On Wednesday, the Supreme Court will consider whether the Constitution protects the right of Guantanamo detainees to file writs of habeas corpus in federal court. President Bush says no - because judges should not question decisions about whom the United States chooses to detain in the "war on terrorism." But the history of Guantanamo itself provides the most compelling reason for rejecting such unbridled claims of executive power.

In June 2004, the Supreme Court ruled in Rasul v. Bush that detainees at Guantanamo were entitled to file habeas corpus petitions under a federal statute that dates to the nation's founding. Congress, however, then amended that statute to repeal habeas corpus for Guantanamo detainees and for other foreign nationals held outside the mainland United States. The court will now decide in Boumediene v. Bush whether Congress violated the Constitution.

For Guantanamo's first 2 1/2 years, the United States imprisoned more than 700 people there incommunicado. No one knew most of the prisoners' names, let alone how they were treated.

We now know why the administration wanted secrecy, thanks to leaks of internal government memos detailing its strategy. The United States brought prisoners to Guantanamo after Sept. 11, 2001, precisely to avoid habeas corpus and any other legal constraints. President Bush labeled all the detainees "unlawful enemy combatants" and denied them any protections under the Geneva Conventions. Before long, interrogators felt free to act without any check against abuses.

Today, the worst interrogation practices have ceased, but the fundamental problem remains: The Guantanamo detainees (who still number more than 300) have never had their day in court to challenge the accusations against them.

Instead, the administration set up hearings known as Combatant Status Review Tribunals. It claims that these provide an "adequate substitute" for habeas corpus. But the tribunals do not come close to passing constitutional muster.

For centuries, habeas corpus has been a key safeguard against the arbitrary exercise of executive power. It guarantees individuals deprived of their liberty the opportunity to challenge the accusations against them before an impartial judge. The Combatant Status Review Tribunals, by contrast, deny detainees the assistance of counsel, rely largely on secret evidence and prevent detainees from presenting evidence that could establish their innocence.

Further, the tribunals are permeated by command influence. Made up of panels of midlevel officers, the tribunals were convened to review decisions that had
already been made, "through multiple levels of review," that the detainees were enemy combatants. The officers were given no institutional protections of independence. In order to find that the detainees had been improperly classified as enemy combatants, the tribunals would have had to reject the conclusions of their superiors.

The most damning evidence against the tribunals comes not from human rights advocates but from longtime military officials.

Lt. Col. Stephen Abraham, a 26-year veteran of military intelligence who assisted in setting up the tribunals, has described how they made decisions based on a haphazard collection of generic information that "lacked even the most fundamental earmarks of objectively credible evidence."

Colonel Abraham has also detailed how different government agencies withheld exculpatory evidence from the tribunals and how the three-member panels were pressured from above to find that detainees were enemy combatants. On the few occasions the panels disagreed, Colonel Abraham explains, their superiors ordered them to conduct "do-overs" until they reached the desired result.

Of course, the tribunals were not designed to test the government's allegations. Rather, they were created to give the appearance of a lawful process for people the administration maintained were not entitled to any process at all.

At bottom, the administration's argument is the same now as it was when the first prisoners arrived at Guantanamo six years ago: Courts should trust the executive when it comes to terrorism. Even fundamental rights such as habeas corpus, the administration says, must yield to executive say-so on questions of national security.

But experience has taught the opposite: that sweeping claims of presidential power to fight terrorism make habeas corpus more, not less, important. We now know that a number of detainees at Guantanamo were innocent of wrongdoing, including dozens of Uighurs from northwestern China who languished in U.S. custody for years.

Habeas corpus helps ensure not only that the executive detains the right people but also that America remains committed to the rule of law.

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