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Guantánamo detentions set for legal showdown

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The US Supreme Court has begun considering whether Guantánamo detainees should have access to the courts to contest their detention.

Lawyers acting for the detainees are arguing that those held in Guantánamo should have the right to habeas corpus: the mechanism that allows detainees to challenge the lawfulness of their detention in an independent and impartial court - and to be released if the detention is found to be unlawful. Many organizations and individuals, including Amnesty International, have filed briefs in the Supreme Court in support of ensuring habeas corpus for the detainees.

The US authorities say the 2006 Military Commissions Act stripped the courts of the power to consider habeas corpus petitions from foreign nationals held as so-called "enemy combatants".

They also argue that the alternative system the government has established – narrow judicial review of military determinations of “enemy combatant” status – is an adequate substitute for habeas corpus. Amnesty International strongly disagrees, as this system does not fix the flaws of the military review; which is not independent, where the detainee has no lawyer and which can rely on information coerced under torture.

With the US courts effectively removed from their role as an independent check on "war on terror" detentions, the past six years have seen detainees subjected to enforced disappearance, unlawful transfer, torture and other abuses.

The ‘rights-free’ zone that the USA has attempted to create at Guantánamo Bay cries out for full judicial scrutiny. The administration chose the location to hold foreign detainees in the "war on terror" because it believed they would not be able to challenge their detention via habeas corpus petitions filed in the US courts.

The Supreme Court ruled against the government in two earlier Guantánamo cases, decided in 2004 and 2006. However, the administration interpreted these rulings narrowly and Congress passed legislation – the Detainee Treatment Act in 2005 and the Military Commissions Act – that sought to obliterate habeas corpus for these detainees and to provide only limited judicial review.

Habeas corpus reflects a fundamental principle of international law. This is a crucial moment for human rights and the rule of law. The Supreme Court is expected to issue its judgment by mid-2008.