fighters for Al Queda.¹ Habeas corpus is necessary to shine the light on prison conditions and is a check against indefinite detention.

SUMMATION

- **Restore** a defendant’s right to habeas corpus;
- **Repeal** the Military Commissions Act;
- **Ban** the use of coercive evidence obtained through torture.

¹ M. Denbeaux and J. Denbeaux, Report on Guantanamo Detainees. A Profile of 517 Detainees through Analysis of Department of Defense Data. February 2006. Accessed July 2007 at: <http://law.shu.edu/aaafinal.pdf>