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APPEALS COURT DISMISSES SUIT CHALLENGING DETENTION OF TALIBAN AND AL QAEDA FIGHTERS IN CUBA *(Coalition of Clergy, Lawyers, and Professors v. Bush)*

The United States Court of Appeals for the Ninth Circuit affirmed a lower court decision that dismissed a habeas corpus petition filed by a group of activists on behalf of the detainees in Guantanamo Bay, Cuba, on the grounds that the plaintiffs lacked legal standing to bring the case. The decision is a victory for WLF which had urged the court to dismiss the case for lack of jurisdiction. WLF recently filed a brief in a related case in the U.S. Court of Appeals for the District of Columbia Circuit, *Rasul v. Bush*, which will be heard on December 2, 2002.

In this case, a petition for habeas corpus was filed in the U.S. District Court for the Central District of California by a group of activists seeking judicial review of the conditions of confinement of the detainees at Camp X-Ray in Guantanamo Bay, Cuba. The detainees include Taliban and al Qaeda fighters captured by U.S. forces in Afghanistan. The so-called "Coalition of Clergy, Lawyers, and Professors" includes such activists as Ramsey Clark, a former Attorney General who has represented radicals and terrorists (including one who was convicted in the 1993 World Trade Center bombing), and activist Professor Erwin Chemerinsky of the University of Southern California Law School.

The district court dismissed the petition on three grounds: 1) the petitioners lacked standing to assert claims on behalf of the detainees and were thus "intermeddlers;" 2) that none of the named custodians of the detainees were present within the jurisdictional reach of the district court; and 3) that because the detainees are aliens being held abroad rather than on U.S. soil or territory, no federal court has jurisdiction to entertain the habeas petitions under controlling Supreme Court precedent. While the United States has control over Guantanamo Bay pursuant to a lease agreement with Cuba, sovereignty over the area remains with Cuba.

In its decision affirming the district court, the court of appeals held only that the plaintiffs lacked standing to bring the case on behalf of the detainees. As the court stated:

The Coalition has not demonstrated any relationship with the detainees. The record is devoid of any effort to even communicate with the detainees. Certainly the absence of any connection or association by the Coalition with any detainee is insufficient even under an elastic construction of the significant relationship requirement to confer standing.

Having found that the plaintiffs lacked standing, the court of appeals vacated that part of

the lower court decision finding that no court could adjudicate the claim because the aliens are physically located in a foreign country, namely, Cuba. That issue will most likely be addressed by the D.C. Circuit in the upcoming argument in the *Rasul v. Bush* case where relatives of some of the detainees have filed a habeas corpus case, and thus, would appear to have standing to bring the challenge.

"It's absolutely outrageous that while our brave men and women in the military are fighting against terrorism in Afghanistan and elsewhere, activists at home are trying to use the courts to thwart our war efforts to capture, interrogate, and punish those responsible for attacking America," said Paul Kamenar, WLF's Senior Executive Counsel.

WLF is the leading public interest law and policy center that has litigated many other court cases brought by activists against our Nation's war on terrorism.

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