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## **Court Weighs Detainees' Right to Challenge Imprisonment**

Cases that were filed before rules changed at issue

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WASHINGTON -- Lawyers for about 490 Guantanamo Bay detainees told the nation's second-highest court yesterday that the prisoners must be allowed to show judges any evidence that they are the innocent victims of a mistake. But the Bush administration argued that a new law strips the detainees of the right to challenge their imprisonment in court.

The arguments yesterday, before the US Court of Appeals for the District of Columbia, represented the first major test of the Detainee Treatment Act, which Congress passed in December. The law sharply reduced the rights of detainees to sue for their release, but it also left unclear whether the new rules would apply to detainees who had already filed cases.

Gregory Katsas, a Bush administration lawyer, said the court's hands had been tied by Congress. He argued that the Detainee Treatment Act had "ousted" judges from hearing prisoners' assertions that they are being wrongfully held and that the law applied to all Guantanamo detainees, no matter when they filed their lawsuits.

But lawyers for the detainees argued that the judges should interpret the law as allowing preexisting cases to go forward.

They also argued that it would be unconstitutional for Congress to strip Guantanamo detainees of their fundamental right to have a judge examine any evidence that would prove they were innocent.

"We're really on dangerous ground here," said Thomas Wilner, one of the detainee lawyers.

The arguments represented the latest battle over the rights of suspected terrorists.

Since the attacks of Sept. 11, 2001, the Bush administration has claimed the power to designate prisoners as "enemy combatants," and thus to hold them indefinitely without trial. But human rights lawyers have argued that all prisoners have the right to make the case that they are innocent.

In 2004, the Supreme Court ruled that Guantanamo prisoners could file lawsuits in federal court.

The ruling led to suits on behalf of hundreds of detainees professing their innocence and alleging mistreatment.

In December, seeking to bring greater order to detainee affairs, Congress passed the Detainee Treatment Act. The act outlawed torture during interrogations, but it also deprived prisoners of the right to a hearing in a federal court.

Under the act, courts can hear only claims that the military had violated its own procedures when it determined that a prisoner was an enemy combatant.

But Congress couldn't decide whether to apply the law to cases that had already been filed.

In a compromise, the legislators deliberately left the law vague so that the courts would decide the matter.

Yesterday's arguments foreshadowed a related showdown expected next week at the Supreme Court. The justices are set to hear the case of Salim Hamdan, a Guantanamo detainee who is accused of having been the personal driver and bodyguard of the Al Qaeda leader, Osama bin Laden.

Hamdan is facing a trial before a military commission for conspiracy to commit war crimes.