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Legal residents' rights curbed in detainee bill

The Boston Globe

By Farah Stockman, Globe Staff | September 28, 2006

WASHINGTON -- A last-minute change to a bill currently before Congress on the rights of prisoners at Guantanamo Bay could have sweeping implications inside the United States: It would strip green-card holders and other legal residents of the right to challenge their detention in court if they are accused of being "enemy combatants."

An earlier draft of the bill sparked criticism because it removed the rights of Guantanamo Bay detainees to challenge their detentions in federal court. But changes made over the weekend during negotiations between the White House and key Republicans in Congress go even further, making it legal for noncitizens inside the United States to be detained indefinitely, without access to the court system, until the "war on terror" is over.

It is unclear who initiated the changes. The bill, which also sets up a new system of military trials for terrorist suspects held at Guantanamo Bay, passed the House yesterday and is expected to be voted on in the Senate today, before Congress breaks for midterm elections.

Human rights advocates yesterday lobbied against the bill.

"This would purport to allow the president, after some incident, to round up scores of people -- people who are lawfully here -- and hold them in military prisons with no access to the legal system, whatsoever, indefinitely," said Joe Onk, senior policy analyst at the Open Society Policy Center, a Washington-based advocacy organization.

Other last-minute additions to the bill include provisions that would broaden the definition of enemy combatant to include anyone who gives material support to enemies of the United States and its allies, and would prevent detainees who have been released from US custody from suing the US government for torture or mistreatment.

But the part of the bill that worries advocates for immigrants most is the one stating that "no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination."

"Habeas corpus" is the legal mechanism that gives people the right to ask federal courts to review their imprisonment.

In the original bill, the section banning "habeas corpus" petitions applied only to detainees being held "outside the United States," referring to the roughly 450 prisoners held at Guantanamo Bay. But in recent days, the

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phrase "outside the United States" was removed.

The White House did not respond to questions asking why the restriction was extended to people in the United States.

But at a press conference after the changes were made, National Security Advisor Stephen Hadley praised the bill as "a legislative framework that allows us to capture, detain, and prosecute and bring to justice terrorists." [Continued...](#)

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Human-rights activists believe the bill would do far more, including give the president greatly expanded powers to hold people indefinitely.

"What if they had this after Sept. 11 [2001] when they picked up all kinds of folks on immigration charges and material-witness charges and tried them in secret immigration proceedings?" said Jumana Musa, a lawyer with Amnesty International. "Those people were deported. Now [if the bill passes], they could be detained indefinitely as enemy combatants."

Eugene R. Fidell, president of the National Institute of Military Justice, added that: "What it means is that certain categories of people are going to be second-raters in our legal system."

"You can't sneeze at the fact that citizenship has got to mean something," Fidell said. "But if I were a green-card holder, thinking about the other pressures that are being brought to bear on green-card holders, it could make me pretty nervous."

Wartime decisions to hold people perceived as threats have often proved problematic. During World War II, the government held over 100,000 Japanese and Japanese-Americans in internment camps. (When they challenged their internment, the Supreme Court twice ruled against them. Decades later, however, the government acknowledged that the internment was unjustified and apologized.)

Jennifer Daskill, US advocacy director of Human Rights Watch, predicted that the Supreme Court would strike down the provisions in the current bill that would take away access to courts for legal US residents arrested in the United States. Still, she said, it could take years before the court rules on the issue, during which time many people could be imprisoned.

The provision would have an immediate impact on Ali Saleh Kahlal al-Marri, so far the only known "enemy combatant" held inside the United States.

Marri, a Qatari student arrested in 2001, has been held in a US military brig without charges for four years.

Like hundreds of detainees at Guantanamo Bay, Marri has challenged his detention in federal court; passage of the new law would throw out his case.

Senate Judiciary Committee chairman Arlen Specter, a Pennsylvania Republican, and Senator Patrick Leahy, a Vermont Democrat, have filed an amendment to the Senate bill under which detainees -- both inside Guantanamo Bay and in the United States -- would retain their access to the courts.

But it was unclear last night whether the amendment has enough support to pass. So far, moderate Republicans have not joined Specter and leading Democrats in supporting the amendment.

Senator Susan Collins, a Maine Republican who is considered a moderate, said she would not support Specter's amendment.

"Detainees from Guantanamo have clogged our courts with more than 420 lawsuits challenging everything from their access to the Internet to the quality of their recreation facilities," her office said in a statement that called the lawsuits "an abuse of our court system."

Collins did not comment on the bill's restriction of rights for non-citizens in the United States. ■

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