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## **Guantánamo Britons lose high court challenge**

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Two Britons detained without trial at Guantánamo Bay today failed in a high court bid to force the British government to seek their release.

Judges upheld a decision by the foreign secretary, Jack Straw, not to petition the US government on behalf of Jamil el-Banna and Omar Deghayes.

The two judges backed the government's claim that it had no obligation to act because the men are foreign nationals and therefore have no legal right to assistance.

However, during the hearing it was revealed that Mr Straw had decided to "reconsider separately" the case of the Iraq-born businessman Bisher al-Rawi, who is also being held at Guantánamo.

Mr al-Rawi, who came to Britain in 1985, has been held by the US for three years but is reported to have cooperated with British security services prior to his arrest in Gambia.

The judges were told there were facts in his case, which could not be discussed in open court, that meant "a specific, security-related request" would be made to the US government on his behalf.

There were currently no plans to make "general requests" on behalf of Mr el-Banna and Mr Deghayes.

Jackie Chase, a spokeswoman for Save Omar, the campaign for the release of Mr Deghayes, expressed disappointment at today's judgment.

"We are disappointed with this ruling because, while Guantánamo is condemned in general terms, the British government is not compelled to protect British residents held there indefinitely without trial or hope of justice," she said.

"It makes no legal or moral sense because Jack Straw has already agreed to make representations on behalf of one of the men, Bisher-al Rawi.

"It has been well documented in the press that Mr al-Rawi had been co-operating with MI5. Is this the price of release from Guantánamo? This is a terribly long way from justice."

Mr al-Rawi and his business partner Mr el-Banna, a Jordanian who was granted refugee status in 2000, were alleged to have been associated with al-Qaida through their connection with the radical Muslim cleric Abu Qatada.

Timothy Otty, representing the detainees, said Mr al-Rawi had been in contact with the cleric with the "express approval and encouragement of British intelligence", to whom he supplied information about him.

Intelligence operatives assured Mr al-Rawi that, should he get into trouble, they would intervene and assist him.

However, the British government was unwilling to make material available to him when a hearing on his case was held at Guantánamo.

Mr el-Banna was accused of being in possession of "a home-made electronic device" at the time of his arrest. His lawyers say it was a battery charger bought from Argos and cleared by the UK authorities before he went to Gambia.

They said Mr el-Banna has lost almost 100lb in weight and "has been traumatised by the fact that he is unable to see his children".

Mr Deghayes was detained in Pakistan, and his name was said to be on the FBI's "most wanted" list. However, his lawyers say the photograph in his file is of a "totally different individual".

They say he has been left virtually blind in one eye by the use of pepper spray and the gouging of his eye but is still being constantly subjected to high light levels.

The judges, Lord Justice Latham and Mr Justice Tugendhat, admitted that their decision might be "uncomfortable and unsatisfactory", but said the court could not require the government "to make a formal request" to the US over the detainees.

In a joint written judgment, they said: "That would be an interference in the relationship between sovereign states which could only be justified if a clear duty in domestic or international law had been identified ... there is no such duty in the present case."

They also said it was impossible for the court to properly evaluate what was happening at Guantánamo, but added that UK foreign policy was clearly to secure closure of the detention facility.

Christopher Greenwood QC, appearing for the foreign secretary, told the judges the government was "attaching considerable weight" to a denial by the US that torture or inhuman treatment had taken place at Guantánamo.

Nine British nationals who had been detained there have been flown back to the UK and released without charge.

Mr Otty said it did not seem too much to ask, considering those details, that all three of the Britons at Guantánamo should receive assistance from the Foreign Office.