

# HAPPY HABEAS DAY

Apparently, Anthony Kennedy understands a few things about the Constitution that many seem to have forgotten.

The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law. The Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law.

Which means the detainees in Gitmo and elsewhere will have their day in a real court, ~~not the Show Trials put together at Gitmo~~ with some protections.

The Supreme Court ruled Thursday that foreign terrorism suspects held at Guantanamo Bay have rights under the Constitution to challenge their detention in U.S. civilian courts.

In its third rebuke of the Bush administration's treatment of prisoners, the court ruled 5-4 that the government is violating the rights of prisoners being held indefinitely and without charges at the U.S. naval base in Cuba. The court's liberal justices were in the majority.

[snip]

The court said not only that the detainees have rights under the Constitution, but that the system the administration has put in place to classify them as enemy combatants and review those decisions is inadequate.

I'll post running updates as I find them.

Update: I guess I'm wrong about the Show Trials:

It does not speak to whether GTMO should be closed (although it basically undermines the Administration's principal reason for using GTMO in the first place, which was to keep the courts from reviewing the legality of the Executive's conduct).

Nor does it affect, in any dramatic sense, possible military commission trials – with the important exception that it invites the defendants in those trials to raise constitutional defenses, such as under the Ex Post Facto Clause.

Update: NAL, but I'm liking the emphasis in the opinion on separation of powers, including a good smackdown of Congress for passing a blatantly unconstitutional law. And here's a bid for the importance of the Courts.

The Government's sovereignty-based test raises troubling separation-of-powers concerns, which are illustrated by Guantanamo's political history. Although the United States has maintained complete and uninterrupted control of Guantanamo for over 100 years, the Government's view is that the Constitution has no effect there, at least as to noncitizens, because the United States disclaimed formal sovereignty in its 1903 lease with Cuba. The Nation's basic charter cannot be contracted away like this. The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply. **To hold that the political branches may switch the Constitution on or off at will would lead to a regime in which they, not this Court, say "what the law is."**

Here's Russ Feingold's statement:

Today's Supreme Court decision is yet another stinging rebuke of the Bush administration's extreme views on executive power. Time after time, the Supreme Court has rebuffed the administration's attempts to undermine the Constitution, from its *Rasul* and *Hamdi* decisions in 2004 to its *Hamdan* decision in 2006. It is a testament to our system of government that the Court has rejected the habeas-stripping provisions of the Military Commissions Act and reaffirmed that the government does not have the power to detain people indefinitely and arbitrarily without judicial review. The writ of habeas corpus provides one of the most significant protections of human freedom against arbitrary government action ever created. We can and must fight terrorists without abandoning the principles on which our country was founded.

And John Conyers:

The Supreme Court has affirmed what we've known to be true for some time: that detainees at Guantanamo Bay have a right to challenge their imprisonment in a court. It is simply not the American way to deny that right and now as the Supreme Court has ruled, it is unconstitutional. The Court was rightly outraged that some of the parties in this case had been held for six years without being given the right to challenge their detention before an impartial court. I applaud today's decision and look forward to the scales of justice being returned to their proper balance.