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## Detainees Launch Legal Step

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WASHINGTON -- A dozen Kuwaiti captives have mounted the first organized legal and diplomatic effort by prisoners at the U.S. naval base at Guantanamo Bay to challenge U.S. policy that holds terrorism suspects indefinitely without court hearings or charges being filed against them.

The men, who say they are innocent, are largely backed by the government of Kuwait, a U.S. ally, in a case that gives voice for the first time to those captured in the war in Afghanistan and shipped to the makeshift prison in Cuba.

The 12 captives contend they are not members of Al Qaeda or the Taliban, but charity workers who were assisting refugees of Afghanistan's harsh regime when they were caught up in the chaos of the war last fall and winter. In attempting to flee across the Pakistani border, they say, they fell into the hands of Pakistanis who "sold" them to U.S. troops, collecting a bounty that American forces were offering for Arab terrorism suspects captured in the region.

Now the men have passed nearly a year in captivity and are among 600 men being held inside Camp Delta, a heavily fortified U.S. military prison on Cuba's Caribbean shore. Federal authorities will say only that like the rest of the detainees, they are enemy combatants who are not entitled to certain legal rights.

But beyond the prison's barbed-wire-and-canvas fence, the Kuwaitis' families are seeking to either win their release or, at a minimum, see that they are charged with some sort of crime so their loved ones can plead their cases in a court of law.

"Set me free as I am innocent," Abdulaziz Shammari wrote in a letter from prison to his father in Kuwait. "Or take me to the court for trial in order to obtain all my rights. I can not stand life in this place."

The Pentagon initially described all the inmates at Guantanamo Bay as front-line Taliban or Al Qaeda fighters, "the hardest of the hard."

But U.S. officials have since conceded they have not found any top-level terrorists among them, and Defense Secretary Donald H. Rumsfeld said last spring it is possible that some were "victims of circumstances and probably innocent.... If we find someone's an innocent and shouldn't have been brought there, they would be released."

### Officials Lend Support

If there are innocents, the Kuwaitis might well be among them.

The families of most of the 12 have collected documents that suggest the men were indeed working for charitable organizations in the Afghan region. They have won the support of top Kuwaiti officials and retained a Washington firm that specializes in international law.

The lawsuit by the men from Kuwait, and the backing of their government, is awkward for U.S. policymakers who expect Kuwaiti support in a war against Iraq and against terrorism generally.

Salem Abdullah Jaber Sabah, the Kuwaiti ambassador to the U.S., said in an interview in Washington that his country has investigated the 12 detainees and is convinced that nine have no terrorist backgrounds and were doing charitable work.

Of the other three, he would say only that there were "certain impressions" and that there are "questions yet to be answered." He would not elaborate.

The written plea of prisoner Shamari is among 58 letters and postcards that the Kuwaitis have mailed home this year. Their correspondence conveys confusion, religious fervor, loneliness and fear.

The letters are filled with anguish about the uncertainty of their fate, the dawning recognition that they may not go home soon, the heartache of being torn from parents, wives and children, and their helplessness to prove themselves in court.

They are teachers, engineers and students, according to leave-of-absence documents signed by their employers approving their charitable work. One is a government auditor; another works as a government agriculturist. Some have been fired from their jobs since their capture. Some knew one another before they arrived at Guantanamo.

Among them, there is worry about a mother with cancer and a niece with a bad heart; three detainees have become fathers in captivity.

Fawzi Odah wrote his family: "I swear to God my longing for you is quite killing me. I am quite anxious to kiss your feet, hands and heads, and your cheeks too."

The detainees, writing in Arabic on forms provided by the International Red Cross that they most likely assumed would be read by their captors, speak well of their treatment at Guantanamo Bay. Some urge their families to be patient as God eventually will send them home. One wrote poetically of how he wept at seeing birds flying about the Cuban island, while another revealed a dream in which God appeared in his cell and told him his "hands are clean."

Still others seem confused and fearful, unsure whether they are in Cuba or elsewhere — some so mistaken as to think they are "close to home."

"The American army took me and transferred me to many places," Saad Madai Azmi wrote. "I do not know where I am now. When I asked I have been informed that I am in America, but I do not know where I am."

#### No Clear-Cut Case

It's not a clear-cut case of innocence, however.

Reports in the Mideast media suggested that one of two Kuwaiti gunmen who killed a U.S. Marine and wounded another last week was a cousin of one of the 12 Guantanamo Bay captives — a report that has yet to be substantiated and is emphatically denied by their families and lawyers.

Combined, the detainees cited eight charitable organizations for which they worked, and one of them — the Kuwait-based Revival of Islamic Heritage Society — has been identified by the U.S. as supporting the Al Qaeda terrorist network.

And one detainee, Fouad Rabiah, took flight engineering classes at the same Florida school where some of the Sept. 11 hijackers later studied.

The Kuwaiti government isn't saying all of the men are innocent, but it simply wants the United States to evaluate its countrymen.

"Let them be put on trial," Ambassador Sabah said. "If they are innocent, let them go. If they are guilty, we will deal with that.

"Nothing will solve this issue until they are given due process."

Yet there are no trials or military tribunals on the horizon. Instead, the U.S. government maintains that it can continue to hold all of the detainees until the end of the war on terrorism. When that might be is far from clear, but the commander of the Guantanamo naval base said last month that he is making plans for expanding his capacity to hold more prisoners for even longer periods of time.

In their first days of captivity, before being turned over to American authorities, several of the 12 Kuwaitis wrote a letter to the emir in Kuwait and the Kuwaiti ambassador in Pakistan, imploring them to help. They described working for charitable groups in the region and then being swept up in the "agonies of war."

They said they were taken out of Afghanistan by a Pakistani guide, and that local village leaders "sold" them to American forces. "This is our third day in the prison where we are suffering very difficult conditions, similar to that of animals," they wrote.

They signed their letter, "Your subjects in a Pakistani prison."

At the time, leaflets had been distributed around the Afghan region offering financial rewards to anyone who turned over Arab terrorist suspects. It was much later that the families discovered their sons and husbands had been transferred to Guantanamo Bay.

Khalid Odah, a colonel in the Kuwaiti air force when the U.S. helped liberate his country in the 1991 Persian Gulf War, was alarmed to learn his 25-year-old son, a religious teacher, was imprisoned in Cuba.

"My son was with me when the U.S. troops leading the coalition forces came to liberate us," the father recalled in an interview from Kuwait. "He has a great love for the Americans. You can understand that, imagining a 14-year-old then seeing these troops coming to liberate his country."

Now, the father said, his son "cannot understand how the Bush administration can act like this."

In January, the father helped form the Kuwaiti Family Committee of the Kuwaiti Detainees at Guantanamo Bay. They met with Kuwaiti officials, and their government started asking questions.

But U.S. communiques to the Kuwait government posed questions of their own. The U.S. wanted to know what legal action Kuwait "may be prepared to take against your citizens in U.S. control at Guantanamo Bay," should they ever be released.

The U.S. listed the detainees by name, and asked, "Would these persons be subject to prosecution in your country, and if so, for what crimes?" The U.S. also wanted to know "what types of punishments are available under your law for offenses that have been or might be brought against these persons in your country?"

In April, the families took their case to the U.S. Embassy in Kuwait, where they were told that "all the persons being held were captured in combat with the United States and are therefore prisoners of war," according to Abdul Rahman R. Haroun, a Kuwaiti attorney assisting the families.

The families then turned to the Washington law firm of Shearman & Sterling. On July 8, attorneys Thomas B. Wilner and Kristine A. Huskey filed suit in federal district court here. They asked that the detainees be allowed to meet with their families, be informed of any charges against them, be able to confer with their lawyers and "have access to the courts or some other impartial tribunal."

"The United States has forcibly taken, transported and jailed them against their will. It has deprived them of their liberty," Wilner said.

The suit was dismissed on July 30 when Judge Colleen Kollar-Kotelly sided with the government's position that the U.S. courts have no jurisdiction in the matter because Guantanamo Bay is outside the sovereignty of the United States.

The lawyers have asked for another hearing before the U.S. Court of Appeals for the District of Columbia. Oral arguments are set for Dec. 2.

Over the summer, U.S. officials allowed a delegation of Kuwaiti authorities to meet with the detainees in Guantanamo Bay. Once again, hopes ran high among the 12 men, as Abdullah Ajmi, a 28-year-old former Kuwait lance corporal, described the meeting in a letter sent to his father.

"We sat together and by Allah willing I will be out of this jail," he wrote his family. "We [will] meet together very soon."

The delegation also met in Washington with CIA Director George J. Tenet, among other U.S. officials. The Kuwaiti officials subsequently briefed the families, who got the impression that Tenet had promised that at least nine of the detainees would be released soon, perhaps as early as the end of this year.

"If Mr. Tenet has promised something, I would love to believe him, just to get some hope for a while," Mansour Kamel, the brother of detainee Abdullah Kamel, 29, said in an interview from Kuwait.

But U.S. intelligence sources, while confirming the meeting with Tenet, insisted that no such assurances were made.

"There was nothing promised," said one intelligence official.

### Families Have Suffered

Life has not been good for the families in Kuwait.

Monther Rabiah said his detainee brother, Fouad, the 43-year-old airplane engineer, is very "soft and gentle, the most softhearted one of all of us." He is not a terrorist, the brother insisted.

"When, I don't know, but yes I shall see him again," Monther said by phone from Kuwait.

"For somebody who leaves the comfort of their house and goes abroad to deliver food to a hungry old man and a widow and a child, God won't let them suffer for too long a time.

"Maybe God will examine him, but he won't let him suffer long."

The detainees are hungry for news from home.

Omar Amin, a 37-year-old Kuwaiti government agricultural supervisor, asked about his wife's pregnancy. "Call the baby Aishah if she is female, and Abdulwahab if he is a boy. Then please slaughter one ram if she is a girl and two rams if he is a boy, and distribute the meat on the poor and the needy.

"Further please cut the hair of the baby, weigh it and distribute its equivalent weight in gold."

A girl was born last spring.

The men are intensely focused on when they might face a court or military tribunal.

"The American investigator himself told me that there is nothing against me, thanks to God," Fayiz Kandari, 27, wrote hopefully on Dec. 23.

By August, his tone had changed. "We are in terrible isolation from the world and I am very worried. We are still in cages."

Shammari, a 29-year-old teacher, joined scores of other detainees in a prolonged hunger strike beginning in early March.

"Every time they state they are going to release me soon, but unfortunately this is far away," he wrote his father on March 24.

"I will continue my strike [for] an indefinite period.

"Further I have gone on strike for water and speech for four days."

He said that "some persons in America want to achieve electoral gains on our account." He instructed his father to "take this message to the Kuwaiti press so that they know the reality as it is."

Two months later, his hunger strike over, he was much less strident. "If man does not tell lies, Almighty God will save and release him from his troubles. Our prophet, peace and blessings be upon him, says that truth means rescue."

Last month, on the one-year anniversary of the Sept. 11 attacks, he told his father: "About me, nothing new. Days come and days go, night comes and night goes."