

State of Michigan LAW DAY 2008 Essay Contest
"The Rule of Law: Foundation for Communities of Opportunity and Equity"

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Habeas Corpus: The Fight for Prisoners Rights
Should the prisoners at Guantanamo Bay have the right to habeas corpus?

Suppose a member of the terrorist group Al-Qaeda is captured and detained at the American Prison in Guantanamo Bay, Cuba. Should prisoners detained here have the right to challenge the legality of their confinement by filing a writ of habeas corpus? Yes, prisoners at Guantanamo Bay should have the right to challenge the legality of their confinement by filing a writ of habeas corpus.

A writ of habeas corpus is a prisoner's application to the court for an order to determine whether he or she is imprisoned lawfully. Habeas corpus was originally used as a procedure to bring prisoners to court to testify, and has evolved into a way for prisoners to challenge their confinement. Guantanamo Bay prisoners should be entitled to this right because Guantanamo Bay, although in Cuba, is a prison under complete American control. Setting these rights aside would deprive prisoners of their Fifth Amendment right to due process of law, and create too much power in the Executive Branch.

The Fifth Amendment states that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." In the case of Rasul v. Bush, 542 U.S. 466 (2004), Judge Stevens held that these Guantanamo Bay prisoners are being deprived of liberty by being held in this prison indefinitely without being charged with any wrongdoing, which unquestionably violates the Constitution.

The separation of powers insures that each branch of government shares power equally, and provides a system of checks and balances to prevent one branch of government from becoming too powerful. In order to execute these systems, the judicial branch must be able to review the cases of prisoners before they can be detained unlawfully by the executive branch.

In the Constitution, our founding fathers recognized that only in compelling circumstances can certain basic rights be set aside. The suspension clause in the Constitution states that "[t]he privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

In Hamdi v. Rumsfeld, 542 U.S. 507 (2004), the United States Supreme Court reviewed the question of whether or not the Executive Branch could restrict access to the court system for "enemy combatants" during wartime. The Court held that "[i]t is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad." 542 U.S., at 532. In other words, the Constitution should not be ignored just because the United States is enduring a time of war.

Prisoners at Guantanamo Bay should have the right to habeas corpus. Otherwise it would interfere with our system of the separation of powers, and our Fifth Amendment guarantee of due process. Our nation should be careful not to suspend, even in wartime, the essential rights of our constitution that define our country.