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Bush Powers Not Unlimited After All

By U.S. Rep. Neil Abercrombie

The Supreme Court of the United States has delivered another stunning rebuke to the Bush administration's belief in the president's unlimited ability to suspend fundamental constitutional rights.

The Supreme Court upheld the right of an individual incarcerated for a crime to be formally charged and to know the basis for the charge. An individual's protection against unlawful detention, known as due process rights, was deemed so important by our forefathers that it's the only individual right written into the text of the Constitution. Long before then, the concept of habeas corpus was a bedrock principle of English common law, the basis for much of our system of laws and justice, and was recognized at least as far back as King Edward I in 1305.

It wasn't until this century that George W. Bush decided the president of the United States had powers above and beyond the law, and could unilaterally set constitutional protections aside. And, he also decided that the federal courts didn't have the power to review such issues. As a result, a number of suspected terrorists have been held in the Guantanamo prison without being charged for as long as six years.

But, it turns out that federal courts, especially the U.S. Supreme Court, do have the power to review the constitutionality of government actions. Actually they've had it since the *Marbury v. Madison* decision 205 years ago. When today's nine justices reviewed the Bush administration's suspension of habeas corpus for "enemy combatants," a majority found it to be unconstitutional.

Why is this important? What's the problem? What will we say when Americans are held for years without charge in some foreign prison? Why should any other country listen when the U.S. preaches to them about human rights while we're using torture as an interrogation technique and illegally detaining prisoners? What does it do to America's standing in the world?

Writing for the majority of the court, Justice Anthony Kennedy said, "The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system reconciled within the framework of the law."

Does this decision mean that terrorists, or terrorist suspects, will be turned loose to prey on us? Absolutely not. But, it does mean they have the right to be charged with a crime, to see the evidence against them, just like the most dangerous criminal. And, if the evidence supports it, they should be tried. If they're found guilty, they should be punished.

At long last, preliminary hearings have begun in Guantanamo for a few of the accused. Five suspected senior al-Qaida detainees have been charged, including Khalid Sheikh Mohammed, the alleged mastermind of the Sept. 11, 2001, attacks, who was transferred to the prison camp in 2006.

So clearly, our legal system can work — even with suspected terrorists — if our leaders don't try to short-circuit the process. And if they do try to reject the process and create their own legal system, the Supreme Court has to bring them back to earth. This time, it did. And, we should all be relieved.