

WAR ON TERRORISM

Panel: Guantánamo captives can't fight in federal courts

■ An appeals panel sided with President Bush and ruled that Guantánamo captives get a military review, not the right to sue in federal court to gain their freedom.

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Setting the stage for a U.S. Supreme Court showdown, a federal appeals panel sided 2-1 with the Bush administration Tuesday and denied Guantánamo Bay captives the right to challenge their detention in lower federal courts.

The Justice Department hailed the decision from the U.S. Court of Appeals for the District of Columbia as a victory in its campaign to close the files on hundreds of Guantánamo captives' challenges at the U.S. District Court in the nation's capital.

Amnesty International USA urged Congress to quickly pass new legislation that would effectively reverse the decision, and attorneys for detainees urged the Supreme Court to take up the issue promptly.

"Federal courts have no jurisdiction in these cases," Judge A. Raymond Randolph wrote for himself and Judge David B. Sentelle. Two successive acts of Congress,

they said, had sufficiently stripped detainees of traditional recourse to the writ of habeas corpus.

"The arguments are creative but not cogent. To accept them would be to defy the will of Congress," Randolph wrote for the two men, who were appointed to the court by Presidents Ronald Reagan and George H.W. Bush.

Congress, when led by the Republicans, twice passed legislation that stripped so-called enemy combatants of their right to challenge their detention in U.S. civilian courts — the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006.

Both were in response to successive Supreme Court rulings that favored detainee rights.

One ruling found Guantánamo subject to U.S. legal jurisdiction; another sided with Osama bin Laden's driver against the Pentagon's first formula for a war court at Guantánamo.

Now the Democrat-led Congress is crafting new legislation that would restore oversight to civilian courts.

And, in parallel, the Pentagon is pressing forward with plans to try the driver, Salim Hamdan, 36, of Yemen, and two other enemy combatants by military commission at Guantánamo Bay, Cuba.

In her dissent, Judge Judith W. Rogers, a Clinton appointee, said the Pentagon had failed to create a fair substitute outside the federal courts where captives held without charge could challenge their detention.

"While judgments of military necessity are entitled to deference by the courts and while temporary custody during wartime may be justified in order to properly process those who have been captured," she said, "the executive has had ample opportunity during the past five years during which the detainees have been held at Guantánamo Bay to determine who is being held and for what reason."

Civil liberties lawyers reacted with alarm to the majority decision.

"Habeas corpus is a right that was enshrined in the Magna Carta to prevent kings from indefinitely and arbitrarily detaining anyone they chose," said Vincent Warren, executive director of the Center for Constitutional Rights, which represents many detainees. "The combined actions of the Bush administration, the previous Congress and two of the three judges today have taken us back 900 years and granted the right of kings to the president."

Under the current U.S. law, the appeals court has only limited power to look over the Pentagon's shoulder: to review findings by a military panel at Guantánamo that a captive met the minimum definition to be declared an enemy combatant.

The Pentagon says it currently holds approximately 395 detainees at Guantánamo but does not provide precise figures.

• TURN TO APPEALS, 2A



The Pentagon prosecutor has said a portion of them — perhaps 80 men and teens — could be charged under Congress' newest formula for a war-crimes court, called a military commission.

Although the Bush administration is seeking to thin its Guantánamo population through repatriations and transfers to other nations' jails, the rest could be held indefinitely and without charge until a U.S. administration declares an end to the war on terrorism.

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