

Justices to hear detainee appeal

At issue is who has the power to free those deemed wrongly held in the war on terror.

DAVID G. SAVAGE
REPORTING FROM WASHINGTON

The Supreme Court set the stage Tuesday for another clash with the president — this time Barack Obama instead of George W. Bush — over detainees in the war on terrorism and whether a judge can order the immediate release of those wrongly held in the United States.

Apparently frustrated with the slow pace of freeing prisoners at Guantanamo Bay, Cuba, the justices voted to hear a new appeal from a group that says it is in limbo. The 14 detainees, Chinese Muslims known as Uighurs, have persuaded judges that they are being wrongly held as “enemy combatants,” but they remain in custody.

By taking up the appeal, the Supreme Court puts itself in position to make a far-reaching decision on whether the executive branch can keep holding a prisoner in the war on terrorism even if the courts have found him to be no threat.

“I never thought we would be arguing in court whether the government can lawfully imprison someone who was found to be innocent. And I never thought we would be arguing against the Obama administration,” said Susan Baker Manning, a Washington lawyer for the Uighurs.

On his first day in office, Obama pledged to close the Guantanamo prison within one year, but recently administration officials have hedged on whether they can achieve that goal. Government lawyers say they have spent months sifting through files to decide which of

[See **Prison**, Page A17]

the more than 200 detainees pose a true danger and must be held indefinitely and which can be safely sent home.

Another lawyer for the Uighurs was buoyed by the court’s action.

“We hope this will result in a ruling that confirms that the writ of habeas corpus guarantees to the innocent not just a judge’s learned essay, but something meaningful — his release,” said Sabin Willett, a Boston lawyer who has been working for seven years to free the Uighurs, who were picked up in Afghanistan.

Five years ago, the Pentagon conceded that these Uighurs were not enemy combatants. But the Bush administration blocked a judge’s order to release them into the United States.

In 2004 and again in 2008, the Supreme Court ruled that the Guantanamo prisoners had a right to seek their freedom before a judge. But Bush, and now Obama, resisted freeing those who had won their claims in court.

This impasse obviously caught the attention of the justices.

The most recent decision came in June 2008, when the Supreme Court ruled 5 to 4 that the Constitution gives all prisoners, including Guantanamo detainees, a right to file a writ of habeas corpus to seek a review of the evidence against them.

Habeas corpus allows prisoners to petition a judge for their freedom. The Bush administration had placed the

detainees at the Guantanamo Bay naval base because it is in Cuba, contending that if they were not on U.S. soil they could not invoke the right of habeas corpus.

The 2008 ruling rejected President Bush’s contention that the commander in chief had full control over military prisoners. It also struck down a law, passed after the 2004 court decision by the then-Republican-controlled Congress, that stripped the Guantanamo detainees of the right to habeas corpus. But the justices stopped short of saying that a judge had the full power to order the release of a wrongly held prisoner.

Since then, judges in Washington have reviewed the cases of 38 Guantanamo prisoners. In 30 of them, judges ruled that the government did not have reasonable grounds for holding the detainees as enemy combatants. But 18 of those 30 detainees remain at Guantanamo, according to lawyers for the Uighurs.

The Obama administration took a middle-of-the-road position. It pledged to work through diplomatic channels to find countries that could take the prisoners once they were freed. The Uighurs say they cannot return to China because they will be persecuted there — and China considers them hostile separatists. But releasing the Uighurs into the United States stirs bipartisan opposition.

Faced with this quandary, the administration’s lawyers maintained that the detainees had no legal right to be released, despite their victory before a trial judge. In February, the administration won a ruling in the U.S. Court of Appeals here that immigration laws forbid the release of ex-Guantanamo prisoners on American soil.

U.S. Solicitor General Elena Kagan urged the high court to steer clear of the controversy.

The power to allow foreigners to enter the country “rests exclusively in the political



branches," not the courts, Kagan told the justices in a brief filed in May. The Uighurs' "continued presence at Guantanamo Bay is not an unlawful detention, but rather the consequence of their lawful exclusion from the United States," she added.

In several follow-up letters, she said the administration had apparently found foreign homes for all but one of the Uighurs who remain at the prison. Other Uighurs have already moved to Bermuda and Palau.

Kagan told the court in her brief that the Uighurs "are free to leave Guantanamo Bay to go to any country that is willing to accept them."

Lawyers for the Uighurs said this impasse makes a mockery of the high court's 2008 ruling.

On Tuesday morning, the court announced it had voted to hear the Uighurs' appeal and to decide whether judges have the authority to order the release of a wrongly held prisoner into the United States.

The court is likely to hear the case of Kiyemba vs. Obama in March and issue a ruling by June.

The case could be decided narrowly by focusing on whether immigration laws forbid releasing foreign prisoners into this country. But lawyers who worked on it say they expect the justices to focus on the broader question of whether a judge has the ultimate power to order the release of a prisoner who is seen as innocent.

"If this case was just about the Uighurs, I don't think the Supreme Court would have

taken it," said Shayana Kadi-dal, a lawyer for the Center for Constitutional Rights in New York. "The real question is whether a prisoner who is wrongly held has a legal right to be released."

In response to the court's action, the Justice Department said the administration remained "committed to closing the detention facility at Guantanamo Bay" and said it was nearing a decision on which detainees would be prosecuted.

Also Tuesday, Congress extended for another year a spending provision that forbids the release of former Guantanamo prisoners into this country. They could, however, be transferred here for trial. david.savage@latimes.com



BRENNAN LINSLEY Pool Photo

DETAINEES: Chinese Uighurs hold a sign at the U.S. military prison at Guantanamo Bay, Cuba. They remain in custody even though judges found that they are being wrongly held.