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## **Levin Protests Move to Dismiss Detainee Petitions**

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Washington Post  
January 5, 2006

Sen. Carl M. Levin (D-Mich.) said yesterday that the Bush administration cannot use recent legislation he helped craft to seek the dismissal of habeas corpus petitions filed on behalf of detainees at Guantanamo Bay, Cuba, contending that the law applies only to new cases.

Justice Department lawyers filed notice in federal courts in Washington this week that the administration will attempt to have 186 pending cases dismissed beginning Monday. They plan to use the newly signed law to argue that the court no longer has jurisdiction to hear the prisoners' cases.

The administration also wrote a letter to the U.S. Court of Appeals for the District of Columbia Circuit indicating that lawyers plan to file a motion next week "to govern further proceedings in these cases in light of the new legislation."

The new language, which President Bush signed into law Friday, restricts Guantanamo Bay prisoners' federal court filings to one review of their status as enemy combatants. It also allows detainees convicted in military trials to appeal those convictions.

In a 2004 Supreme Court decision, the prisoners won the right to file habeas corpus petitions contesting their incarcerations. But Levin and Sen. Lindsey O. Graham (R-S.C.) wanted to limit further access to the courts via those petitions.

In an interview yesterday, Graham disagreed with Levin, saying that he believes the legislation does not preserve existing lawsuits.

"The courts will decide whether to proceed in pending cases," Graham said.

Levin, however, said he rebuffed at least three administration efforts to make the law retroactive while the legislation was being written. He specifically objected each time, and a compromise bill ultimately was written so that it would apply only to future cases, according to a written statement from his office yesterday.

Legal experts said yesterday that the administration may have room to interpret the law because its language is somewhat vague. It says that the law would "take effect on the date of the enactment" and does not address whether the law applies to pending cases.

The Center for Constitutional Rights, which represents hundreds of detainees at Guantanamo Bay, filed additional habeas corpus petitions late last week in an attempt to give more detainees access to the courts before the law took effect, said Bill Goodman, the center's legal director. Goodman said nearly all of the approximately 500 prisoners in Guantanamo Bay now have cases pending in federal courts.

The Bush administration interpreted the new law as applying to all detainee cases, pending or not yet filed, according to a White House signing statement on Friday. Justice Department lawyers believe the law removes the court's jurisdiction, preventing judges from hearing such cases.

Citing the access to courts still provided by the new law, Tasia Scolinos, a Justice Department spokeswoman, said yesterday that "we are aware of no other country that has provided their enemies with such extensive legal review during an ongoing conflict."

District Judge Reggie B. Walton, who is presiding over several detainee cases, moved swiftly yesterday, issuing orders asking lawyers for the detainees to show in court why their cases "should not be dismissed for lack of jurisdiction." The orders require detainees' attorneys to make such arguments by Jan. 12.

"The Act raises serious questions concerning whether this court retains jurisdiction to hear this case and all related matters," Walton wrote in an order released yesterday.

Michael C. Dorf, a law professor at Columbia University, said he was not surprised the administration moved quickly to try to have the cases dismissed. "I think the administration has a plausible argument that it applies to pending cases," he said. "It is legitimately ambiguous language. This is a gift from Congress, enabling them to remove jurisdiction. Why wouldn't they do it right away? In a way, I'm surprised they waited three days."

But Madeline Morris, a law professor at Duke University and adviser to the chief defense counsel for the military commissions at Guantanamo Bay, said yesterday that she believes the law's language clearly does not apply to previously filed cases.

She said the administration is seeking "to reduce and limit the scope of judicial oversight and involvement in these cases," but that the courts, ultimately, will have the final say unless Congress again steps in.

Levin said in his statement that "the administration is now seeking to end-run the legislative process and achieve a result through the courts that it was unable to obtain in Congress. I hope and expect that the courts will reject this effort."

*Staff writer Carol D. Leonnig and researcher Julie Tate contributed to this report.*