D.C. CIRCUIT COURT OF APPEALS RULES THAT GUANTANAMO DETAINEES HAVE NO CONSTITUTIONAL RIGHT TO CHALLENGE THEIR DETENTION

On February 20, 2007, The Center for Constitutional Rights (CCR), which represents many of the Guantanamo detainees and coordinates the efforts of hundreds of pro bono attorneys across the country, condemned the two-to-one decision by the D.C. Circuit Court of Appeals in the combined cases of Al Odah v. USA and Boumediene v. Bush, the first lawsuits challenging the Military Commissions Act of 2006 (MCA) to be addressed by the courts. The ruling states that the Guantanamo detainees have no constitutional right to habeas corpus, therefore the passage of the MCA by Congress eliminated the statutory right to challenge their detention in the courts.

The MCA, which was signed into law by President Bush on October 17, 2006, is the second attempt by the Bush administration to strip detainees of their statutory right to challenge their detention in the courts, a right that the Supreme Court has already affirmed twice, in CCR’s landmark case Rasul v. Bush in 2004 and in Hamdan v. Rumsfeld in 2006. The act also allows for evidence obtained through torture—a violation of the Geneva Conventions—and greatly widens the scope of who the president can label an “enemy combatant.”

“This decision empowers the President to do whatever he wishes to prisoners without any legal limitation as long as he does it off shore, and encourages such notorious practices as extraordinary rendition and a contempt for international human rights law,” said Shayana Kadidal, managing attorney of the Center for Constitutional Rights Guantanamo Global Justice Initiative. “The matter will ultimately have to be resolved by the Supreme Court for a third time.”

Al Odah v. USA consists of the first eleven habeas petitions filed after the landmark Supreme Court decision in Rasul v. Bush. The Boumediene appeal, filed jointly by CCR and cooperating counsel Wilmer, Pickering, Cutler, Hale, & Dorr and Clifford Chance, is on behalf of six Bosnian humanitarian workers seized by the U.S. military in Bosnia after the Bosnian courts ordered local authorities to release them. In Al Odah, D.C. District Court Judge Joyce Hens Green stated that detainees possess “the fundamental right to due process of law under the Fifth Amendment.” Reaching an entirely different conclusion, Judge Richard Leon dismissed the Boumediene appeals, ruling that the detainees possess no constitutional rights to habeas corpus. Both cases were appealed, and the two cases were consolidated for oral arguments before the D.C. Circuit Court of Appeals, which were heard in November 2006.

“We call on the legal profession and all Americans concerned about the loss of liberty undertaken by the Bush Administration and now rubber stamped by the Court of Appeals to join with us in taking this fight to the United States Supreme Court. We call on Congress to take up the fight that the American people sent you to Washington to wage, to quickly enact legislation that will begin the process of restoring our most fundamental rights,” said CCR Legal Director Bill Goodman.

“Habeas corpus is a right that was enshrined in the Magna Carta to prevent kings from indefinitely and arbitrarily detaining anyone they chose—the combined actions of the Bush Administration, the previous Congress and two of the three judges today have taken us back 900 years and granted the right of kings to the president,” said CCR Executive Director Vincent Warren.