



the facts about habeas corpus

guantánamo
global
justice
initiative

what is habeas corpus?

Habeas corpus, or the Great Writ, is the legal procedure that keeps the government from holding you indefinitely without showing cause. When you challenge your detention by filing a habeas corpus petition, the executive branch must explain to a neutral judge its justification for holding you. Habeas corpus prevents the King from simply locking up subjects in secret dungeons and throwing away the key. It's been a pillar of Western law since the signing of the Magna Carta in England in 1215.

The Founders of our nation believed habeas corpus was so essential to preserving liberty, justice, and democracy that they enshrined it in the very first article of the United States Constitution.

what happened to habeas corpus?

In its waning days, the last Congress passed the Military Commissions Act (MCA) of 2006 by a slim margin. Among many ill-considered and dangerous provisions, the MCA revoked the right to habeas corpus for anyone detained at Guantánamo Bay as well as for any foreigner the government detains anywhere and labels an "enemy combatant." This provision applies to legal residents of the U.S. as well, meaning someone who has lived in the U.S. for years could potentially be labeled an "enemy combatant" and then thrown into prison with no legal recourse to challenge their detention.

how does it relate to Guantanamo?

The government has little or no evidence against most of the men detained at Guantánamo. We now know that almost none of the Guantánamo prisoners were taken into custody by U.S. forces or captured on any battlefield. The overwhelming majority were sold into captivity by Northern Alliance and Pakistani warlords for substantial bounties—\$5,000 and more for each person they turned in; enough money, as leaflets the U.S. military distributed throughout Afghanistan said, "to take care of your family . . . for the rest of your life." In fact, of the nearly 800 men that have been held at Guantánamo, only 10 have ever been charged with any crime.

Soon after the first 20 detainees were flown to Guantánamo, CCR began filing habeas corpus petitions asking the government to explain why it was holding these men outside of the reach of the U.S. court system in what has since become a notorious

offshore penal colony. Despite numerous legal victories that affirm the detainees' right to challenge their detention, the Bush administration has managed to prevent the detainees from getting a fair hearing in the courts.

what does this mean for the detainees?

In June 2007, the Supreme Court decided to hear CCR's most recent case challenging the detention of many Guantánamo detainees. These men have faced indefinite detention, sham trials, and conditions rapidly inducing psychological deterioration for nearly six years. In the coming Supreme Court term, for the third time, the high court will hear the detainees' cases and, we hope, once more seek to hold the Administration accountable and uphold habeas corpus.

The MCA extends a second-class system of justice far beyond Guantánamo to any non-citizen - including legal permanent residents of the U.S. - anywhere in the world whom the executive unilaterally declares to be an "unlawful enemy combatant."

what does this mean for everyone else?

Habeas corpus was originally meant to act as a bulwark precisely against this type of executive power. The founders of our nation considered habeas corpus the most fundamental of rights because it insured that the executive branch could not hold people without cause. Since the founding of the U.S., the writ has been suspended on only four occasions, each for a brief period of time and each in territory that was an active combat zone.

By compromising this core legal value and necessary protection against the executive branch, the MCA has eroded the very foundation of our legal and constitutional framework. If we do not defend the detainees' right to habeas corpus and the rights of those who are not yet citizens, we all lose.

Educate others about the habeas corpus

Take this leaflet, make copies, and pass it to others at your workplace, school, or place of worship.

Call and write representatives and demand they support legislation that would repeal the MCA and restore the right to habeas corpus.

Write letters to the editor about the MCA and habeas corpus for your local newspaper. Speak out, and encourage others to do the same.

centerforconstitutionalrights