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Judge Rules Guantanamo Trials Unlawful

Combatant Trials Cannot Continue in Current Form, Judge Orders

By Carol D. Leonnig
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Military trials set up to determine the guilt or innocence of enemy combatants imprisoned at a U.S. military prison in Cuba are unlawful and cannot continue in their current form, a federal judge ruled this afternoon.

In a major setback to the Bush administration, U.S. District Judge James Robertson found that detainees held at Guantanamo Bay, Cuba, may legally be prisoners of war entitled to the protections of international law and should be allowed a hearing on whether they qualify for those protections.

Robertson determined that the military commissions the Pentagon created after the Sept. 11, 2001, invasion of Afghanistan, to try and sentence the detainees are not lawful or proper. He found that commission rules allowed that the first person scheduled to go to trial on charges of terrorist acts could be denied access to evidence and excluded from some commission sessions, in violation of military law.

The judge ruled that unless and until the military gives detainees a fair hearing before a "competent tribunal" on whether they are prisoners of war, the government can only try them for enemy offenses in military courts martial, under long-established rules of military law.

The judge's ruling could send the government scurrying just as it begins to conduct the first commission sessions. Robertson made his decision in the case of Salim Ahmed Hamdan, a Yemeni captured in Afghanistan in late 2001 and accused of being a member of al Qaeda, but his opinion is expected to set the standard in this court. Department of Justice lawyers were not immediately available for comment, nor were attorneys who argued on behalf of detainees in this specific case. Several were in Cuba for commission preparations and other legal matters.

But another attorney representing several detainees who are now challenging their imprisonment called Robertson's ruling a major victory for the principle of fairness in U.S. courts.

"It's huge," said lawyer Brent Mickum. "I would like to think this is the first step in the dismantling of the government's Guantanamo edifice: the government has said it doesn't need to provide anything more to the detainees, and the judge is saying the government process afforded to detainees is legally deficient."