

[The Huffington Post](#)

November 21, 2008

Breaking News:

[Reports: Obama Chooses Tim Geithner For Treasury, Bill Richardson For Commerce](#)

[This is the print preview: Back to normal view »](#)



[Jonathan Hafetz](#) | [BIO](#) | [I'M A FAN OF THIS BLOGGER](#)

## American Justice on the Line

Posted December 19, 2006 | 09:49 AM (EST)

**Read More:** [Guantanamo Bay](#), [Supreme court](#), [United States](#), [Washington](#), [Breaking Politics News](#)



Last week, a district judge in Washington dismissed the case of Guantanamo Bay detainee [Salim Hamdan](#). In June, Hamdan won a landmark [Supreme Court decision](#) striking down President's jerry-rigged system of military trials at Guantanamo. Now, thanks to a new law stamped through Congress in October, Hamdan cannot even get into court. This decision should alarm all Americans who care about their country's most basic rights and values.

The fate of the remaining 400 prisoners at Guantanamo - now entering their fifth year in detention without charge - hinges on how other courts interpret this new law, known as the [Military Commissions Act of 2006](#) ("MCA"). Most significantly, the act purports to eliminate these prisoners' right to habeas corpus simply because the President has concluded they are "illegal enemy combatants." If appeals courts agree with the district judge's decision, these prisoners will face potential life sentences without a judicial hearing, let alone a trial, to determine their guilt or innocence.

The MCA's harm threatens to spill beyond Guantanamo. The President has taken the radical position that he can now deprive non-citizens living in this country of their right to habeas corpus. In his view, the military can snatch any of the millions of immigrants off the streets of the United States at any time and jail them forever without charge or court review. For the first time in the Nation's history, those who live and work among us can be vanished, just like in a Latin American dictatorship.

More though is at stake than the fate of individual detainees. Habeas corpus embodies America's commitment to justice and fairness, essential principles endangered by the siren call of "national security."

Why then does the President want to get rid of habeas corpus? Because for the past five years habeas has provided the one meaningful check on his power to detain and interrogate suspected terrorists outside the law.

Long celebrated as the Great Writ of Liberty, the Framers made habeas corpus "[the bulwark](#)" against arbitrary government in our Constitution. The Great Writ has the power to unmask and reveal abuses of power not through lawyers' arguments but through the power of a judge - as the phrase habeas corpus or "you have the body" suggests - to order a prisoner be produced for a hearing to inquire into the facts.

Habeas, then, is not a get-out-of-jail free card. Instead, it protects what most Americans rightly understand as justice: the opportunity for all prisoners to be judged, fairly and openly, in a court of law.

To be sure, the President claims that Guantanamo detainees are "the worst of the worst." But, if that is true, why has the President has not produced any evidence to sustain these allegations? No person detained as an "enemy combatant" has ever testified in a federal court, and the administration has thus far successfully blocked hearings in the hundreds of habeas cases filed since [the Supreme Court ruled in 2004](#) that federal courts must hear the detainees' petitions. Indeed, whenever confronted with the prospect of meaningful court review, the administration has chosen to free prisoners rather than face a judge's scrutiny of its detention operations.

In place of habeas, the administration says determinations must be made by a Combatant Status Review Tribunal ("CSRT"). The CSRT, however, merely rubber-stamps decisions made by the Defense Department, imprisoning people based on secret evidence and evidence gained by torture. According to a [recent report](#) by Seton Hall law school, most detainees were found to be "enemy combatants" based on evidence they never saw or had any chance to respond to. Instead of an attorney, detainees were given "personal representatives," military officers who typically meet with them once for 10 minutes before their hearing. In America, a person gets more due process when he contests a parking ticket than a Guantanamo detainee gets to prove his innocence before he is condemned to years, if not decades, of imprisonment.

Often, it is the graphic image that galvanizes the public's attention, whether it is the picture of a human pyramid of prisoners at Abu Ghraib or of Jose Padilla in blacked-out goggles at a South Carolina navy prison. But, perhaps the worst form of torture perpetrated since September 11, and the one habeas corpus is designed to prevent, is indefinite imprisonment without charge. Unlike convicted criminals, individuals detained as "enemy combatants" at Guantanamo and elsewhere have not been tried or sentenced. They do not know when, if ever, might be released or charged with a crime. Instead, they remain in perpetual limbo in an amorphous and never-ending "war on terrorism," without access to the courts and isolated from family and the rest of the outside world.

Fortunately, there is a rising tide of support for habeas corpus from across the political spectrum. Conservative legal scholars have joined liberals in [opposing limits on habeas corpus](#). Former federal prosecutors, including former Attorney General Janet Reno, have also [denounced the administration's policy](#) of illegal detentions. Meanwhile, the television program *Sleeper Cell* has dramatized the creeping horror of time spent in isolation for millions of Americans. There is a growing sense, then, that administration has gone too far, alienating even some of its staunchest supporters, by imprisoning people without access to the courts.

Habeas corpus protects freedom and justice - values that cross party lines. As [the Supreme Court explained](#), habeas helps maintain the "delicate balance of

governance" by "serving as an important judicial check on the Executive's discretion in the realm of detentions." With the administration's "war on terrorism" well into its sixth year, it is essential that the courts and Congress preserve this proud legal tradition from extinction.

**Comments for this post are now closed**

[More in Politics...](#)



[Sarah Palin Turkey Incident: Does TV Interview...](#)



[McCain Pollster Explains Loss, Calls Frank Luntz...](#)



[An Open Letter To Joe Lieberman](#)



[Obama's Cell Phone Records Looked At By...](#)



Ads by Google

---

## **Masters in Diplomacy**

Earn a Masters in Diplomacy Online at Norwich University.

[www.Norwich.Edu/Diplomacy](http://www.Norwich.Edu/Diplomacy)

Comments for this entry are currently under maintenance but will be restored soon.

 

- [Archive](#) |
- [User Agreement](#) |
- [Privacy](#) |
- [Comment Policy](#) |
- [About Us](#) |
- [Powered by Movable Type](#)

© 2008  
H  
I  
r

