

# KAFKA WOULD BE PROUD

The BoGlo reports what we already know—many of the people at Gitmo who have been determined to not be a threat in status review hearings remain in Gitmo. And, at the same time, some people who have been released to their home country have not undergone review hearings.

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.

For example, if you're Saudi, they may send you home even if you haven't been cleared.

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.

And here's the takeaway summary of where things stand.

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.

I'm curious what Paul Clement will have to say about this state of affairs when he visits his friends at SCOTUS coming up. You think SCOTUS will be cross that the detainees have not gotten the reviews SCOTUS ordered?