

## WILL GITMO GET LESS CRITICISM IN 2008?

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Six years after the first terror suspects arrived at the military prison in Guantanamo Bay, Cuba, the Supreme Court and Congress are trying to decide whether the Constitution applies to them.

Last week, the high court heard oral arguments in two cases addressing whether enemy combatants are entitled to challenge legality of their detention and incarceration — invoking the constitutional writ of habeas corpus. A decision is expected in June. At the same time, a Senate subcommittee began asking tough questions.

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*Suspected terrorist operatives have been held at Guantanamo Bay prison since 2002.*

(Photo: REUTERS)

tainees were brought to Guantanamo and the administration still has not yet tried a single detainee, not in any U.S. criminal court and not by the military commissions ... In addition, new concerns have been raised about the legal rights given to Guantanamo detainees, not just by outside scholars,

but by the very military officers who personally participated in the process,” said Sen. Dianne Feinstein, a California Democrat who chairs the Judiciary Subcommittee on Terrorism, Technology and Homeland Security.

Some detainees are in a legal no-man’s land. Feinstein said at least 60 detainees remain imprisoned at Guantanamo even though the government has cleared them for release. Their home countries are refusing to take them back and the U.S. government is having difficulty finding other places for them to go, Feinstein said.

Since the war in Afghanistan began in 2002, 775 detainees have been brought to Guantanamo, Feinstein said. As of Dec. 8, 305 persons continue to be incarcerated at Guantanamo Bay. U.S. officials intend to try only a small fraction: Feinstein said as many as 80 will eventually be tried; the rest will be freed.

Known informally as Gitmo and located on a U.S. naval base, the Guantanamo Bay prison is used for suspected terrorist operatives who are classified as enemy combatants by the U.S government. The government claims the detainees cannot be classified as prisoners of war because they don’t fit the Geneva Convention definition: They are neither guerrilla fighters nor part of a regular army.

Human rights organizations such as Human Rights Watch and Amnesty International, along with the International Committee of the Red Cross, disagree. They question the legality of the detention and allege that the detainees have been subjected to sexual and religious degradation and torture.

Feinstein said she had wanted to hear from Col. Morris Davis. The senator said Morris told her he recently resigned as a chief Defense Department prosecutor because he felt the Gitmo prosecutions had become politicized. Feinstein said Davis’ superiors ordered him not to testify.

Seton Hall Law School Professor Mark P. Denbeaux told the senators that granting detainees the right to challenge their incarceration before international or military tribunals is the only remedy for the “tainting” of Guantanamo adjudications.

But other witnesses at the hearing said current procedures prevent detainees from undermining ongoing anti-terrorism efforts.

The writ of habeas corpus is “fundamentally a doctrine tailored for peacetime circumstances” and the Constitution grants Congress the authority to suspend it during rebellion or invasion, said Deputy Assistant Attorney General Steven A. Engel.

“The founders of the Constitution likely would have been surprised to think that such an action would have been required with respect to the rights of alien enemy combatants. In the nearly 800 years of the writ’s existence, no English or American court has ever granted habeas relief to alien enemy soldiers captured and detained during wartime,” said Engel.

The sister of a 9/11 victim agreed. “Americans fundamentally understand and accept that we are a nation of laws, but they do not accept that this means they must surrender their security to terrorists, individuals who would exploit and hide behind our enlightened laws in order to use weapons of mass destruction to kill thousands of people in a single act,”

said Sandra Burlingame, an attorney who co-founded 9/11 Families for a Safe & Strong America. Her brother, Capt. Charles F. “Chic” Burlingame, III, piloted American Airlines flight 77, which crashed into the Pentagon after terrorists hijacked in on Sept. 11, 2001.

“Although a few mistakes were made when some of the Guantanamo detainees were taken into custody in the fog of war, others were indisputably captured with AK-47s still smoking in their hands,” Burlingame said. Lawyers demanding rights for Guantanamo detainees should realize that “any one of those who have been properly classified in Combat Status Review Tribunals as an unlawful enemy combatant could be the next Mohamed Atta or Hani Hanjour, who, if captured in the summer of 2001, would have been described by these lawyers [representing detainees] as a quiet engineering student from Hamburg and a nice Saudi kid who dreams of learning to fly.”