

## Protecting Habeas Corpus

Human Rights USA has taken the lead role in challenging "habeas stripping" in several refugee and terrorism cases. Thus far, the courts have exhibited considerable reluctance to reach the core issue: whether aliens', refugees', or terror suspects' fundamental rights to habeas review protected under the Suspension Clause have been violated. The courts instead try to avoid dealing directly with challenges to the constitutionality of habeas-stripping provisions contained in legislation passed by Congress, preferring instead to consider "alternative mechanisms" for judicial review. Unfortunately, the courts' hesitance to deal fully with the issues raised by "habeas stripping" has contributed to the prolonged and arbitrary detention of hundreds awaiting habeas review. The government's strategy of forestalling considerations of the substantial merits of the claims raised in the terrorism cases -- by forcing the detainees and the courts to deal with procedural and jurisdictional issues -- has enjoyed considerable success, at the expense of affording proper legal remedies to those detained individuals.

Human Rights USA continues pushing the courts to issue clearer guidance on "habeas stripping" and has filed briefs in a number of cases pending at all levels of the federal court system. For example:

- We challenged (and are still in the process of challenging) the placing of restrictions on access to habeas corpus proceedings in terrorism cases.
- Our organization challenged the use of special military tribunals (as opposed to regular criminal courts) to prosecute alleged terrorists, particularly in cases like *Al-Marri* (543 U.S. 809 (2004)) which involve U.S. residents.

The Military Commissions Act of 2006 was passed by Congress in response to the Supreme Court's landmark ruling in *Hamdan v. Rumsfeld*, which held that President Bush could neither detain terror suspects without providing some level of due process, nor detain terror suspects without Congressional authorization. The MCA, in addition to authorizing the detention of terror suspects, also purports to eliminate access to habeas corpus for Guantanamo detainees. The MCA further restricts judicial review in terrorism cases by:

- Granting immunity from lawsuits to CIA agents and U.S. officials carrying out renditions to torture and other abuses against terrorists; and
- Making Geneva Convention protections unenforceable in U.S. courts.

Human Rights USA has filed a complaint with the Inter-American Commission on Human Rights, challenging these policies as violations of international law. We have also encouraged criminal prosecutions, in the U.S. and abroad, of high-level U.S. officials implicated in torture abuses.

See below for documents related to our challenges to restrictions on habeas corpus:

#### Al Odah:

- Our amicus brief filed in support of Khaled Al Odah, raising the arguments that the Geneva Conventions apply to all detainees and are judicially enforceable in habeas proceedings, and that the Legislative Branch's Authorization of the Use of Military Force (AUMF) does not authorize the government to violate international law.
- Our subsequent amicus brief in support of Al Odah, after the passage of the Detainee Treatment Act of 2005 (DTA), arguing that all detainees have access to habeas corpus to challenge their detention, notwithstanding the "habeas-stripping" provisions of the DTA.
- Our additional amicus brief, arguing against the retroactive application of the DTA to detainee cases in which habeas petitions had already been filed, and also charging that the revocation of access to habeas corpus constitutes a violation of the Suspension Clause, because the DTA does not provide an adequate and effective alternative to habeas corpus.

#### Criminal Complaints:

- Human Rights USA's Criminal Complaint filed with Attorney General John Ashcroft in 2004, requesting the investigation and prosecution of U.S. officials implicated in the torture of detainees.
- Our Letter and Memorandum to Attorney General Alberto Gonzales in 2006, urging for the appointment of independent counsel to investigate and prosecute crimes associated with "extraordinary renditions."
- Formal request for a hearing before the Inter-American Commission on Human Rights of the Organization of American States, filed in 2007, to investigate whether the Military Commissions Act of 2006 violates international law, treaties, and human rights standards.