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Government claims broad power over foreigners at Guantanamo

Justice lawyer says a military review is sufficient

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WASHINGTON - Under detailed questioning by a federal judge, government lawyers asserted Wednesday that the U.S. military can hold foreigners indefinitely as enemy combatants at Guantanamo Bay, Cuba, even if they aided terrorists unintentionally and never fought the United States.

U.S. District Judge Joyce Hens Green asked if a "little old lady in Switzerland" who sent a check to an orphanage in Afghanistan could be taken into custody if some of her donation was passed to al-Qaida terrorists without her knowledge.

"She could," replied Deputy Associate Attorney General Brian Boyle. "Someone's intention is clearly not a factor that would disable detention." It would be up to a newly established military review panel to decide whether to believe her and release her.

Boyle said the military can pick any foreigner who provides support to terrorists or might know of their plans. The foreigners held on the U.S. naval base in Cuba "have no constitutional rights enforceable in this court," Boyle said.

"That's really shocking," Thomas B. Wilner, attorney for 12 Kuwaiti detainees, said after Green's hearing. "People throughout the world will fear the United States is asserting the power to pick up little old ladies and men who made a mistake."

Green presided over an initial skirmish in what promises to be a long battle to flesh out the meaning of the Supreme Court's historic June 28 ruling that the Guantanamo prisoners can ask U.S. courts to see to it that they have a proceeding to challenge detention.

To streamline the proceedings, Green heard arguments in 12 cases involving 54 detainees. A colleague, District Judge Robert J. Leon, who declined to have his cases coordinated with the others at this stage, will hear almost identical arguments over two cases today.

The government has asked the judges to throw out the cases. Boyle said combatant status review tribunals, set up since the Supreme Court decision, and an annual administrative review by the military provide "more than sufficient due process" to satisfy the high court.

Wilner and other attorneys said the panels, which consist of three military officers, have orders to presume the government's evidence is accurate and accept statements given under torture. The detainee is not allowed to have a lawyer or see secret evidence against him.