

The following text may be printed, copy/pasted, or downloaded and emailed.

U.S. to Seek Dismissal of Guantanamo Suits

NEIL A. LEWIS
New York Times
January 4, 2006

WASHINGTON, Jan. 3 - The Bush administration notified federal trial judges in Washington that it would soon ask them to dismiss all lawsuits brought by prisoners at Guantanamo Bay, Cuba, challenging their detentions, Justice Department officials said Tuesday.

The action means that the administration is moving swiftly to take advantage of an amendment to the military bill that President Bush signed into law last Friday. The amendment strips federal courts from hearing habeas corpus petitions from Guantanamo detainees.

On Tuesday, the Justice Department sent notices to all the federal judges in Washington who have cases involving challenges brought by Guantanamo inmates, informing them of the new amendment. The officials said the department would file formal notices within several days asking the judges to dismiss more than 160 cases involving at least 300 detainees.

If the administration wins its argument it would mean an abrupt end to a wide effort by dozens of lawyers to use the right of habeas corpus in federal courts to challenge the imprisonment of suspected terrorists at Guantanamo as enemy combatants.

The administration had selected Guantanamo as the site for a detention camp for terrorism suspects in the expectation that its actions would not be subject to review by federal courts. But in June 2004, the Supreme Court ruled that the naval base at Guantanamo was not outside the jurisdiction of United States law and that the habeas corpus statute that allows prisoners to challenge their detentions was applicable.

The challenges were brought in various district courts in Washington. After some federal judges disagreed over the meaning of the Supreme Court ruling, the United States Court of Appeals for the District of Columbia Circuit took up the issue, and during arguments in September, the appeals judges seemed skeptical of the administration's contentions.

In addition to arguing in court, the administration separately pressed its case in Congress and found a strong ally in Senator Lindsey Graham, Republican of South Carolina, who said the challenges brought by Guantanamo inmates were frivolous and were clogging the courts. Mr. Graham, along with Senators Carl Levin, Democrat of Michigan, and Jon Kyl, Republican of Arizona, sponsored the amendment to the Defense Act eliminating habeas corpus jurisdiction in federal courts.

The amendment instead allows the District of Columbia appellate court to review the results of military tribunals at Guantanamo in which the prisoners were found to have been properly deemed imprisoned as enemy combatants.

Administration critics have complained that the tribunals at Guantanamo, in which panels of three officers decide whether a prisoner is an enemy combatant, are unfair in several respects. The prisoners are not represented by lawyers and they often may not see evidence used against them for national security reasons.

Tasia Scolinos, the Justice Department spokeswoman, said the detainees had ample opportunity to be heard.

"We are aware of no other country that has provided their enemies with such extensive legal review during an ongoing conflict," Ms. Scolinos said. "Detainees are entitled to legal review both within the military system and to the highest civilian courts in the country."

The Justice Department requests asking the district judges to dismiss all the habeas corpus petitions are expected to be challenged by lawyers for the detainees, making it likely that the issue will be resolved by the appeals court or the Supreme Court.

Although the courts and Congress are co-equal branches of government, the Constitution allows Congress to define the scope of jurisdiction for all federal courts below the Supreme Court.