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Crossroads for Detainees

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After four years in operation, America's terrorist prison camp at Guantanamo Bay, Cuba, is at a crossroads.

Will it return to its roots: a kind of rights-free zone where Al Qaeda suspects are interrogated with little judicial oversight? Or will it become an ever stronger magnet for vigorous legal challenges, based on alleged violations of international human rights, the Geneva accords, American law, and US constitutional protections?

The White House, Congress, and the courts have all weighed in on the issue. Now the matter is before two key courts, whose rulings will help define not just the scope of judicial oversight at Guantanamo, but perhaps also the role of America's system of divided government in wartime.

To opponents, Guantanamo symbolizes all that is wrong with the administration's approach to terrorism. A draft report for the United Nations Commission on Human Rights concludes that US treatment of the detainees has violated international law and, at times, has amounted to torture, the Los Angeles Times reported.

"I do think we'll look back on it [as] a period of horrible shame and regret for how we treated people, how we disobeyed our own law and international law," says Barbara Olshansky, a lawyer at the New York-based Center for Constitutional Rights.

But to the administration and its supporters, Guantanamo is a necessary innovation to wage and win a new kind of warfare involving an enemy plotting to kill as many Americans as possible.

Guantanamo was built not merely to warehouse war prisoners for the duration of the war on terror, but to create a mechanism to pry intelligence information from suspected Al Qaeda supporters. When suspects began arriving at the US Navy base in January 2002, critics warned that they were being dumped into a legal black hole.

But the Supreme Court and several federal judges have since ruled in the detainees' favor, spawning a blitz of lawsuits filed on behalf of more than 500 detainees, attacking the legality of key parts of the administration's war on terror.

Then, on Dec. 30, 2005, Congress entered the fray by passing a law stripping the federal courts of jurisdiction to hear pretrial appeals in Guantanamo cases.

What exactly the Detainee Treatment Act of 2005 requires, however, is hotly debated by legal analysts.

The first indication of how the courts may view Guantanamo's future role will probably come from the Supreme Court. On Friday, the justices are scheduled to consider at their closed-door conference a Bush administration motion that the high court dismiss the case of Salim Ahmed Hamdan, a former driver for Osama bin Laden. Mr. Hamdan's case is one of the most important of the high court's current term. It is a test of the legality of President Bush's military commission process.

Hamdan was scheduled to face war-crimes charges before a military commission at Guantanamo in 2004. On the eve of his trial, a federal judge in Washington agreed with Hamdan that the commission process was illegal. That ruling was overturned by a three-judge panel of the US Court of Appeals for the District of Columbia Circuit. The case is now before the Supreme Court. But after it agreed to hear the case, Congress passed the Detainee Treatment Act.

Administration lawyers say the act strips jurisdiction from all federal courts - including the Supreme Court - to hear pretrial appeals from Guantanamo detainees.

Lawyers for Hamdan disagree. They say Congress was aware that the Hamdan case could produce a landmark decision on the president's creation of military commissions. "Congress did not intend to strip the federal courts of their power to adjudicate pending cases," says Neal Katyal, a lawyer for Hamdan, in his brief.

He warns that the government's reading of the law amounts to an unconstitutional suspension of the right of those in government custody to seek an independent judicial inquiry into the reason for their detention. The Constitution guarantees such a right via so-called writs of habeas corpus, and the right may only be suspended by Congress in cases of rebellion or invasion when public safety requires it.

Solicitor General Paul Clement says in his brief that Congress established in the Detainee Treatment Act a process to hear detainee cases at the federal appeals court in Washington. But those cases can only be heard after their trial is complete, he says. Hamdan's appeal to the Supreme Court must wait until after he has been tried by a military commission, Mr. Clement says.

The federal appeals court in Washington, known as the D.C. Circuit, is examining the same issue. It is weighing how the Detainee Treatment Act will affect 13 other cases involving Guantanamo detainees. In addition, hundreds of other Guantanamo cases are on hold at the district court level pending a ruling in the D.C. Circuit cases.

Much will depend on how the courts interpret the new law, says Ms. Olshansky of the Center for Constitutional Rights which has played a leading role in filing lawsuits on behalf of Guantanamo detainees. But she adds that the immediate impact has been to further delay any resolution of the detainees' cases.

"How long are we going to make these men wait without giving them the most basic justice?" Olshansky asks. "The morale [among Guantanamo prisoners] is through the bottom of the floor and people are going to die from the hunger strike long before any of this happens."

Hunger strikes have continued on and off at the detention facility throughout its operation. By late last year several dozen prisoners joined in a particularly determined hunger strike. But more recently military officials say the number of hunger strikers has fallen to as low as four.

Lawyers who represent detainees say officials at Guantanamo started using larger tubes to force-feed prisoners through their noses. The prisoners were strapped down and the tubes inserted in a rough and painful manner, they say.

Military officials deny the abuse charges, saying members of the medical staff are motivated by humanitarian concerns in the tube feedings.

But the tube feeding is only one of many concerns, says Joshua Colangelo-Bryan, a New York lawyer who represents three Bahraini detainees. One of his clients has tried to kill himself 10 times because of his isolation in the camp, he adds.