The following text may be printed, copy/pasted, or downloaded and emailed.

Court to Decide Future of Detainees' Suits

TONI LOCY
Associated Press
March 23, 2006

WASHINGTON - Faced with hundreds of claims by detainees at GuantanamoBay, a federal appeals court pressed the Bush administration on Wednesday to say how much power judges will have to determine the legality of the detentions.

The three-judge panel is being asked to decide whether the Detainee Treatment Act, signed by President Bush on Dec. 30, retroactively voids hundreds of lawsuits by abolishing a right to challenge detentions that has been part of U.S. legal principles since the nation's founding.

Judges David B. Sentelle and A. Raymond Randolph seemed willing to accept the administration's view that the act forces dismissal of more than 200 lawsuits filed in U.S. District Court here on behalf of over 300 detainees.

But no one on the panel appeared to agree with the administration's take on what would happen next if detainees sought to essentially transfer their challenges to the appeals court.

Under the act, detainees can file petitions challenging determinations by military tribunals that they are "enemy combatants" who can be held without charges indefinitely. Those appeals must be filed with the U.S. Court of Appeals for the District of Columbia Circuit.

For the three judges, the big issue was how much power they and their fellow appeals court judges will have to examine the detainees' claims.

Gregory G. Katsas, a Justice Department lawyer, argued that judges would be limited to reviewing the sufficiency of the administrative hearings held by the military because the detainees _ who are aliens held outside the United States have no rights under the Constitution.

Sentelle was incredulous. He reminded Katsas of a 2004 Supreme Court decision that cleared the way for detainees to file court challenges to their detentions.

"You are saying that every single one of their claims are going to fail," Sentelle said. "You are saying that all the Supreme Court did ... was give (detainees) a right to file a piece of paper that cannot possibly grant release."

Judge Judith W. Rogers pushed Katsas to tell her whether the appeals court could order a detainee's release if it found that the military's hearing was flawed.

When Katsas launched into a lengthy answer, Sentelle became impatient and told the lawyer to answer yes or no.

Sentelle said the panel wanted to know whether the act says "turn him loose," if the appellate court finds problems in the military's proceedings.

Katsas said, "The short answer is yes." But he qualified it, saying the Defense Department would have the power to hold an administrative hearing to correct any deficiencies found by the appeals court.

The administration has claimed it indefinitely can hold detainees, even those who are acquitted of war crimes.

Only 10 detainees have been charged with terrorism and war crimes. Nearly 500 detainees are held at the GuantanamoBay prison, which opened in January 2002 to hold suspected al-Qaida and Taliban operatives.

Thomas B. Wilner, a lawyer for the detainees, said he would support the detainee act if it allowed the appeals court to conduct in-depth reviews of the circumstances of a detainee's capture and detention.

Stephen H. Oleskey, who also represents detainees, told the panel that the administration does not want judges to delve too deeply into whether evidence used to hold prisoners was obtained by torture.

Meantime, a Pentagon official said Wednesday the Defense Department is considering a written rule barring use of evidence obtained by torture at criminal trials by military commission.

Until now, Pentagon officials had considered a written rule unnecessary because military prosecutors had promised such evidence would not be used at trial.

The Detainee Treatment Act was a compromise reached among Sens. Carl Levin, D-Mich., Lindsey Graham, R-S.C., and Jon Kyl, R-Ariz., to address criticism over the military's interrogations tactics and the lengthy detentions at Guantanamo.

Wilner said in court papers that Congress overstepped its authority and can bar legal challenges to detention only in cases of "rebellion" or "invasion."

"There is no rebellion or invasion," he wrote.