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Held without evidence? Released with evidence? Files raise questions on Guantanamo decisions

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Two dozen prisoners were cleared for transfer from Guantanamo Bay last year even though U.S. military panels found they still posed a threat to the United States and its allies.

Dozens more were cleared even though they didn't show up for their hearings. One Saudi arrested in Afghanistan was approved for release after offering a peculiar account that he had gone to the Taliban-controlled country to lose weight.

Pentagon documents obtained by The Associated Press show seemingly inconsistent decisions to release men declared by the Bush administration to be among America's most-hardened enemies. Coupled with accusations that some detainees have been held for years on little evidence, the decisions raise questions about whether they were arbitrary.

Human rights groups contend the documents show the military panels, known as Administrative Review Boards, often are overridden by political expediency at Guantanamo, where about 340 men are still held.

"What it says on your passport is more important than what it says in your ARB," said Ben Wizner, an attorney for the American Civil Liberties Union, noting that European citizens at Guantanamo were among the first to get out amid intense lobbying by their countries. "It's all about diplomatic pressure."

The Pentagon created the Administrative Review Board process in 2004 as the U.S. Navy base in Guantanamo Bay, Cuba, was filling up with men captured around the world in the war on terrorist groups. It said the boards would "help ensure no one is detained any longer than is warranted, and that no one is released who remains a threat to our nation's security."

The boards hold sessions in an air-conditioned trailer, hearing testimony from shackled detainees and making recommendations on whether to transfer, release or continue to hold the men. The final decisions are made by Deputy Secretary of Defense Gordon England, who is not bound by the recommendations, but who officials say usually follows them.

The Pentagon, in response to a Freedom of Information Act request from AP, released transcripts and memos last month from last year's hearings.

Based on those sessions, England ordered 273 inmates kept at Guantanamo and 55 transferred to authorities in other nations. He didn't order any outright releases, but most detainees transferred from Guantanamo have been freed soon after arriving home.

The heavily censored documents indicate testimony before the panels often had little effect on the outcome. Of the 55 detainees cleared for transfer to their homelands or countries of residence, only 14 participated in their hearings. And 24 found to still pose a threat were ordered transferred by England anyway.

Navy Cmdr. Jeffrey Gordon, a military spokesman, said "a great majority of detainees who left Guantanamo have been a threat," but added that many factors are considered in deciding their fate.

"There are mitigating factors that the deputy secretary of defense can take into account in deciding whether to approve a transfer of a detainee," Gordon said by phone from the Pentagon.

U.S. officials say those include whether the receiving country can confiscate the detainee's passport and

monitor or detain him.

The military has kept secret much of the case files, so there is no way for the public to judge the quality of the evidence against each detainee. But defense attorneys say that while classified evidence is often used to justify holding a detainee, it rarely comes into play in decisions to let people go from Guantanamo.

Lt. Col. Stephen Abraham, an Army reservist who served as a liaison between Guantanamo tribunals and intelligence agencies, criticized the process used to decide which detainees are sent home.

"The decisions are not orderly nor analytic and only rational if you accept the premise that they are made for political and not legal reasons," Abraham said in an e-mail to AP.

One of the men who was transferred was Mohammad Akhtiar, an Afghan who told the panel he had worked for the U.S.-allied Karzai government in Afghanistan and that he was steadfastly opposed to the Taliban. He listed several senior Afghan officials, including the minister for refugees and repatriation, who he said could vouch for him.

In December, Akhtiar was flown to Afghanistan and immediately released, said his U.S. lawyer, Dicky Grigg. Grigg considered it a happy ending, saying: "I believed that Mohammed Akhtiar was not a terrorist."

But some of the Arbitration Review Board results were murkier.

Abdul Rahman Mohammed Hussein Khowlan, a Saudi, said he went to Afghanistan to lose weight and to find the Prophet Muhammad's clothing — even though the founder of Islam had never been in that country.

A board member asked Khowlan to explain the search, but the detainee, who allegedly was carrying a Kalashnikov assault rifle when he was captured, responded: "There's nothing to add."

England ordered Khowlan sent home to Saudi Arabia, whose government is a key U.S. ally in the Middle East.

During the Arbitration Review Board hearings, the transcripts show, military officers painstakingly questioned detainees to gauge the truth of their accounts. The panel's recommendations are censored from the Pentagon memos, however, meaning only England's final decisions are publicly known. But the military said those decisions differed from the panels' recommendations only occasionally.

Human rights groups say the documents bolster their suspicions the review board hearings are window dressing and that the panels aren't really the mechanism for determining who gets out of Guantanamo and who stays.

"The findings suggest the transfer and release determinations were made independently based on security risks, relations with other countries and other factors that are independent of the ARB process, and that the ARB process may be for show," said Jennifer Daskal, senior counterterrorism counsel for Human Rights Watch.

Lawyers said lobbying by detainees' home countries is a major factor in release decisions. Of the 55 men slated for transfer last year, 30 were from Saudi Arabia, which has a reintegration program that provides former detainees with guidance from psychiatrists, clerics and sociologists.

Wizner, the ACLU attorney, said he did not feel dangerous men were being released from Guantanamo, but rather that the Pentagon was labeling them as threats to avoid accusations it had imprisoned innocent men.

One lawyer said the U.S. even sent away two detainees who "failed" their hearings. England determined last year that both Isa al-Murbati and Jumah al-Dossari should continue to be held, but both got out of Guantanamo this summer, said their New York attorney, Joshua Colangelo-Bryan.

Navy Capt. Lana Hampton, a military spokeswoman, said England on occasion "may change his decision, based on the receipt of additional information or for other reasons," even without another hearing.

Colangelo-Bryan said al-Murbati was released upon arrival in his native Bahrain, an island state in the Persian Gulf that is home to the U.S. 5th Fleet. Al-Dossari, who holds dual Bahraini-Saudi citizenship, is in the Saudi reintegration program and will be home soon, the lawyer said.

"If a government is on good terms with the United States and presses for a detainee's release, the release will

happen regardless of the ARB findings," Colangelo-Bryan said. "I believe that is what happened with Isa and Jumah."

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