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**WLF REPRESENTS RETIRED GENERALS AND
ADMIRALS IN URGING COURT TO DISMISS
CHALLENGES TO GUANTANAMO DETENTION**

(Boumediene v. Bush, No. 06-1195)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to dismiss challenges to the American military's detention of enemy combatants at Guantanamo Bay, Cuba. In a brief filed in *Boumediene v. Bush*, WLF argued that Congress acted properly in stripping the federal courts of jurisdiction to hear habeas corpus petitions filed by detainees.

WLF filed its brief on behalf of seven retired generals and admirals. The seven are Generals John Altenburg, Thomas Hemingway, Michael Marchand, and Michael Nardotti; and Admirals James Carey, Steven Kantrowitz, and William Schachte. Several held critical roles in developing U.S. detention policy prior to their retirements, and four served as either the highest or second-highest ranking lawyer in their branch of the armed services. WLF also filed the brief on behalf of itself, the Allied Educational Foundation, and the National Defense Committee, a group headed by Admiral Carey that supports a strengthened military.

WLF argued that the U.S. Constitution does not extend protections to aliens not living in the United States, and thus that the detainees' claims based on the Constitution are without merit. WLF argued that the protections of the Constitution are reserved for citizens and others, such as resident aliens, who have contributed to American society and thus have a legitimate basis for invoking constitutional protections. The detainees argue that the statute removing jurisdiction over habeas petitions violates the Constitution's Suspension Clause, which limits Congress's power to suspend the writ of habeas corpus. WLF argued that the Suspension Clause does not apply to overseas aliens.

"Throughout our history, the courts have never allowed nonresident aliens to invoke the U.S. Constitution as a basis for challenging their detention by American authorities," said WLF Chief Counsel Richard Samp after filing WLF's brief. "To allow enemy combatants to use the U.S. Constitution to challenge their detention would be a sure-fire way to undermine American military strength, by diverting the attention of field commanders from the military offensive abroad to the legal defensive at home," Samp said.

As part of the on-going war against militant Islamists, the U.S. military has taken into custody numerous al Qaeda and Taliban operatives. Several hundred of those operatives are being detained at Guantanamo Bay. In June 2004, the U.S. Supreme Court ruled that the federal habeas corpus statute grants federal courts jurisdiction to hear habeas petitions filed by Guantanamo Bay detainees who seek release. It remanded those claims to the district court in the District of Columbia to determine whether any such petitions stated a valid claim for relief. Congress responded by amending the federal habeas statute to eliminate jurisdiction in cases involving Guantanamo Bay detainees.

In February 2007, the U.S. Court of Appeals for the District of Columbia Circuit dismissed the habeas petitions, finding that the law adopted by Congress did not violate the Suspension Clause. The Supreme Court later agreed to review that decision.

In its brief filed with the Supreme Court, WLF argued that controlling precedents, established during past wars, make clear that nonresident aliens being held as enemy combatants are not entitled to any constitutional protections. WLF argued that the Supreme Court did not change that precedent when it ruled in 2004 in *Rasul v. Bush* that the federal habeas statute grants federal courts jurisdiction to hear challenges to detention brought by Guantanamo Bay detainees. WLF argued that nothing in the *Rasul* decision suggests that the Supreme Court intended to do anything more than interpret the statute creating habeas corpus jurisdiction; it certainly did not indicate that Taliban and al Qaeda fighters have a constitutional right to file habeas claims, nor did it suggest that Congress was prohibited from amending the habeas statute.

WLF also noted that the admirals and generals it represents have serious concerns that a decision recognizing Petitioners' habeas claims could undermine American military effectiveness. The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a considerable portion of its resources to promoting America's national security.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site.