



## SUPREME COURT HEARS GUANTANAMO CASE

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*The Supreme Court has begun reviewing three important terrorism-related cases that will determine whether foreign prisoners have the right to a trial in U.S. courts and whether the government has the right to detain U.S. citizens accused of working with terrorists without a trial.*

The Supreme Court heard arguments on Tuesday in a case that will determine whether foreign prisoners being held at the U.S. naval base in Guantanamo Bay, Cuba can be tried by American courts.

Tuesday's hearing was the first of three separate cases -- two of which will be heard on April 28 - that will consider how the United States has waged its war on terrorism. These first cases will measure the civil liberties of war-time prisoners against the need for national security.

"These cases raise fundamental questions about the role of the courts in preserving civil liberties during times of national crisis," said Steven Shapiro of the American Civil Liberties Union.

The U.S. military has been holding about 600 prisoners at Guantanamo since early 2002. In efforts to capture members of the al-Qaida network, believed to be responsible for the Sept. 11, 2001 attacks that killed nearly 3,000 people, the United States battled Afghanistan's Taliban government, catching many of the current prisoners.

Since then, the Bush administration has claimed the right to hold the prisoners indefinitely, refusing them access to lawyers and not charging them officially. The Department of Defense cites the need to preserve security during war.

### **The case of foreign detainees**

In Tuesday's case, the nine court justices reviewed a previous ruling that said American courts do not have jurisdiction over the legal claims of prisoners being held at Guantanamo. Because the base is in the "sovereign territory of Cuba," prisoners there would not fall under U.S. laws, according to a case decided in 1950.

Lawyers for 16 British, Australian and Kuwaiti detainees argued that the U.S. Constitution does not allow the government to create a prison that falls outside the reaches of American courts and that prisoners should have access to those courts to fight for their release.

The federal government argued the earlier ruling, involving German prisoners in U.S. custody during World War II, should be maintained, or upheld. The government also argued that U.S. courts should not interfere with the military and its trial procedures.

The United States plans at some point to try the men suspected of being terrorists before a military tribunal and not a traditional court.

### **What is Guantanamo?**

One of the main arguments the justices will have to decide is who controls Guantanamo Bay.

The United States established the base at Guantanamo after the Spanish-American War, getting the new government of Cuba to agree to the base after driving Spanish forces off the island in the early 1900s.

Under the lease the two governments signed, the Bush administration argued, Cuba holds ultimate control over the property. Lawyers for the detainees say the naval base, which houses a detention camp for prisoners captured in foreign wars, is U.S. territory and therefore prisoners should be protected by U.S. laws.

"Cuban law doesn't apply there. Cuban law has never had any application inside that base. A stamp with Fidel Castro's picture on it wouldn't get a letter off the base," said John Gibbons, the attorney representing the detainees.

Some members of the court seemed to agree with Gibbons' argument, including Justice Stephen Breyer, who raised the notion of checks and balances, the U.S. form of government that allows for each of the three branches of government to rein in the other.

"It seems rather contrary to an idea of a Constitution with three branches that the executive would be free to do whatever they want, whatever they want without a check," Breyer said.

But Justice Antonin Scalia questioned whether the court was in a position to create such a check on the government or the military.

"We have only lawyers before us, we have no witnesses, we have no cross-examination, we have no investigative staff," he said. "And we should be the ones, Justice Breyer suggests, to draw up this reticulated system to preserve our military from intervention by the courts?"

### **The case of the 'enemy combatants'**

On April 28, the court will review the cases of two U.S. citizens being held indefinitely as "enemy combatants" -- Yaser Hamdi, an American caught fighting with the Taliban in Afghanistan, and Chicago native Jose Padilla, who changed his name to Abdullah al-Muhajir. The FBI arrested Padilla after it reportedly uncovered a plot to explode a so-called "dirty bomb" -- a bomb that can be used to spread radioactive material.

Neither Hamdi nor Padilla has been charged with a crime. Their lawyers are asking that they be released or officially charged and given the opportunity to argue their cases in court, a right afforded to all Americans under the Constitution.

The Supreme Court is expected to decide all three cases in June. If the government loses, it would set limits on the power of the president during times of war. If it wins, it will allow the United States to continue to detain the prisoners. Either way, the court will be setting the first legal boundaries in America's ongoing war on terrorism.

*By Kristina Nwazota, Online NewsHour*

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