



Written by [Gary Benoit](#) on November 10, 2008

## Will the Constitution's Trial Rights Finally Be Vindicated?

Maybe.

U.S. District Court Judge Richard J. Leon opened a habeas corpus hearing on November 6 to see if they even had the right to a trial. The Bush administration has long openly flouted the explicit requirements in the Fifth and Sixth Amendments to the U.S. Constitution, which requires that anyone held by the federal government be quickly charged and tried under either a criminal trial by jury or a trial under the military system (for those involved in the military forces). The Bush administration has long held that it can detain anyone, even an American citizen or a native-born American citizen, indefinitely without ever bringing them to court. The administration openly denied that Americans had rights under either the criminal and the military court systems if they designated them enemy combatants.



After years of bureaucratic delay by the Bush Justice Department, the Supreme Court appeared ready to rule in 2004 and 2006 that the federal government may not imprison Americans without due process of law. So the Bush administration backed off its assertion that it could imprison Americans without trial and clung to a fall-back position: foreigners can be imprisoned indefinitely without trials or due process rights.

That's still a popular position with some neo-con talk radio hosts, even if the principle that "foreigners have no rights" flagrantly violates the essential principles of both the U.S. Constitution and Christianity.

The Bush policy has led to the prolonged detainment of a number of obviously innocent people, including even some the U.S. government itself concluded were innocent. That's hardly surprising, considering the right to trial by jury isn't designed to protect the guilty, but rather to differentiate the innocent from the guilty. The guilty terrorist very appropriately does not do well with a trial under the American system of justice.

It's unclear if Judge Leon's hearing will go anywhere. Leon opened a habeas corpus hearing for the same defendants back in 2005 and ruled they could be held indefinitely without the constitutionally required due process.

That case ended in yet another Supreme Court chastening of the Bush administration, *Boumediene v. Bush*, a 5-4 decision where the courts liberals ended up as unlikely defenders of the U.S. Constitution and Bill of Rights.

Now Leon, a Bush appointee, has the case again.



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Delay and maximum secrecy seem to be the Bush strategy, as the Justice Department lawyers kept calling for hearings to be held in secret. Defense Attorney Ramzi Kassem told the *New York Times* that “the government lost its battle to avoid judicial scrutiny, so they have shifted strategy to avoid public scrutiny.”

But thankfully, the Bush lawyers are running out of time.

Again, maybe.

Unless the Obama administration wants to keep this failing tyrannical policy going.

Dare Americans have the audacity of hope for the U.S. Constitution?



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