

THE RULE OF LAW PREVAILED

I'm just getting off a conference call with the Center for Constitutional Rights, one of the organizations that has been pushing for Habeas at Gitmo for years. Gita Gutierrez, one of the CCR lawyers that's been fighting this fight the longest, said of the ruling that "unambiguously, the rule of law prevailed."

Here's some of what they believe the opinion to mean:

- The 40 to 60 people who have already been determined **not** to be enemy combatants will now have court assistance in finding a way and a place to be released. One of the key issues for these men is that they often come from countries like Syria where, if they were to return, they would be tortured. A number of them have petitioned to be released to third countries, in some cases where they have family. DOD has refused to consider this up until now. This ruling gives courts the ability to provide for relief to those being held even after they were determined not to be enemy combatants.
- There are roughly 260 people at Gitmo who have not received a Combat Status

Review. Over a hundred have already petitioned for Habeas, and a number of those have been stayed awaiting this ruling. Some of those stays require the petitioners to restart their petition within 10 days of the ruling, so you're going to see them move into a Habeas process within the next two weeks.

- Michael Ratner, the head of CCR, stated that he believes in many of these cases, the government will be unable to prove it has reason to detain these people—either because the evidence is tainted or because there is no evidence. So the government may be forced to release many of these men as well.
- It's unclear where and how these Habeas petitions will be heard—so it's an open question whether detainees will be able to come to DC to present their case.
- Carol Rosenberg, my favorite journalist covering the show trials, asked if the government will rush to charge detainees under the Military Commissions Act. Gutierrez responded that

they're really limited by whom they can charge; she put the number at around 60-80 people who they have enough evidence to charge.

Finally I asked (with McCaffrey the MilleniaLab barking in the background—oops) about whether this ruling applied to the prison at Bagram, or the floating prisons. Gutierrez stated that it's not clear. The deciding issues for Gitmo are that the US has control over the territory of the Gitmo base, as well as complete control of the detainees. The ruling, Gutierrez said, left open that Habeas would apply to detainees held elsewhere, but does not do that explicitly. The CCR attorneys on the call did say that the ruling prevented the government from creating "law-free zones" in which they rule, but without the rule of law.

So, for 260 people rotting away at Gitmo, this is a very important ruling. And it pretty much eliminates the reason for Gitmo—the government's attempt to create a space that was US territory not subject to US law.