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Hearing wrestles with boundaries of war on terror

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USA TODAY
December 2, 2004

WASHINGTON — A federal judge peppered government lawyers Wednesday with pointed questions about the Bush administration's decision nearly three years ago to hold hundreds of foreigners indefinitely at a military prison in Cuba as part of its war on terrorism.

"When will this end?" U.S. District Judge Joyce Hens Green asked.

She must decide whether to grant a government request to dismiss more than a dozen lawsuits filed on behalf of more than 50 detainees that challenge the legality of detentions at the U.S. Naval Base at Guantanamo Bay.

Brian Boyle, a Justice Department lawyer, told Green that President Bush has determined that the 550 suspected al-Qaeda and Taliban operatives pose a danger to the United States and will remain in custody as long as Bush says so.

"I wish I could give the court an answer," Boyle said.

"I wish you could," Green replied.

"The president decides when belligerency begins and when it ends, for the purposes of protecting the country," Boyle said.

Most of the detainees' lawsuits were filed after the Supreme Court ruled in June that the Guantanamo detainees may challenge their detentions in U.S. courts.

The arguments before Green touched on nearly every aspect of the administration's legal war on terrorism. Lawyers argued over Bush's decision that the detainees are not entitled to prisoner-of-war protections under the 1949 Geneva Conventions because they did not wear uniforms or insignia. And they sparred over allegations that the evidence against many detainees was obtained by torture.

Green's aggressive questioning was tempered by her concern over how deeply judges should delve into the military's evidence that the detainees are enemy combatants. If she were to refuse to dismiss the cases, she asked lawyers for the detainees, "What's next?"

The lawyers told her they want to investigate and test the government's evidence — a process that Green noted "will take years."

Boyle argued that the cases should be dismissed because the detainees have been given all of the process they are entitled to as non-U.S. citizens.

Lawyers for the detainees criticized the government's reliance on administrative hearings, known as Combatant Status Review Tribunals, that the military is conducting to determine whether detainees are enemy combatants. The captives' lawyers said the hearings are unfair because detainees do not have attorneys and cannot see much of the evidence against them because it is secret.

Several times, Boyle reminded Green that judges should defer to a president at war. But Green asked whether "a little old lady in Switzerland" could be detained as an enemy combatant if she contributed money to an organization that was "a front for al-Qaeda," even though she thought she was giving money to help orphans.

Green offered other scenarios, including: someone from Ireland who taught English to an al-Qaeda operative; a man who knew his cousin was an al-Qaeda member but did not report it to police; and a reporter who knew Osama bin Laden's whereabouts but refused to tell authorities for fear of revealing a source's identity.

Boyle said it is possible that the people in Green's fictitious examples could be taken into custody. Green then pushed Boyle to define the battlefield in the war on terror.

"If an enemy combatant can include someone in Africa or Europe who never came within 1,000 miles of the battlefield (in Afghanistan), what and where is the battlefield?" she asked, referring to three detainees captured in Africa.

There are no boundaries, Boyle said, because al-Qaeda is a global terrorist group "like nothing we have seen before."