

A mixed verdict on the terror war Detainees have right to U.S. courts, justices rule

Tuesday, July 6, 2004 Posted: 4:20 PM EDT (2020 GMT)

WASHINGTON (CNN) -- The U.S. Supreme Court on Monday handed down a mixed verdict on the Bush administration's war against terror, ruling that U.S. and non-U.S. citizens alike seized as potential terrorists can challenge their treatment in U.S. courts.



Jose Padilla, left, and Yaser Esam Hamdi.

The high court supported the U.S. federal government in one important respect, ruling that Congress gave President Bush the authority to seize and hold a U.S. citizen, Louisiana-born Yaser Esam Hamdi, as an alleged enemy combatant.

But the court ruled that Hamdi could use American courts to argue that he is being held illegally. ([Hamdi case background](#))

Additionally, foreign-born men held at a Navy prison camp at Guantanamo Bay, Cuba, can also have their day in U.S. courts, the justices said in ruling on a separate case. ([Guantanamo case background](#))

The court sidestepped a third major terrorism case, ruling that a lawsuit filed on behalf of detainee Jose Padilla improperly named Defense Secretary Donald H. Rumsfeld instead of the much lower-level military officer in charge of the Navy brig in South Carolina where Padilla has been held for more than two years. ([Padilla case](#))

[background](#))

Padilla must refile a lawsuit challenging his detention in a lower court.

The Justice Department had no immediate reaction to the rulings.

But lawyers for the Center for Constitutional Rights, a legal advocacy group that has been representing the Guantanamo detainees, hailed the ruling.

"The Supreme Court has not closed the doors of justice to the detainees imprisoned at Guantanamo Bay," said the group's president, Michael Ratner. "This is a major victory for the rule of law and affirms the right of every person, citizen or non-citizen, detained by the United States to test the legality of his or her detention in a U.S. Court."

"What appears to be going on here is some sort of compromise," said CNN senior legal analyst Jeffrey Toobin. "The court feels strongly about national security and the president's ability to conduct foreign affairs and military affairs, yet also responsible for the rule of law." ([Toobin analysis](#))

Reaction was quick from other quarters, as well.

"Today's historic rulings are a strong repudiation of the administration's argument that its actions in the war on terrorism are beyond the rule of law and unreviewable by American courts," said Steven R. Shapiro, director of the American Civil Liberties Union, in a written statement.

The ACLU filed friend-of-the-court briefs in all three cases.

"The Supreme Court's verdicts show that, contrary to what the administration believes, we can have both security and liberty," added Sen. Charles Schumer, D-New York, in a written statement.

"Congress should now enact legislation that reflects the court's carefully balanced decisions on liberty and security. The Judiciary Committee ought to hold hearings immediately to begin the process of enacting legislation."

In the case of Hamdi, a U.S. citizen captured on a battlefield outside the United States and held for more than two years at a navy brig in Charleston, South Carolina, the court ruled that U.S. authorities have the right to hold him, but that he has the right to challenge his detention.

Congress voted shortly after the September 11 attacks to give the president significant authority to pursue terrorists, but Hamdi's lawyers said that authority did not extend

to the indefinite detention of a U.S. citizen without charges or trial.

Writing for the 6-3 majority in *Hamdi v. Rumsfeld*, Justice Sandra Day O'Connor said, "As critical as the government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat."

Justices Antonin Scalia, John Paul Stevens and Clarence Thomas dissented.

"This detention falls squarely within the federal government's war powers, and we lack the expertise and capacity to second-guess that decision," Thomas wrote in the dissenting opinion.

"They did the right thing," said Hamdi's lawyer, Frank Dunham, when told of the ruling. "The court had to stand up for Hamdi. It's about all of us. You can't have a situation where the president can lock someone up and they can't have the opportunity to be heard."

In the Guantanamo case ruling, the court consolidated two cases -- *Rusul v. Bush* and *al Odah v. U.S.* -- involving a British-born and a Kuwaiti-born man. The rulings could affect the approximately 600 non-U.S.-born men being held in the Navy prison on Guantanamo.

The court said the Cuban base is not beyond the reach of American courts even though it is outside the country.

Lawyers for the detainees there had said to rule otherwise would be to declare the Cuban base a legal no-man's land.

The Bush administration contends that as "enemy combatants," the men are not entitled to the usual rights of prisoners of war set out in the Geneva Conventions.

The Associated Press reported that the high court's ruling applies only to Guantanamo detainees, although the United States holds foreign prisoners elsewhere.

Writing for the 6-3 majority, Justice John Paul Stevens said U.S. authorities have the right to hold the men, but that they have the right to challenge their detention in a U.S. court.

In the Padilla case, his attorney, Donna Newman said, "Today the Supreme Court did not rule that the president has the authority to detain an American citizen on American soil. What they did was delay the inevitable -- that Padilla must be charged

with a crime."

The cases are: *Hamdi v. Rumsfeld* (03-6696), *Rumsfeld v. Padilla* (03-1027), *Rasul v. Bush* (03-334) and *Al Odah v. United States* (03--0343).

Supreme Court Producer Bill Mears contributed to this report.

Find this article at:

<http://www.cnn.com/2004/LAW/06/28/scotus.terror.cases/index.html>