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4 ex-detainees sue Rumsfeld, 10 others

Plaintiffs allege officials to blame for abuse at base

By Charlie Savage, Boston Globe

October 28, 2004

WASHINGTON -- Four former Guantanamo detainees yesterday sued Secretary of Defense Donald H. Rumsfeld and 10 others in the military chain of command overseeing the American interrogation prison in Cuba, alleging that the officials are personally responsible for illegal acts of prolonged arbitrary detention and torture.

The lawsuit, believed to be the first of its kind by former detainees who have since been released from the prison, seeks \$10 million for each of the men to be paid by the officials out of their own pockets as compensation for their role in the alleged abuses.

All four plaintiffs are British citizens who were taken into US military custody in December 2001 in Afghanistan, and released in March from Cuba. Although they were imprisoned and interrogated for more than two years, none has been charged with a crime.

"This case is not about the money," Eric Lewis, a lawyer for the detainees, said at a press conference yesterday. "It is about accountability. Torture is un-American. Arbitrary detention is un-American. And what these young men have suffered, and continue to suffer, is something for which we and the American justice system need to hold these people accountable."

Plaintiff lawyers acknowledged that before they can air the merits of their case in court, they will first have to overcome an anticipated claim that all the officials are immune from being sued because they were acting on behalf of the government. The lawyers said yesterday that because it is illegal for any official to authorize torture, they can defeat that defense.

However, Major Michael Shavers, a Pentagon spokesman, disputed the basis for the former detainees' case and said there is no US policy that condones torture.

"These individuals were captured in Afghanistan fighting illegally for Al Qaeda," he said. "They were properly classified as enemy combatants. Their detention was directly related to this combat activity, as determined by an appropriate DOD official before they were taken to Guantanamo. There is no basis in US law to pay claims to those captured and detained as a result of combat activity."

The lawsuit asserts that the four men "never engaged in terrorist activity or took up arms against the United States." It says that three of the men, all friends from Tipton, England, traveled to Afghanistan in October 2001 "to offer help in the ongoing humanitarian crisis and were detained in November 2001 by the Northern Alliance and turned over to the US military.

It claims the fourth, a web designer from Manchester, England, went to Pakistan in October 2001 for a "religious retreat" and quickly decided to return home, but was kidnapped, taken to Afghanistan, and jailed by the Taliban as an accused British spy. After the Taliban regime fell, it says, US soldiers took custody of him.

The four allege that during the course of their 2 years of detention by the US military, they were continuously interrogated and repeatedly mistreated, including receiving beatings and being held in isolation.

"They were 'short shackled' in painful 'stress positions' for many hours at a time, causing deep flesh wounds and permanent scarring," the complaint alleges. "Plaintiffs were also threatened with unmuzzled dogs, forced to strip naked, subjected to repeated forced body cavity searches, intentionally subjected to extremes of heat and cold for the purpose of causing suffering."

Shavers said that "US policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a matter consistent with all US legal obligations, and in particular with legal obligations prohibiting torture."

The detainees, however, say the officials conspired to break US legal obligations, citing a series of formerly top secret memos about coercive interrogation techniques at Guantanamo which have been made public since the Abu Ghraib prisoner abuse scandal in Iraq earlier this year. Many of the techniques in those memos, which the lawsuits call "illegal," match their account.

"The legal memoranda will go some ways to defeating their claims of immunity because it shows they knew what the standards were and that they were doing their damndest to get around them," said Steven Watt, a senior fellow at Center for Constitutional Rights, one of the lawyers working on the case.

The lawsuit also says that some of the alleged mistreatment in Guantanamo was "regularly videotaped" and may be available as corroborating evidence.

The suit is being brought under the Alien Tort Claims Act, a 1789 US statute that allows noncitizens to sue human rights abusers for alleged violations of customary international law that have taken place anywhere in the world.

It alleges that the treatment of the detainees violated the US Constitution's Fifth Amendment, which forbids the deprivation of liberty without due process; the Eighth Amendment, which forbids cruel and unusual punishment; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Geneva Conventions.

The Bush administration announced in early 2002 that the Geneva Conventions would not apply to the Afghanistan conflict, sparking intense global criticism. The conventions forbid mistreating wartime prisoners and require individual status hearings for detainees, which were not given.

Among the plaintiffs is Shafiq Rasul, who was also the named plaintiff in a landmark Supreme Court case earlier this year. In June, the court ruled that Guantanamo detainees may challenge the basis for their indefinite detention in federal civilian courts, contrary to the position of the Bush administration.