

NEW CLASH ON DETAINEES U.S. ASKS COURT TO LIMIT LAWYERS AT GUANTÁNAMO

Plan Would Restrict Visits to Clients and Access to Secret Evidence

By WILLIAM GLABERSON

The Justice Department has asked a federal appeals court to impose tighter restrictions on the hundreds of lawyers who represent detainees at Guantánamo Bay, Cuba, and the request has become a central issue in a new legal battle over the administration's detention policies.

Saying that visits by civilian lawyers and attorney-client mail have caused "intractable problems and threats to security at Guantánamo," a Justice Department filing proposes new limits on the lawyers' contact with their clients and access to evidence in their cases that would replace more expansive rules that have governed them since they began visiting Guantánamo detainees in large numbers in 2004.

The filing says the lawyers have caused unrest among the detainees and have improperly served as a conduit to the news media, assertions that have drawn angry responses from some of the lawyers.

The dispute is the latest and perhaps the most significant clash over the role of lawyers for the detainees. "There is no right on the part of counsel to access to detained aliens on a secure military base in a foreign country," the Justice Department filing argued.

Under the proposal, filed this month in the United States Court of Appeals for the District of Columbia Circuit, the government would limit lawyers to three visits with an existing client at Guantánamo; there is now no limit. It would permit only a single visit with a detainee to have him authorize a lawyer to handle his case. And it would permit a team of intelligence officers and military lawyers not involved in a detainee's

case to read mail sent to him by his lawyer.

The proposal would also reverse existing rules to permit government officials, on their own, to deny the lawyers access to secret evidence used by military panels to determine that their clients were enemy combatants.

Many of the lawyers say the restrictions would make it impossible to represent their clients, or even to convince wary detainees — in a single visit — that they were really lawyers, rather than interrogators.

Jonathan Hafetz of the Brennan Center for Justice at New York University, a lawyer who has helped to coordinate strategy for the detainees, said the government was trying to disrupt relationships between the lawyers and their clients and to stop the flow of public information about Guantánamo, which he described as a "legal black hole" before the courts permitted access for the lawyers in 2004.

"These rules," Mr. Hafetz said, "are an effort to restore Guantána-

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mo to its prior status as a legal black hole."

The dispute comes in a case in which detainees are challenging decisions by military panels that they were properly held as enemy combatants. The Justice Department's proposed rules could apply to similar cases that lawyers say are likely to eventually involve as many as 300 of the roughly 385 detainees now held at Guantánamo.

Some of the detainees' lawyers say the Justice Department proposal is only the latest indication of a long effort to blunt their effectiveness, which they say was evident in statements of a senior Pentagon official early this year. The official, Charles D. Stimson, deputy assistant secretary for detainee affairs, resigned after he was criticized for suggesting that corporations should consider severing business ties with law firms that represented Guantánamo detainees.

Under the current rules, legal mail is inspected for contraband but is not read. The lawyers, who have security clearances, are presumed to be entitled to review classified evidence used against their clients.

There is no limit on the number of times lawyers can visit their clients.

Some say that they have been to Guantánamo 10 or more times and that they have needed the time to work with clients who are often suspicious and withdrawn.

Justice Department officials would not comment on the proposal, which is scheduled to be the subject of a court hearing on May 15.

The filing used combative language, saying lawyers had been able to "cause unrest on the base" and mentioned hunger strikes, protests and disobedience. An affidavit by a Navy lawyer at Guantánamo, Cmdr. Patrick M. McCarthy, which accompanied the filing, said lawyers had gathered information from the detainees for news organizations. Commander McCarthy also said the lawyers had provided detainees with accounts of events outside Guantánamo, like a speech at an Amnesty International conference and details of terror attacks.

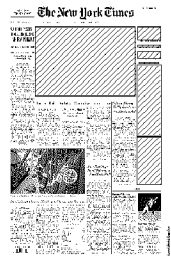
"Such information," his affidavit said, "threatens the security of the camp, as it could incite violence among the detainees."

Several detainees' lawyers involved in some of the incidents denied that they had caused security problems. Neil H. Koslowe, a lawyer at Shearman & Sterling in Washington, called the assertion a "McCarthy-era charge" that was not supported by the evidence.

The dispute over the lawyers' role is one of the first issues the appeals court in Washington will have to decide as it opens a new chapter of the legal battle over Guantánamo. In 2005, Congress designated that court as the forum for detainees to directly challenge decisions made by the Pentagon's combatant status review tribunals designating them as enemy combatants.

But many detainees' lawyers have resisted filing petitions to review those decisions because Congress narrowly defined the arguments the appeals court could consider. The law said the court could review whether a panel's decision "was consistent with the standards and procedures" set forth by the Pentagon.

Instead, many detainees' lawyers pursued habeas corpus petitions, using the centuries-old legal proceeding to ask a judge for release from imprisonment. But after a complex trip through the courts, Congress in 2006 passed a provision intended to strip courts of the authority to hear



habeas corpus cases involving Guantánamo detainees.

A divided panel of the federal appeals court in Washington upheld that provision in February. And early this month, the United States Supreme Court declined to review that decision. Two justices, John Paul Stevens and Anthony M. Kennedy, said that before the Supreme Court could again consider whether Congress was permitted to strip the courts of the ability to consider the habeas corpus cases, the detainees had to try to complete the appeals court review of their enemy combatant decisions.

As a result, much of the focus in the legal battle is now shifting to the appeals court. Scores of petitions seeking review of the combatant-status rulings are expected to be filed in the coming weeks, according to the Center for Constitutional Rights, an advocacy group that has been coordinating the detainees' lawyers. The May 15 arguments will focus on rules that could apply to all of those cases.

Lawyers say they are pressing ahead with the more limited review process in the appeals court as part of an effort to set the stage for a return to the Supreme Court. Some lawyers said that while they may lose, that would allow them to argue to the Supreme Court that the reviews were so limited that the detainees needed the more sweeping consideration permitted in habeas corpus cases.

But government lawyers, too, are developing new strategies in the wake of the Supreme Court action this month. They say that Congress and the courts have determined that expansive habeas corpus petitions are not available to the detainees.

As a result, they say, rules like those that allowed unlimited visits with detainees are no longer necessary as the detainees pursue the more limited appeals court review.

But, while arguing that detainees have no right to lawyers, the Justice Department filing said the government was giving the Guantánamo detainees enough access to lawyers so that "the court's review will be assisted by having informed counsel."

Addressing claims that lawyers' actions have led to unrest.



Paul J. Richards/Agence France-Presse, via Getty Images

A military guard on duty this week at the United States naval base in Guantánamo Bay, Cuba, where about 385 detainees remain in custody.



Paul J. Richards/Agence France-Presse, via Getty Images

A detainee this week at the naval base in Guantánamo Bay, Cuba. The Justice Department has proposed new rules for lawyers with clients there.