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## **Judge Questions Sweep of Bush's War on Terrorism**

Pentagon Says 550 'Enemy Combatants' Are Confined Properly, Seeks Benefit of Doubt on Detentions

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A federal judge yesterday questioned the Bush administration's broad definition of its powers to indefinitely imprison alleged Taliban and al Qaeda fighters at the military prison in Guantanamo Bay, Cuba, especially those who have never taken up arms against the United States.

U.S. District Judge Joyce Hens Green's questions came as the Defense Department argued during a hearing that it has properly imprisoned 550 people as "enemy combatants" at Guantanamo Bay, based on at least some evidence that they were Taliban or al Qaeda members or assisted or supported terrorist groups.

Government lawyers, who are asking Green to dismiss the claims of 54 Guantanamo detainees who have challenged their imprisonment, said yesterday that a federal court should not micromanage the president's war on terrorism.

"The military has an interest in holding people who pose a risk," Brian Boyle, principal deputy associate attorney general, said of the Pentagon's decision to hold some people for nearly three years. "We're not detaining these people just because there's some enjoyment in it."

But Green, who is overseeing the detainee cases that followed a landmark Supreme Court ruling in June, pressed the government to acknowledge that the broad definition of "enemy combatant" could ensnare scores of seemingly benign people in military prison cells indefinitely.

"If a little old lady in Switzerland writes checks to what she thinks is a charitable organization for Afghanistan orphans, but it's really supporting . . . al Qaeda, is she an enemy combatant?" the judge asked.

Boyle said the woman could be, but it would depend on her intentions. "It would be up to the military to decide as to what to believe," he said.

The Supreme Court ruled that the enemy combatants held at Guantanamo Bay are entitled to contest their imprisonment in U.S. courts. Some of the detainees subsequently filed habeas corpus cases in U.S. district courts.

The Pentagon argues that "combatant status review tribunals" it created after the Supreme Court ruling provide the detainees sufficient opportunity to rebut the charges against them, making the federal court's intervention unnecessary.

But attorneys for the detainees argued that detainees are not allowed to see the evidence against them or consult lawyers during the tribunal proceedings, which, they said, merely rubber-stamp the administration's previous declarations that the detainees were enemy combatants. Of 160 detainees who have completed their tribunal hearings in the past three months, all but one have been declared enemy combatants.

Lawyer Joseph Margulies said that, in some cases, the government's only evidence that a detainee is a terrorist is the detainee's own statement, given during lengthy captivity, amid physical coercion and threats. He said the tribunals mock the American promise of justice.

"It's past time for the mockery to end, " he said.

After hearing Green's hypothetical questions, the military agreed it could imprison a Muslim teacher whose class includes a family with Taliban connections. It also agreed that it could detain a man who does not report his suspicions that his cousin may be an al Qaeda member, or a reporter who knows where Osama bin Laden is located but does not divulge the information to protect an anonymous source.

Green said the Supreme Court ruled this summer that the military has the authority to detain people but expressly for the purpose of preventing their return to the battlefield and keeping them from continuing to wage war. Several Guantanamo Bay detainees, the government acknowledged, were arrested or seized in Britain, Bosnia and Zambia.

"What's the purpose of detaining someone who never came within 1,000 miles of a battlefield?" she asked the government lawyers. "What, quote, 'battlefield' is the United States trying to prevent the detainees from returning to? Back to Africa? Back to London? Back to some acreage of land somewhere?"

Boyle said the boundaries of a war on terrorism are unlimited, and he urged the judge not to set artificial ones. But lawyer George Brent Mickum IV, who represents detainees seized in Africa, questioned how the president's authority could be limitless around the globe.

"To detain anyone, anytime, anywhere in the world, indefinitely, under any rules they devise, that just can't be -- must not be -- the law of the land," he said.