

Some cleared Guantanamo inmates stay in custody

Lawyers call US system of hearings a sham

By Farah Stockman

GLOBE STAFF

GUANTANAMO BAY — About a quarter of detainees who were cleared to leave Guantanamo Bay prison after hearings in 2005 and 2006 remain in custody, raising questions among inmates and their lawyers about the legitimacy of the system of hearings to review evidence against the prisoners.

The military's failure to release all of those who were cleared to leave — combined with the fact that dozens of other inmates who were not cleared have nonetheless been released — has led many inmates and their lawyers to contend that the system is a sham, and that the real decisions are being made elsewhere.

The military says most of the cleared inmates remain in custody because of difficulties in negotiating terms of their release to their home countries. But officials also acknowledge that the hearings are not the final decision on an inmate's fate, and that the Pentagon retains the power to hold even those who have been cleared by the three-officer panels who review the inmates' cases.

The system of hearings was enacted after the Supreme Court insisted inmates be given a chance to present evidence and argue for their release. The court did not specify what procedures should be used, but required that in-

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mates get a chance to argue for their freedom.

Next month, the high court will review the system, and the fairness of the hearings will be a major point of contention. In the government's brief, it cites annual reviews as part of its argument that detainees "enjoy more procedural protections than any other

captured enemy combatants in the history of warfare."

But the detainees and their lawyers see it differently. According to Pentagon statistics, 10 percent of the prisoners chose to attend their hearings this year. In 2004, more than 60 percent had chosen to attend. The dramatic falloff, lawyers say, is because the inmates do not trust the system.

"It's pretty clear the process is a sham," said Ramzi Kassem, a member of the clinical faculty at Yale Law School who represents an Algerian detainee cleared more than two years ago. "There's strong evidence that the hearings are meaningless."

Shaynan Kadidal, a senior attorney at the Center for Constitutional Rights, which coordinates the defense of the detainees, said of the review-board system, "It's creating a semblance of a process and the illusion that the military has a systematic way of determining who gets released."

Under the system, all inmates receive an initial hearing that determines whether they should be classified as enemy combatants. Afterward, they receive annual reviews before panels made up of three military officers to determine if they are still a threat to the United States. Inmates are invited to submit any new evidence that has emerged as to their level of dangerousness.

The hearings take place in austere trailers without lawyers and almost always without media present. Afterward, the panel issues a "determination" about whether a detainee should be held for another year or transferred to another country. The prisoners can be set free or transferred to their native countries for possible prosecution.

The review hearings, which began in December 2004, serve as the only opportunity for the vast majority of detainees to contest their imprisonment, since only three of the more than 300 detainees have been formally charged with a crime.



After the first round of review hearings in 2005, the Pentagon cleared 133 detainees, according to a list posted on the Pentagon's website in September. About 40 of them remained in custody, according to the Center for Constitutional Rights.

In 2006, a group of 55 detainees was cleared to leave the prison after a second round of hearings, but about 15 of them remain, according to the lawyers' group, which compiled its list based on information it has gathered from its members, Defense Department documents, and other sources.

While those detainees have languished, dozens of others have been sent home or declared eligible to leave even though they were not cleared through the hearings. Among a planeload of 14 Saudis sent home last week, only one appears to have been cleared through the hearings.

Twelve of the 14 detainees who were sent home failed to show up at their hearings last year.

"What it tells you is that the annual reviews don't necessarily determine who is released and who isn't," said Rebecca Dick, a lawyer at the firm Dechert LLP who represents several Guantanamo Bay detainees. "We haven't been able to distinguish any pattern."

Military officials respond that, in all, more than half of the nearly 800 people who have been held at Guantanamo since 2002 have been released through one means or another — proof that the military is eager to release detainees once it determines they are not a threat.

But officials also acknowledge that closed-door negotiations between US officials and the detainees' home countries often play a larger role than the hearings in determining when and if a detainee is released.

"People tend to look at the [review boards' determinations] as the decision — it is not the decision," said Frank Sweigart, director of the office that oversees the review process for enemy combat-

ants. "It is clearly a key factor, but for a person to insinuate that [it] is the single most important factor, I would say that would be incorrect."

In addition, Alan Liotta, who oversees detainee matters at the Defense Department policy office, said officials in Washington conduct their own reviews. He said they consider factors including new evidence, the danger posed by the detainee, and the willingness of the detainee's home country to promise that he will not threaten the United States.

"It is important that people understand that the process is set on a case-by-case basis assessing the threat of the individual and considering the circumstances in the country they will be returning to," he said.

When questioned about the delays in releasing cleared detainees, Pentagon officials have often pointed the finger at the detainees' home countries, saying that the countries will not accept them or cannot guarantee that they will not be mistreated upon their return.

But the list of cleared detainees includes at least a dozen from Afghanistan, a country that has repeatedly accepted its citizens back and agreed that they would not be mistreated.

Defense lawyers say they believe the review hearings are designed to give the impression of due process, while the real decisions are made through a separate process in which the foreign policy interests of the United States and other countries takes precedence over fairness to the detainees. Therefore, they say, the detainees are being denied their right to contest their detentions before an impartial decision maker, as the Supreme Court ordered in 2004.

The annual hearings "are window dressing," said Lynne Soutter, a Boston lawyer with the firm WilmerHale who is involved in the latest Supreme Court challenge.

A lack of confidence in the pro-

cess is a possible explanation why fewer detainees are opting to argue their cases at the hearings. In 2004, 60 percent chose to attend their hearings, according to Captain Lana Hampton, a Pentagon spokeswoman. That number dropped to less than 40 percent in 2005, less than 20 percent in 2006, and 10 percent in 2007.

Hampton said reasons vary for the decline in participation.

"Some detainees refuse to leave their cells, while many have stated that they have told their story at one or more proceedings," she said.

But the plummeting participation has disturbed the military officers who conduct the hearings, according to transcripts.

Officers have urged detainees to spread the word in the prison about the importance of the hearings.

"These men respect you," the presiding officer told an elder Afghan detainee in 2006. "I want to ask you to encourage your friends to come to their boards, because I tell you now, from one man to another, it makes a difference."



BRENNAN LINSLEY/ASSOCIATED PRESS/FILE

A detainee walked past cell doors last month at the Guantanamo Bay detention facility in Cuba.