

U.S. court term has terrorism, death penalty cases

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By James Vicini

WASHINGTON, Sept 30 (Reuters) - The U.S. Supreme Court begins a new term on Monday and legal experts will watch to see if the court continues its conservative shift as it rules on blockbuster cases on the rights of Guantanamo prisoners and the death penalty.

The justices return to the bench for the first time since June 28, when they ended a term in which President George W. Bush's two appointees led a sharp move to the right on divisive social issues like abortion and civil rights law.

Observers said they will watch closely to see whether the court's conservative majority, bolstered with Bush's additions of Chief Justice John Roberts and Justice Samuel Alito, continue to change the law, giving Bush a legacy that lasts long after he leaves office.

"It is pretty clear to me that the court has moved to the right," Steven Shapiro, the legal director of the American Civil Liberties Union, said in an overview of the term.

The Supreme Court, which rejected Bush's legal policies in the war on terrorism in rulings in 2006 and 2004, will decide whether the hundreds of detainees at the U.S. military prison in Guantanamo Bay in Cuba can use American courts to challenge their indefinite confinement.

"This is perhaps the big case of the term," said Washington lawyer Andrew McBride at a briefing hosted by the **Washington Legal Foundation**.

The high court will have to decide whether foreign nationals held by the U.S. military are entitled to the right of habeas corpus -- which allows individuals to challenge their imprisonment -- and whether they have constitutional rights, he said.

At issue is part of an anti-terrorism law adopted by Congress last year at Bush's request. It takes away the rights of foreign terrorism suspects to contest their imprisonment in lawsuits before U.S. District Court judges in Washington.

'PROBLEMS OF TERRORISM'

"We're once again seeing the court face up to the implications of the problems of terrorism," former Attorney General Richard Thornburgh said at the same briefing.

McBride said the outcome probably will be determined by Justice Anthony Kennedy, a moderate conservative who often casts the decisive vote on the closely divided court.

Besides Roberts and Alito, who will be together for their second full term, the other conservatives are Justices Antonin Scalia and Clarence Thomas. The liberals are Justices John Paul Stevens, David Souter, Stephen Breyer and Ruth Bader Ginsburg.

The court may decide other cases pitting national security claims in the war on terrorism against civil liberties.

McBride said at least one case involving the domestic warrantless spying program created by Bush after the Sept. 11 attacks may be headed to the Supreme Court this term.

And the American Civil Liberties Union has asked the high court to hear the appeal of a German man who wants to hold former CIA officials liable for his kidnapping and torture more than 3 1/2 years ago. The administration got the lawsuit dismissed because it threatened to expose state secrets.

The term also has two important death penalty cases.

In one, the justices will decide whether the three-drug cocktail commonly used to execute death row prisoners is unconstitutional because it may inflict unnecessary pain and suffering.

Both supporters and opponents of the death penalty agreed the case could resolve the existing uncertainty over how states carry out executions by lethal injection.

"Like the guillotine and the electric chair, lethal injection was heralded as a scientific advance, only to result in cruelty in practice," Columbia University law professor Michael Dorf said.

In the other case, involving a Mexican on death row in Texas, the justices will decide whether Bush exceeded his powers by requiring that state courts comply with an international tribunal's ruling.

Complying with the ruling by the World Court in The Hague in 2004, Bush ordered the Texas court to review the case of Jose Medellin. He never was told of his right under international law to talk to a consular officer from Mexico immediately following his arrest.

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