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Lawyers: Detainees' Cases Stalled in the Legal System

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WASHINGTON — Detainees at Guantanamo Bay, Cuba, are frustrated with the U.S. court system because none of them has received a court hearing, despite a Supreme Court decision a year ago that gave them the right to challenge their detention, according to detainees' attorneys.

Two lawyers who represent detainees say their clients are also susceptible to what the attorneys allege is a campaign by interrogators to interfere with 94 lawsuits that have been filed on behalf of more than 200 people held at Guantanamo.

The criticisms come as the controversial detention facility has been labeled as "the gulag of our time" by Amnesty International. Most of the 520 detainees have been incarcerated for more than three years without being charged.

Defense Secretary Donald Rumsfeld, however, told Fox News Sunday that the public shouldn't lose sight of the fact that the detainees at Guantanamo are "bad people."

"These are suicide bombers, these are murderers. This is the 20th hijacker from 9/11 down there. These are people who are out to kill people," Rumsfeld said.

Attorney Thomas Wilner, who represents 11 Kuwaiti detainees, said in court papers that interrogators have pressured detainees to drop their lawsuits by telling them that most released prisoners did not have counsel. Wilner also charged that interrogators had posed as lawyers and had asked detainees if they knew that their attorneys were Jewish.

Attorney Marc Falkoff, who represents 14 Yemeni detainees, said in an interview that four of his clients threatened last week to fire their lawyers and drop their lawsuits against the U.S. government. "They believe they have been punished for having lawyers, and they are convinced that they will not be allowed out of Guantanamo so long as they keep their lawyers," Falkoff says.

He says that the cases should have been heard by now because they involve detentions. But Falkoff says the detainees do not understand that appeals in U.S. courts can take years to resolve.

Esteban Rodriguez, director of the Defense Department's Joint Intelligence Group at Guantanamo Bay, denied in a May 5 affidavit that interrogators had urged detainees to drop their cases, impersonated lawyers or made disparaging comments about attorneys' ancestry

Last June 28, the Supreme Court rejected the Bush administration's arguments that the U.S. military base at Guantanamo Bay is beyond the reach of American courts. The decision allows detainees to contest their imprisonment. Appeals are pending over two trial judges' conflicting interpretations of that ruling. In January, one judge ruled that detainees have no rights to full hearings to determine the basis for their detentions. Another judge said that they do.

Attorney Muneer Ahmad, who represents a Canadian detainee, says the administration has twisted the Supreme Court ruling. "According to the government, the detainees have a right to knock on the door of the court," he says, "but it is the court's obligation to slam the door in their faces."

Of the suspected al-Qaeda and Taliban operatives held at the Guantanamo Bay prison since it opened in January 2002, four have been charged with war crimes. The Pentagon, on President Bush's orders, created a military justice system for foreign terrorism suspects.

But those criminal cases also are stalled by appeals in the courts. Last November, a third federal judge here ruled that military tribunals — or commissions, as the Pentagon calls them — are unfair because, among other reasons, the panels' secrecy rules will keep defendants from seeing all of the evidence against them.

Lawmakers of both parties toured the Guantanamo facility Saturday and noted progress in improving conditions and protecting the rights of detainees. Rep. Sheila Jackson Lee, D-Texas, acknowledged improvements but still supported an investigation by an independent commission.

Rumsfeld said on NBC's Meet the Press on Sunday that a new independent investigation of abuse allegations isn't needed and "doesn't make sense."

Last month, several people died in riots in Afghanistan and elsewhere after Newsweek incorrectly reported that a military probe had found that soldiers had flushed a Koran down a toilet at Guantanamo. The military subsequently found five incidents of Koran mishandling.

Revelations late last year that FBI agents had witnessed detainees chained naked for hours to floors in extremely hot or cold rooms continue to fuel calls by Republicans and Democrats — including former presidents Jimmy Carter and Bill Clinton — for the military to close the prison or for Congress to insist on changes in policies there.

A decision could come any day from a three-judge panel that heard arguments in the military tribunal case in April. However, a ruling in the appeals over the detainee lawsuits is months away.

If the courts give detainees the right to delve into evidence gathered on the battlefield and in interrogations, "it will be rough sledding for our military commanders," says Brian Boyle, a former Justice Department lawyer involved in the detainee litigation. "Already, the deep intrusion of criminal-style judicial process into the operations of Guantanamo has doubtlessly slowed the intelligence-gathering process."