



An inexplicable power grab

Ruling puts lives at risk, usurps the role of Congress and the president.

By Richard Samp

Throughout our nation's history, the courts have usually deferred to our elected branches of government — Congress and the president — on foreign affairs and national security issues. And with good reason. The courts simply lack the expertise and resources to justify second-guessing military experts on such issues.

In Thursday's sharply divided 5-to-4 decision, the Supreme Court decided to abandon that long history of deference. It decreed that henceforth, it will be the job of federal courts to decide on their own whether aliens captured on foreign battlefields are really "enemy combatants."

The court said the doctrine that it was upholding is enshrined in the Constitution, even though it candidly acknowledged that it could not cite a single prior case in which an American or English court had exercised such power in a case involving aliens held overseas.

The court's unprecedented power grab is inexplicable given the absence of substantial evidence that innocent people are being detained. Every Guantanamo Bay detainee has been afforded a hearing in front of a Combatant Status Review Tribunal; those still being held were all determined to be enemy combatants. The basic fairness of the hearings is readily apparent. Many resulted in detainees being released.

The procedure is the one set up by Congress and the president; they determined that the process achieved the proper balance between protecting the rights of the innocent and ensuring that our ability to wage war is not impaired.

Congress even provided for federal court review of tribunals' findings. None of that was sufficient for the Supreme Court, which insisted — in the face of contrary judicial precedent — that federal courts can do a better job.

Let's hope the court is right; some of our lives might depend on it. Just how high the stakes are was spelled out by the four dissenting justices: At least 30 former Guantanamo detainees later returned to the battlefield to resume their war against the United States. Judges should keep the potentially lethal consequences in mind before they contemplate overruling military experts and ordering additional releases.

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