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Chinese Detainees' Lawyers Will Take Case to High Court

Ruling on Uighurs Is Called Vital

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Lawyers for a group of Chinese nationals held in the U.S. military prison at Guantanamo Bay, Cuba, with no hope of release are taking the rare step of asking the Supreme Court to intervene immediately, saying only the high court can resolve the constitutional crisis their case presents.

Attorneys for the detained Uighurs, Muslim natives of western China who oppose their country's Communist rule, are scheduled to petition the court as early as today. They seek a break in the impasse created when U.S. District Judge James Robertson ruled last month that the Bush administration's "Kafka-esque" detention of the Uighurs was illegal but he simultaneously determined that the court lacked the power to overrule the president and free them.

"That ruling doesn't simply hit innocent men now in their fifth year of imprisonment," said Sabin Willett, one of the Uighurs' attorneys. "It goes to whether we have a judicial branch at all. This is that rare question so vital that the Supreme Court should immediately intervene to answer."

Lawyers for the nine Chinese detainees plan to urge the Supreme Court to step into the void, arguing in draft legal documents they provided to The Washington Post that the high court and the public have a major stake when the federal judiciary decides it cannot stop the president from continuing to break the law.

Their case is among nearly 200 legal challenges filed since 2004 on behalf of Guantanamo Bay detainees who are contesting the legality of their imprisonment, and it is among the first in which a court has reached a conclusion on the central question of whether their detention is unlawful.

The government acknowledges that the Uighurs were imprisoned by mistake in 2002. Military officials determined in 2004 that they were not enemy combatants and should be released.

Robertson wrote in his Dec. 22 opinion that the Uighurs would probably be persecuted if they were returned to China. They are seeking refuge in the United States, where other Uighurs have been granted asylum, the judge said, but only the president has the authority to grant that and his administration has strenuously opposed the idea.

The State Department has tried without success to persuade other countries to take in the Uighurs, officials have said.

It is highly unusual for parties in a case to seek a hearing before the Supreme Court -- called a petition for certiorari before judgment -- at this stage. The attorneys for the detainees are asking the high court to let their clients skip the year-long process of first appealing to the federal appeals court for the District of Columbia and resolve the conundrum of a ruling without relief and what they call the "absurdity" of illegal imprisonment without end.

Lawyers working on behalf of the Uighurs argue that Robertson's decision effectively "proclaims an Executive with unchecked power . . . to seize and perpetually imprison persons from around the globe."

"The prospect of innocent men detained indefinitely, and of an Executive wielding powers beyond those granted to it by the Constitution . . . is simply intolerable," they wrote.

A Justice Department spokesman declined to comment on legal papers that have not been filed yet. The administration has argued in court that the president can continue to detain the Uighurs under the executive's "necessary power to wind up wartime detentions in an orderly fashion."

The two men at the center of the dispute, Abu Bakker Qassim and Adel Abdu Hakim, were seized by bounty hunters in Pakistan after they fled U.S. bombing in Afghanistan in the fall of 2001. They were turned over to U.S. forces and taken to Guantanamo Bay in 2002. A military tribunal formally ruled in the spring of 2004 that they were not enemy combatants and should be released. Their case could affect as many as nine Uighurs currently held at Guantanamo Bay.

It is rare for the high court to grant this kind of petition, legal experts say. Those that meet the high standard typically involve a direct conflict between two branches of government and center on a matter of "imperative public importance."

The court agreed to take up such a request in 2002 when presented with two related Michigan affirmative action cases that were moving through the federal courts at different stages and created a potential conflict. The most historic examples of cases that went directly to the Supreme Court include U.S. v. Nixon, in which the court determined that President Richard M. Nixon had to turn over tapes of Oval Office conversations during the Watergate scandal, and Youngstown v. Sawyer, in which the court ruled that President Harry S. Truman's war powers did not give him the authority to seize private steel mills.