

Detainees' lawyers: U.S. broke own rules

In court, they took issue with the "enemy combatant" label and called for a release.

By Andrew O. Selsky
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SAN JUAN, Puerto Rico — Lawyers for Guantanamo Bay detainees told a federal appeals court yesterday that the United States violated its own rules when it branded hundreds of prisoners as enemy combatants — basing their argument on statements by two U.S. military officers.

The lawyers asked the U.S. Court of Appeals for the District of Columbia Circuit to order the immediate release of Mohammed Sulaymon Barre, a Somali among 360 prisoners at Guantanamo Bay. Barre was arrested in Pakistan in November 2001 after he had obtained refugee status from a U.N. agency.

Shane Kadidal, a New York lawyer, said petitions would be filed for other Guantanamo detainees, alleging that the military violated its own rules in

the Combatant Status Review Tribunals — the military panels that determine whether someone was an enemy combatant who should be held.

Barre's attorneys say a Navy rear admiral who used to be in charge of the tribunal system noted in an affidavit that the military, at least in some cases, did not present all exculpatory evidence.

In his May 31 statement, Navy Rear Adm. James M. McGarrah acknowledged that "if certain information which suggested that the detainee should not be designated as an enemy combatant was duplicative," then that "duplicative information" might not have been presented to the tribunals at Guantanamo.

Evidence indicating that a detainee was not an enemy combatant may also have been excluded "if it did not relate to a specific allegation being made against the detainee," McGarrah said.

Combatant Status Review Tribunals have been held for about 570 detainees at Guantanamo Bay, the U.S. naval base in southeast Cuba. The

military determined that all but 38 were "no longer enemy combatants."

Rules issued by Deputy Secretary of Defense Gordon England in July 2006 stipulate that any "evidence to suggest that the detainee should not be designated as an enemy combatant" must be presented to the tribunal.

A Pentagon spokesman defended the process yesterday, referring a reporter to a statement by Justice Department lawyers that said "it is manifestly reasonable not to fill the administrative record with duplicative material."

Furthermore, presenting exculpatory evidence unrelated to a specific allegation against the detainee "would be useless at best and confusing at worst," the Justice Department lawyers argued.

The New York-based Center for Constitutional Rights, which represents many at Guantanamo, filed the petition yesterday. It did not file the petition on behalf of other detainees because the court previously requested that cases be presented individually, Kadidal said.

