

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

U.S. Seeks to Avoid Detainee Ruling

Dan Eggen and Josh White
Washington Post
January 13, 2006

The Bush administration took the unusual step yesterday of asking the Supreme Court to call off a landmark confrontation over the legality of military trials for terrorism suspects, arguing that a law enacted last month eliminates the court's ability to consider the issue.

In a 23-page brief, U.S. Solicitor General Paul D. Clement said the justices should throw out an appeal by Yemeni national Salim Hamdan, an alleged driver and bodyguard for Osama bin Laden, because a new statute governing the treatment of U.S. detainees "removes the court's jurisdiction to hear this action."

The brief represents the latest escalation in the showdown between the Bush administration and critics of the government over the legal rights of military detainees captured overseas. Hamdan's case is one of several high-stakes legal battles working their way through the courts, and the Supreme Court's November decision to consider his appeal was a blow to the government.

Hamdan is among approximately 500 inmates held at the military prison at Guantanamo Bay, Cuba; nine are scheduled to be tried by "military commissions" created after the Sept. 11, 2001, attacks. Hamdan's lawyers and many civil liberties groups have decried the commissions as unconstitutional and unfairly stacked against defendants.

Separately, the administration is trying to eliminate habeas corpus lawsuits filed on behalf of nearly every detainee, saying they have clogged federal courts with frivolous actions. The Supreme Court gave Guantanamo Bay detainees access to federal courts in a 2004 ruling.

The Detainee Treatment Act, principally written by Sens. Lindsey O. Graham (R-S.C.) and Carl M. Levin (D-Mich.) and signed into law Dec. 30, is intended to prevent detainees from having access to U.S. courts except in specific circumstances. It outlines a limited system for legal challenges by inmates, allowing them only to appeal the determination that they are enemy combatants to the U.S. Court of Appeals for the District of Columbia Circuit and then, potentially, to the Supreme Court. It also allows anyone convicted in a military commission to appeal that decision.

The two lawmakers and their colleagues have disagreed sharply in recent days over whether the legislation is meant to apply to cases such as Hamdan's that were filed before Bush signed the legislation into law.

Clement's brief argues that the statute must be given "immediate effect" -- meaning that previous legal challenges should be dismissed, and that Hamdan and other inmates should proceed under the new rules.

"Congress made clear that the federal courts no longer have jurisdiction over actions filed on behalf of Guantanamo detainees," Clement wrote.

Levin, in a statement issued yesterday, said that "the Justice Department is in error. Far from deciding that the relevant statutory language applies to pending cases, Congress specifically considered and rejected language that would have stripped the courts of jurisdiction in cases that they had before them."

Neal Katyal, a Georgetown University law professor who represents Hamdan, declined to comment on the government's filing.

Burt Neuborne, a New York University law professor who wrote a friend-of-the-court brief in the Hamdan case, said the government's brief ignores the fact that if Hamdan's case is dismissed, he and other detainees will have no avenue to challenge the legality of Bush's power to detain enemy combatants and create military trials.

"The government's basic argument is: You can't hear it now, but you can hear it later," Neuborne said. "What they don't say is that the other route doesn't let Hamdan raise the question of the president's authority in these cases. . . . They're not telling the Supreme Court the real consequences of their motion."

Justice Department officials believe cases filed on behalf of detainees held at Guantanamo Bay should now be pulled from all U.S. courts. They filed notice within days of the law's passage asking for the dismissal of cases in the U.S. District Court and the appeals court in the District of Columbia. The cases range from legal challenges of the military commissions process to complaints about treatment at the facility in Cuba.

U.S. District Judge Reggie B. Walton denied yesterday all motions in 15 pending detainee cases before him and indefinitely stayed the cases, noting that the new law "raises serious questions concerning whether this Court retains jurisdiction" to hear them. Walton wrote that he will wait for the appeals court to resolve the jurisdictional issues before removing the stays.

Joshua Colangelo-Bryan, who represents a Guantanamo Bay detainee named Jumah Dossari, said yesterday that the stay in his case leaves his client with few options for improving his conditions at the prison. Dossari has tried to kill himself at least 10 times, according to his lawyers, who have been asking the court for independent mental health experts and better living conditions.

"He may have been placed in a legal limbo that may last months or years," Colangelo-Bryan said. "This means that he is utterly and entirely at the mercy of the military, which chose to place him in isolation despite knowing that he was suicidal. Our hands are tied in terms of seeking relief."