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Backward at Bagram

One of the most vital jobs of the federal courts is to check excessive claims of presidential power. The courts have stepped up to the task at important times since President George W. Bush embarked on a campaign after the Sept. 11, 2001, attacks to create an imperial presidency. Sadly, a recent ruling by a federal appeals court on the American military prison at Bagram Air Base in Afghanistan was not one of those times.

What makes the ruling especially distressing is that the extravagant claim of executive power upheld by the court — to create a law-free zone at the Bagram lockup — was dreamed up by Mr. Bush and subsequently embraced by President Obama. The appellate court ruled that there was no right to federal court review for the detainees, who say they were captured outside of Afghanistan, far from any battlefield, and then shipped to Bagram to be held indefinitely in harsh conditions.

The decision overturns a narrowly focused 2009 ruling by Judge John Bates of the Federal District Court. His decision was based on the 2008 Supreme Court decision that granted prisoners at Guantánamo Bay, Cuba, a federal court review of their detention. Judge Bates extended the Supreme Court ruling to non-Afghan detainees at Bagram who had been held for more than six years — a small slice of the 600 to 800 prisoners there.

Judge Bates recognized that Bagram is in an active theater of war, and habeas corpus traditionally has not applied to detainees abroad in zones of combat. But his ruling also recognized that the logic of exempting prisoners of war from judicial review cannot apply to a detainee who is imported to the war zone.

The appellate panel found that the process for sorting prisoners at Bagram was even flimsier than the one at Guantánamo, which the Supreme Court said was inadequate. To justify overruling Judge Bates, the appellate judges overestimated the practical difficulty of affording court access and underestimated American control in Bagram. They also dusted off a precedent from 1950 to suggest that granting habeas corpus rights to a small number of Bagram detainees would somehow “hamper the war effort, and bring aid and comfort to

the enemy.”

Actually, military commanders and Mr. Obama himself have argued that ensuring fair treatment of detainees advances national security interests by denying Al Qaeda and the Taliban an effective recruiting tool.

On a positive note, the appellate court left open the possibility of a different result in a case where there is a clear showing that the government transferred detainees into an active combat zone in order to evade judicial review of detention decisions. The ruling was deeply unconvincing in suggesting, however, that this did not apply to the case before it.

It would be comforting to think that detainee treatment issues at Bagram have been resolved. But just a week before the panel’s ruling, the Red Cross confirmed the existence of an American-run prison facility at Bagram, where some detainees allege they were abused.

Under the pressure of a lawsuit, the administration in January provided the names of detainees at the notorious Bagram prison. But it still resists disclosing vital details, including their citizenship, the locations and circumstances of their capture, and how long they have been held. Further, it has yet to release salient details about how the newly revised military process for reviewing the validity of detentions is working in practice. We await the administration’s accounting.