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Gitmo Judge Rejects Claim he's Interfering

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NEW YORK - A federal judge Monday rejected a government argument that he was interfering with the president's constitutional authority to wage war by insisting that Guantanamo Bay detainees be asked if they want their names to be made public.

The government raised the objection after U.S. District Judge Jed S. Rakoff last month ordered the Defense Department to pose the question to detainees held at the Guantanamo Bay, Cuba, naval base.

The judge wrote that the argument was without merit, and that it was offered improperly after he had already rejected the government's other reasons for insisting that the information not be released to The Associated Press.

In April, the AP filed a lawsuit asking for transcripts of 558 tribunals conducted in the last year to give detainees a chance to challenge their incarceration. The government released the documents but redacted facts about each detainee's identity.

In his ruling last month, Rakoff noted that the government had argued the identities should be kept secret to protect the privacy of the detainees rather than for national security reasons.

The judge said each detainee could answer "yes" or "no" to the question of whether he wanted his identity revealed.

"One might well wonder whether the detainees share the view that keeping their identities secret is in their own best interests," he wrote last month.

In its new argument, the government said the "questionnaire approach somehow encroaches on the president's constitutional authority to wage war as commander in chief," Rakoff said.

The government had argued that the question "intrudes on the relationship between the military and the captured enemy combatants."

The judge said the argument was "wholly unpersuasive" and that the Supreme Court had approved far more intrusive judicial involvement concerning detainees.

The judge gave the government until Oct. 14 to submit the question to detainees and until Oct. 28 to summarize the responses for the court so it could decide what to do with the AP's request.

Government spokeswoman Bridget F. Kelly had no immediate comment.

David A. Schulz, an attorney who argued the case for the AP, said he was pleased that the judge had rejected the new argument.

"We hope this will move us one step further to getting the withheld information about the detainees," he said.

In August 2004, the government began combatant status review tribunals to let detainees rebut their classification as "enemy combatants" after the Supreme Court ruled the detainees may challenge their imprisonment.

Guantanamo holds 520 prisoners; more than 230 others have been released or transferred to the custody of their home governments. Most were captured during the U.S. war in Afghanistan after the Sept. 11, 2001, attack. Only a few have been charged with crimes.

The Bush administration designated them enemy combatants, a classification that includes anyone who supported the Taliban or al-Qaida and which does not afford as many legal protections as prisoners of war have under the Geneva Conventions. The designation also allows indefinite detention without charges.