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Guantanamo Bay Detainees Lose Appeal

Men's detention ruled unlawful, but there's nowhere for them to go

GINA HOLLAND
Associated Press
April 18, 2006

WASHINGTON -- The Supreme Court on Monday turned down a long-shot appeal filed on behalf of two Chinese Muslims being held at Guantanamo Bay while the U.S. government tries to find a country to take them.

The men's plight has posed a dilemma for courts and a public relations problem for the Bush administration.

A federal judge said the detention of the ethnic Uighurs at the military prison in Cuba was unlawful but there was nothing courts could do. Without comment, the justices declined to consider an unusual direct appeal of that decision.

The military agrees that Abu Bakker Qassim and A'Del Abdu al-Hakim should be freed after more than four years in U.S. custody. But with concerns they would be persecuted back in China, where?

"We don't want to put them on a boat and shove them offshore," said Robert Turner, a former State Department official in the Reagan administration who now teaches at the University of Virginia. "It's one of those tragic cases ... there are no easy answers. These guys are, in a sense, collateral damage to the war."

The men were captured in 2001 in Pakistan, and the following year the U.S. military shipped them to Guantanamo Bay along with hundreds of other suspected terrorists.

The military decided that the two men and 36 others -- out of more than 550 prisoners -- were not enemy combatants. The standard procedure is to send those people home. But Qassim and al-Hakim could not be returned to China after last year's vindication because the United States suspects they would be tortured or killed.

Lawyers for the two contend they could be released into America. A small number of Uighur refugees already live in the Washington area and have offered them jobs and housing.

The Bush administration opposes that. Solicitor General Paul Clement told justices that there were "substantial ongoing diplomatic efforts to transfer them to an appropriate country." In the meantime, Clement said, the men have had television, a stereo system, books and recreational opportunities including soccer, volleyball and pingpong.

President Bush meets with Chinese President Hu Jintao at the White House on Thursday.

A German newspaper reported over the weekend that German officials are being pressed to accept some Uighurs now held at Guantanamo Bay.

Qassim and al-Hakim were captured as they fled a Taliban military training camp where they were learning techniques they planned to use against the Chinese government. They are Uighurs, Turkic-speaking Muslims who have a language and culture distinct from the rest of China.

It would have taken an unusual intervention of the Supreme Court to deal with the case now.

Lawyers for Qassim and al-Hakim filed a special appeal, asking justices to step in even while the case is pending before an appeals court. Arguments at the U.S. Court of Appeals for the District of Columbia Circuit are next month.

About 490 foreigners are still being held at Guantanamo Bay. Lawyers for more than 300 of the detainees filed a brief in Monday's case, saying that Qassim and al-Hakim "are far from the only innocent noncombatants languishing at Guantanamo."

Justices ruled two years ago that the detainees could use American courts to challenge their detentions and this summer will rule on a case testing the government's plans to hold war-crimes trials at Guantanamo Bay.