

Third round at US Supreme Court for Guantanamo detainees seeking rights

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WASHINGTON: The U.S. Supreme Court is struggling yet again over how much justice is enough for foreign terror suspects held at Guantanamo Bay. The Bush administration is resisting mightily pleas for prompt court hearings.

Even should the court rule quickly and decisively for the detainees, the legal fight still could be around when a new president succeeds George W. Bush in 13 months.

Most questions from the justices in arguments Wednesday seemed to accept that the 305 men held at the U.S. naval base in Cuba, many for almost six years without charges, have some rights to challenge their detention.

Instead, the crucial question that emerged was whether the limited court review created by the Bush administration and Congress in response to earlier Supreme Court rulings for the detainees was good enough.

The court's resolution of this matter, expected in a decision early next year, could determine whether the detainees receive prompt hearings that might result in freedom for some or face many more months, even years, of legal proceedings and imprisonment.

Justice Stephen Breyer tried to capture the inadequacy of the review process when he spoke of a detainee who, after six years in jail, may want to argue that the Constitution says he must be charged or released. "I don't see anything," Breyer said, "that permits me to make that argument. So I'm asking you: Where can you make that argument?"

Solicitor General Paul Clement, the Bush administration's top Supreme Court lawyer, replied, "I'm not sure that he could make that argument."

Breyer said: "Exactly."

The administration quickly built and opened the detention facility at Guantanamo Bay after the Sept. 11, 2001, terror attacks and accepted in January 2002 its first prisoners, alleged to be enemy combatants suspected of ties to the al-Qaida network or the radical Islamic Taliban government of Afghanistan.

The Supreme Court has ruled twice that people held there without charge can go into civilian courts to seek their freedom. Each time, the administration and Congress, then controlled by Republicans, has changed the law to try to close courthouse doors to the detainees.

Two dozen protesters, some in prison-like orange jumpsuits, chanted and waved signs outside the Supreme Court building on Wednesday. "Restore habeas corpus!" they chanted, referring to the right of a detained person to have the legality of his detention reviewed by a court.

Clement, in his written argument, said foreigners captured and held outside the United States "have no constitutional rights to petition our courts for a writ of habeas corpus."

The government lawyer spent most of his time Wednesday telling the justices that if they determine

that he is wrong on that constitutional question, they should not rule whether procedures in place are adequate.

Instead, he said the court should return the issue to the U.S. Court of Appeals for the District of Columbia Circuit, where the detainees' status as enemy combatants is undergoing a highly restrictive form of review. Compared with protections historically afforded foreigners held by the United States somewhere other than on U.S. soil, the review is a "remarkable, remarkable liberalization," Clement said.

Richard Samp, who wrote a brief for the conservative Washington Legal Foundation that supported the administration, said such an outcome is about the best the government can expect. "Time is the government's friend in this case," Samp said.

Justice Anthony Kennedy, considered a pivotal vote in the case, also raised the possibility of allowing the appeals court to rule whether the review process is an adequate substitute for the court hearings the detainees want.

Seth Waxman, the detainees' lawyer, said that review is "structurally flawed" and pleaded for prompt hearings for his clients after their lengthy detention.

Detainees cannot introduce evidence of their innocence and have no right to a lawyer, Waxman said. The Washington appeals court "has already said it will not hear any new evidence," he said. The court also will presume that evidence about the detainees that was considered, unchallenged, by panels of military officers is correct, Waxman said.

Chief Justice John Roberts and Justice Antonin Scalia appeared most interested in pressing Waxman about whether the detainees have any right to a court hearing.

"Show me one case" down through the centuries where circumstances similar to those at Guantanamo Bay entitled an alien to challenge his detention in civilian courts, said Scalia.

Kennedy, however, seemed to answer that question in a concurring opinion in *Rasul v. Bush*, the 2004 case that was the court's first foray into the administration's detention policies.

"Guantanamo Bay is in every practical respect a United States territory," Kennedy said in the earlier ruling.

The justices decided to review the issue in June, after having turned down the detainees' appeal in April. They provided no explanation, but their action followed a declaration from a military officer who criticized combatant status review tribunals.

The officer, Lt. Col. Stephen Abraham, was at the court Wednesday. "To those who have defended the tribunals, suggesting that it is an adequate substitute for habeas corpus, I would say just one thing to them: 'You did not sit on those tribunals. I did,'" Abraham said.

The United States has no plans to put most of those held at Guantanamo on trial. Just three detainees face charges under the Military Commissions Act, and the military has said it could prosecute as many as 80.

Associated Press writers Natasha Metzler and Pete Yost contributed to this report.