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FOR THE RECORD

BY CRAIG M. SANDBERG

Supreme Court Says Inmates Can Use Habeas Corpus Petitions

On June 12th the Supreme Court of the United States (*Boumediene v. Bush*; No. 06-1195) delivered another rebuke to the Bush administration's handling of the foreign national detainees at Guantánamo Bay, ruling 5 to 4 that the prisoners there have a constitutional right to go to federal court to pursue habeas challenges to their continued detention. The Court declared unconstitutional a provision of the Military Commissions Act of 2006 that stripped the federal courts of jurisdiction to hear habeas corpus petitions from the detainees seeking to challenge their designation as enemy combatants.

Justice Kennedy's opinion for the majority stressed that it was not ruling that the detainees are entitled to be released. The issue of whether the detainees are entitled to have writs issued to end their confinement is left to the District Court judges who will be hearing the challenges. The Court also said that "we do not address whether the President has authority to detain" individuals during the war on terrorism, and hold them at the U.S. Naval base in Cuba, which must also first be considered by the District Court judges.

"The laws and Constitution are designed to survive, and remain in force, in extraordinary times," Justice Anthony M. Kennedy declared for a five-member majority clearly impatient that some prisoners have been held for six years without a hearing. The Court also declared that detainees do not have to go through the special civilian court review process that Congress created in 2005, since that is not an adequate substitute for habeas rights. Moreover, the Court refused to interpret the Detainee Treatment Act to include enough legal protection to make it an adequate replacement for habeas and that Congress unconstitutionally suspended the writ in enacting that Act. Also,

in analyzing the process that the Pentagon set up in 2004 to decide which prisoners are to be designated as "enemy combatants," the Court found serious defects in that system process of so-called Combatant Status Review Tribunals. The procedures used by those tribunals "fall well short of the procedures and adversarial mechanisms that would eliminate the need for habeas corpus review."

Justice Kennedy's opinion declared that the Suspension Clause "protects the rights of the detained by a means consistent with the essential design of the Constitution. It ensures that, except during periods of formal suspension, the Judiciary will have a time-tested device, the writ, to maintain the 'delicate balance of governance' that is itself the surest safeguard of liberty." Those who wrote the Constitution, he added, "deemed the writ to be an essential mechanism in the separation-of-powers scheme."

As a practical matter, the Court's 5 to 4 decision immediately gives the detainees access to a federal court in Washington, where its district judges are now conferring to develop a framework for handling about 200 cases filed by those the government suspects of terrorism held at the island naval base.

Unfortunately, the decision left at least one important question unanswered: "What is the 'extent of the showing required of the government' at a habeas corpus hearing in order to justify a prisoner's continued detention." Additionally, it was unclear how classified evidence would be handled and the extent of due process to which the detainees may be entitled.

Although the court did not directly address the viability of the military commissions in its ruling, this ruling may, however, call into question the value of the government continuing to pursue these cases through military commissions. In its reliance on the Suspension Clause, the

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ruling suggests that the Constitution applies in Guantánamo Bay.

Illinois Supreme Court Holds That Government Benefits Qualify as Collateral Sources

In a highly-anticipated opinion, on June 19th (*Wills v. Foster*; No. 104538), the Supreme Court of Illinois held that government benefits constitute collateral source. In doing so, the Court clarified the application of the collateral source rule.

Chief Justice Thomas, authoring the unanimous judgment and opinion, wrote that “[u]nder the reasonable-value approach that we have adopted, the fact that the collateral source was the government instead of a private insurance company is a distinction without a difference.” The collateral source rule, as described in *Arthur v. Catour*, 216 Ill. 2d 72 (2005), provides that benefits that an injured party receives from a source independent of the tortfeasor, such as an insurer, do not diminish the damages recoverable

from a tortfeasor. The policy underlying the rule, according to *Arthur*, is that a benefit to the plaintiff should not become a windfall to the tortfeasor.

The court’s ruling also clarified the method by which the reasonable cost of medical services is determined. When the full amount of the bill has not been paid, the plaintiff must make a prima facie case that the amount billed is reasonable before it can be introduced into evidence. Thereafter, the court made clear that “defendants are “free to cross-examine any witnesses that a plaintiff might call to establish reasonableness, and the defense is free to call its own witnesses to testify that the billed amounts do not reflect the reasonable value of the services. Defendants may not, however, introduce evidence that the plaintiff’s bills were settled for a lesser amount because to do so would undermine the collateral source rule.”

Finally, in rendering its opinion, the Court relied on Restatement (Second of Torts § 920A (1979). Because the reasonable-value approach based on section 920A

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of the Restatement was incompatible with *Peterson v. Lou Bachrodt Chevrolet Co.*, 76 Ill. 2d 353 (1979), the Court overruled *Peterson*. As such, and although not specifically articulated in its opinion, the Court’s opinion suggests that gratuitous assistance, as well as treatment, is compensable on a reasonable-value of services approach. ■



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