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POLITICS AND POLICY

FROM THE ARCHIVES: August 8, 2002

White House Seeks to Expand Indefinite Detentions in Brigs

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WASHINGTON -- Suspected terrorists Jose Padilla and Yaser Hamdi -- U.S. citizens being held in stateside Navy brigs without bail, charges, access to attorneys or the right to remain silent -- may soon have company.

Stung by the courtroom circus that yet another accused terrorist, Zacarias Moussaoui, has created, and the aggressive defense marshaled by John Walker Lindh before he plea-bargained his way out of a possible life sentence, the Bush administration is preparing to expand its policy of indefinitely detaining in U.S. military jails people it designates as "enemy combatants." Such prisoners -- whether Americans or foreigners captured in the U.S. -- aren't afforded the same constitutional rights as criminal defendants, or even the limited rights allowed in military tribunals.

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The White House is considering creating a high-level committee to decide which prisoners should be denied access to federal courts. The Goose Creek, S.C., facility that houses Mr. Padilla -- mostly empty since it was designated in January to hold foreigners captured in the U.S. and

facing military tribunals -- now has a special wing that could be used to jail about 20 U.S. citizens if the government were to deem them enemy combatants, a senior administration official said.

U.S. citizens or aliens arrested on American soil have better claims to constitutional rights than the foreigners captured overseas who are being held at the U.S. Guantanamo Bay Naval Base in Cuba. This year, two federal judges have ruled that the Guantanamo detainees have no right to seek freedom in U.S. courts.

Raising the stakes this week in what could become a constitutional showdown, the administration refused a federal court's order to turn over intelligence documents related to the capture of Mr. Hamdi, who is imprisoned in Norfolk, Va., claiming the judge lacked the authority on procedural grounds. It also is trying to get his public defender removed from the case. Officials said they selected brigs in South Carolina and Virginia partly because they fall under the jurisdiction of courts that are more conservative and presumably more sympathetic to the administration. The Padilla case is being handled by a judge in New York, where a grand jury has been investigating terrorist activity, but the administration wants it transferred to Charleston, S.C.

The moves are part of a fierce fight the administration is waging to establish precedents in the two cases that would allow it to indefinitely detain more people it designates as wartime foes. The issues seem destined for the Supreme Court, which has a mixed record on such matters. During the Civil War, it barred the military detention of noncombatant Americans when federal courts are functioning, but it upheld the roundup of 120,000 Japanese-Americans and the secret trial and execution of Nazi saboteurs during World War II.

"There's a different legal regime that we're developing" to confront terrorism, a senior official said, melding the once-separate realms of civilian law and the law of war. Criminal law determines guilt and assigns punishment for past wrongdoing, but the law of war gives governments vast powers to prevent possible harm by imprisoning and interrogating enemy soldiers.

Does that mean future Moussaouis won't face civilian trials? "Not if we can help it," said a White House official.

Some in Congress consider the policy misguided. "The fact that somebody is despicable ... is not enough under the tradition and history of this country to imprison them forever without them ever having a hearing," said Sen. John Edwards, a North Carolina Democrat.

Critics point to a 1971 law, partly inspired by the Japanese-American detentions, that bars imprisoning citizens "except pursuant to an act of Congress." The administration maintains that the law doesn't apply to enemy combatants.

'ENEMY COMBATANTS?'

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Attorney General John Ashcroft said last month that courts could hear petitions filed for such prisoners. But in papers filed Tuesday in the Hamdi case, the Justice Department argued for the narrowest possible review, saying a signed Pentagon declaration that Mr. Hamdi is an enemy combatant should settle the matter.

At the outset of the campaign against al Qaeda, the international Islamist network organized by Osama bin Laden, career federal prosecutors maintained that they are best suited to deal with terrorists. But the Moussaoui and Lindh cases soured top officials on that route.

After dropping the most serious charges against Mr. Lindh, prosecutors agreed to let him plead guilty to aiding the enemy in Afghanistan, and he now faces 20 years in prison. But the elaborate defense put up by the Californian's lawyers drained government resources and threatened to expose intelligence, military techniques and personnel, and even to bring al Qaeda battlefield prisoners to the witness stand in the Alexandria, Va., federal courthouse. Mr. Moussaoui, a French citizen captured in Minnesota while allegedly conspiring to take part in the Sept. 11 plot, is representing himself and flooding the same court with bizarre and accusatory motions aimed at glorifying Mr. bin Laden.

By the time Mr. Padilla, an American from Chicago, was arrested in May, the administration already had tired of such games. Mr. Padilla is a onetime gang member who converted to Islam in the early 1990s. He was arrested after returning from Pakistan, where he allegedly took part in an al Qaeda plot to detonate a "dirty bomb" that would spread radioactive material in the U.S.

Originally jailed on a secret "material witness" warrant, Mr. Padilla was transferred to military custody on the eve of a hearing where a court-appointed lawyer was to seek his freedom. President Bush personally approved Mr. Padilla's transfer, but officials said they are considering procedures that wouldn't require presidential involvement in future cases.

Under one proposal, a committee of the attorney general, the defense secretary and the director of central intelligence would determine whether a U.S. citizen should go to military detention. If the prisoner were foreign, the national-security adviser also would be involved.

At least two prisoners now held as material witnesses could be candidates for combatant classification:

- James Ujaama, a U.S. citizen from Seattle, was arrested last month as part of an investigation into alleged plans to set up an al Qaeda-linked training camp in rural Oregon. He is jailed in Alexandria.
- Mohammed Mansour Jabarah, a Kuwaiti-born Canadian citizen, was arrested in Oman and turned over to the U.S. after allegedly plotting to blow up U.S. and Israeli embassies in Singapore. He is being held at Fort Hamilton in Brooklyn, N.Y., according to an administration official.

In Hanahan, S.C., next door to Mr. Padilla's brig, residents have their own concerns. "I didn't know they could lock you up without a trial," says Charles Bates, a retired shipyard worker whose house abuts the naval facility. His greater concern, however, is the possibility of retaliatory terrorist strikes against his town. "It's not helping the value of our property, having that brig there," he adds.

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