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## **U.S. Barred From Sending 13 Detainees Abroad**

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A federal judge yesterday barred the Bush administration from transferring a group of detainees from the U.S. military prison in Cuba to the custody of foreign governments without first giving the prisoners a chance to challenge the move in court.

U.S. District Judge Henry H. Kennedy Jr. said he was preventing transfers without advance notice to bar the government from "unilaterally and silently taking actions" to move detainees outside the reach of U.S. courts. The government must give detainees' lawyers 30 days' notice of any proposed transfer, the judge ruled, so their lawyers have time to object.

The judge also chided the Justice Department for arguing it was giving detainees what they had originally requested: freedom from U.S. control at the naval base at Guantanamo Bay, Cuba. About 540 men are held at the prison based on the government's claim that they are enemy combatants or have ties to terrorists. Some have been there for three years.

The Bush administration has been grappling with how to handle terrorism detainees over the long term. Officials have said they were considering transferring some of the prisoners to their home countries where they would be imprisoned, which prompted lawyers for a number of detainees to file court challenges.

In his ruling yesterday, Kennedy said such transfers are hardly the same as giving detainees "a plane ticket to anywhere they want to go."

"The [government's] assertion that they are merely 'relinquishing' custody of detainees whom the government is simply 'no longer interested in detaining' is disingenuous," Kennedy wrote in issuing an injunction against the government. "It seems beyond question that advocating for release into freedom is not equivalent to advocating for transfer from ongoing detention in one locale to ongoing detention in another."

A Defense Department spokesman said yesterday that the Pentagon was reviewing the decision and could not comment.

David Remes, a lead attorney for the detainees, cheered the ruling. "The government could have sent any of our clients abroad to places where they could be tortured, and we would never have a chance to object," Remes said. "The government would effectively make these cases go away. And right now these cases are a monumental embarrassment to the government."

Several detainees have claimed that U.S. interrogators tortured them, sent them to foreign countries to be tortured, and that the only evidence against them in some cases are the statements of fellow detainees who have been tortured.

Kennedy's decision directly affects 13 Yemenis held at the base in the case he was deciding, but lawyers for 20 more groups of detainees have filed similar requests to block such transfers with other judges.

Legal specialists called Kennedy's decision a significant milestone in the government's anti-terrorism efforts for two reasons. They said he is the first judge to rule that courts have control

over detainee transfers. Second, his ruling wrests more control from the government, another court setback for an administration that sought to run Guantanamo without court oversight.

Experts said it could affect the administration's "renditions," a surreptitious practice of sending detainees to foreign countries that can employ more abusive interrogation tactics.

"It's hugely significant because it shows there is a real check against the government's power here," said Matthew S. Freedus, a Washington lawyer and expert in military law.

In his ruling, Kennedy agreed with lawyers for detainees, who said such transfers would probably help the government deny their clients a day in court, and end court and public scrutiny of the government's Guantanamo Bay operations. Those attorneys have accused the military of having little to no factual evidence to hold many of their clients and of torturing many into confessions.

"They got the wrong guys at the wrong place," said Michael Ratner, of the Center for Constitutional Rights. "These people were imprisoned, interrogated and tortured for no reason. So now the government wants to get rid of them, because they just can't justify what they've done."

Kennedy wrote that it "is not a foregone conclusion" that the military has properly classified the Guantanamo Bay detainees as enemy combatants, thus the detainees' legal claims must be protected. Two judges' conflicting decisions on that issue are on appeal to a higher court.

Meanwhile, Navy Secretary Gordon R. England announced yesterday that after conducting military tribunals on 558 detainees at Guantanamo Bay, 38 have been deemed to be "non-enemy combatants" who should be sent back to their home countries, and five have already been transferred. England did not address whether any of 13 Yemeni prisoners in this case are included in the 38 found to be releasable.