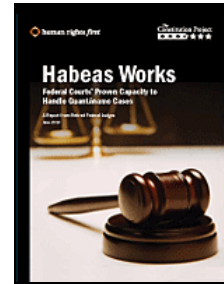


## Sixteen Former Federal Judges Conclude: Habeas Works—No New Law for Guantánamo Cases Needed



A report from 16 former federal judges concludes that Congress does not need to pass new legislation to govern federal courts' review of habeas cases, in which individuals at the Guantánamo Bay detention facility challenge the lawfulness of their detention. The report released by the Constitution Project and Human Rights First, *Habeas Works: Federal Courts' Proven Capacity to Handle Guantánamo Cases*,<sup>1</sup> asserts that attacks on the judiciary's ability to review habeas cases are unfounded, as are calls for congressional intervention. In short, the report shows:

- ☑ **The record demonstrates: habeas is working.** A close examination establishes that the federal judges hearing these cases have moved judiciously and cautiously to apply the pertinent law and develop the procedural rules governing habeas cases. In that way, the courts have gradually forged an effective jurisprudence that seeks to address the government's interest in national security while protecting the right of prisoners to fairly challenge their detention.
- ☑ **The Courts are not legislating;** they are doing what courts do. In Guantánamo cases, Courts determine the lawfulness of detention by assessing whether the government's standard comports with the law, and then applying the standard to the different facts of each case. This is the core of what courts do. This is judging.
- ☑ **New legislation will create more delay.** Any new statute governing the review of the Guantánamo cases would require judicial interpretation that would undermine existing jurisprudence, re-create uncertainty, and guarantee years of additional litigation for cases of men who, in some cases, have already been in detention for over eight years.
- ☑ **The Supreme Court said the lower courts can handle these cases.** In *Hamdi v. Rumsfeld*, the Supreme Court delegated the responsibility to develop the substantive standard for detention under the Authorization for Use of Military Force in their "time-honored and constitutionally mandated roles of reviewing and resolving [habeas] claims."<sup>2</sup> In *Boumediene v. Bush*, the Court reaffirmed its faith in the lower courts and left to them the important job of refining the substantive standard.<sup>3</sup>
- ☑ **Congress has recognized that courts are best suited to develop litigation rules.** The Rules Enabling Act reflected a "[r]ecognition by Congress of the broad rule-making power of the courts."<sup>4</sup> Courts are well suited to promulgate the rule for judicial proceedings because judges know best the business of the court.

<sup>1</sup> Available at <http://www.constitutionproject.org/manage/file/407.pdf> and <http://www.humanrightsfirst.info/pdf/Habeas-Works-final-web.pdf>.

<sup>2</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 535 (2004) (O'Connor, J., plurality opinion).

<sup>3</sup> 128 S. Ct. 2229 (2008).

<sup>4</sup> 28 U.S.C. § 2072(a) (2006).

## Former federal judges endorsing *Habeas Works*

**Hon. John J. Gibbons:** Appointed to the United States Court of Appeals for the Third Circuit by President Nixon; served 1970-1990

**Hon. Shirley Hufstедler:** Appointed to the United States Court of Appeals for the Ninth Circuit by President Johnson; served 1968-1979

**Hon. Nathaniel R. Jones:** Appointed to the United States Court of Appeals for the Sixth Circuit by President Carter; served 1979-2002

**Hon. Thomas D. Lambros:** Appointed to the United States District Court, Northern District of Ohio, by President Johnson; served 1967-1995

**Hon. Timothy K. Lewis:** Appointed to the United States District Court, Western District of Pennsylvania, by President George H.W. Bush; served 1991-1992; appointed to the United States Court of Appeals for the Third Circuit by President George H.W. Bush; served 1992-1999

**Hon. James K. Logan:** Appointed to the United States Court of Appeals for the Tenth Circuit by President Carter; served 1977-1998

**Hon. Abner Mikva:** Appointed to the United States Court of Appeals for the District of Columbia Circuit by President Carter; served 1979-1994

**Hon. Robert P. Murrian:** Appointed United States Magistrate Judge to the United States District Court by the Judges of the Eastern District of Tennessee; served 1978-2002

**Hon. William A. Norris:** Appointed to the United States Court of Appeals for the Ninth Circuit by President Carter; served 1980-1997

**Hon. Robert O'Connor, Jr.:** Appointed to the United States District Court, Southern District of Texas, by President Ford; served 1975-1984

**Hon. Stephen Orlofsky:** Appointed to the United States District Court, District of New Jersey, by President Clinton; served 1995-2003

**Hon. Raul A. Ramirez:** Appointed to the United States District Court, Eastern District of California, by President Carter; served 1980-1989

**Hon. Charles B. Renfrew:** Appointed to the United States District Court, Northern District of California, by President Nixon; served 1972-1980

**Hon. H. Lee Sarokin:** Appointed to the United States District Court, District of New Jersey, by President Carter; served 1979-1994; appointed to the United States Court of Appeals for the Third Circuit by President Clinton; served 1994-1996

**Hon. William S. Sessions:** Appointed to the United States District Court, Western District of Texas, by President Ford; served 1974-1987

**Hon. Alfred M. Wolin:** Appointed to the United States District Court, District of New Jersey, by President Reagan; served 1987-2004