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Top court ends session, curbs president's role

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WASHINGTON - The Supreme Court term that ended last week will be remembered for its declaration that the rule of law stands above the commander in chief, even in times of war and national emergency.

For the first time since the "steel seizure" case of 1952, the Supreme Court flatly rejected the president's claim of wartime powers. Then, President Truman had tried to seize and run the steel mills to sustain the war effort in Korea.

With support for the Korean conflict lagging, the justices, all Democratic appointees, rebuked Truman, a Democrat, and ruled that the president's role as commander in chief of the armed forces did not give him unchecked power on the home front.

Last week, in something of an echo, the justices, mostly Republican appointees, said President Bush had gone too far in asserting that he had a wartime military power to lock up indefinitely those he deemed to be "enemy combatants."

There were several other challenges to presidential power in the just-completed term, but the Supreme Court did not exactly lay waste to White House authority. It preserved the secrecy of White House meetings, let the president enforce treaties despite environmental concerns and upheld the government's overseas abduction of a man facing U.S. criminal charges.

But those actions were dwarfed by the rulings undercutting the president's powers to hold terror suspects indefinitely. Scholars called the rulings landmarks in preserving basic rights.

"These are the most important cases on the rule of the law and the right to liberty that have been decided in the last half-century," Northwestern University law Professor Doug Cassel said.

The justices did not dispute that a national emergency may require the use of emergency powers.

The government may seize suspicious persons who may "become missiles of destruction," said Justice John Paul Stevens, the 84-year old World War II veteran who is considered the most liberal member of the court today.

But seizing them to thwart an attack is one thing. Locking them up for years without a trial or a chance to contest the charges against them is quite another, he said, whether

they are foreigners or U.S. citizens.

Stevens joined with conservative Justice Antonin Scalia in rejecting Bush's view that the commander in chief can order the military to arrest and hold Americans citizens without giving them a hearing.

"The very core of liberty secured by our Anglo-Saxon system of separated powers has been the freedom from indefinite imprisonment at the will of the executive (branch)," Scalia wrote. "The practice of arbitrary imprisonments . . . in all ages is one of the favorite and most formidable instruments of tyranny," he added, quoting Alexander Hamilton.

In all, eight of the nine justices rejected the Bush administration's claim of presidential power that had been put forth in the cases of Yaser Hamdi, a U.S. citizen by birth who was captured in Afghanistan, and Jose Padilla, a suspected terrorist who was arrested in Chicago.

Both men have been locked up for nearly two years and denied a chance to speak to their families or to a lawyer or to appear before a judge.

Meanwhile, at Guantanamo Bay, Cuba, more than 600 foreign men captured in the war on terror have been held in isolation and kept from pleading their cases before a judge.

Bush's lawyers insisted before the Supreme Court that the justices had no authority to "second-guess" Bush's decision to imprison these men indefinitely.

"The president's core constitutional powers in time of war . . . are not limited to aliens and foreign battlefields. (They) encompass the capture and detention of enemy combatants, wherever found, including within the nation's borders," the administration said.

This claim that the commander in chief is above the law was rejected.

In a 6-3 ruling, the court said the Constitution gives all people in U.S. custody, even foreign nationals, a right to challenge the basis for holding them. And with only Justice Clarence Thomas dissenting, the court said citizens who are detained have a right to a lawyer and a right to a hearing before a neutral decision-maker.

Five justices did agree that the military can capture and hold indefinitely U.S. citizens who are shown to be soldiers for the enemy. The detained men won only a right to a hearing, not a get-out-of-jail pass, they said.

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