

Secret arrests and detentions

Bush invokes “enemy combatant” rule against defendants

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In the wake of a federal appeals court ruling earlier this month affirming the US government’s right to conduct secret arrests, the Bush administration has announced a series of measures that significantly escalate the police-state powers it has assumed in the name of a “war on terrorism.”

On June 23, Bush signed an order declaring Ali S. Marri an “enemy combatant.” Marri, a Qatari immigrant and resident of Peoria, Illinois, was arrested in December of 2001 during the nationwide roundup of Arabs and Muslims in the wake of the September 11 terrorist attacks.

The designation of Marri as an enemy combatant denies him the right to a trial, placing him in legal limbo, without the right to a lawyer or the right to answer charges and evidence brought against him. He is subject to indefinite detention in a military brig, with the possibility of being brought before a military court at any time. Such a drumhead proceeding could result in a death sentence, with no right of appeal.

The defendant was immediately transferred from an Illinois federal prison to a Navy brig in South Carolina.

In a separate action, the government announced June 20 that Iyman Faris, a Columbus, Ohio truck driver and naturalized US citizen from Kashmir, pled guilty in a closed-door proceeding to two counts of aiding a terrorist organization, after having waived his right to a trial. Faris had been arrested, detained and charged in secret.

Government sources told reporters for both the *New York Times* and the *Washington Post* that Faris agreed to plead guilty and face a possible 20-year sentence after he was threatened with being designated an enemy combatant and turned over to the military.

Faris was accused of involvement in an improbable plot to bring down the Brooklyn Bridge in New York City by cutting its suspension cables with acetylene torches.

The action against Ali S. Marri marked the first time the Bush administration has stopped an ongoing judicial process by dropping criminal charges and declaring a defendant an

enemy combatant. The president has designated two other men as enemy combatants: Yaser Esam Hamdi, who was captured in Afghanistan; and Jose Padilla, who was arrested in Chicago in May 2002 and accused of plotting to produce a “dirty” radioactive bomb. Both Padilla, born in Brooklyn, and Hamdi, born in Louisiana, are US citizens.

More than a year after Padilla’s imprisonment, a federal appeals court in New York agreed June 23 to hear an appeal on whether he should have the right to meet with lawyers, who are challenging his military detention. The court is expected to hear oral arguments in October.

The government claims any contact between Padilla and his legal counsel could jeopardize national security. His attorney, Donna Newman, has charged federal prosecutors with trying “to put him in a black hole so he has access to nobody.”

As in the cases of Padilla and Hamdi, no evidence has been presented to substantiate the enemy combatant charge against Marri. Like the other two men, he has been spirited away to a military prison to face indefinite imprisonment without being charged, much less tried, on the say-so of George W. Bush.

The six-point criminal complaint that prosecutors presented against Marri, a graduate student in computer sciences at Bradley University in Peoria, was limited to the claim that he lied to an FBI agent and committed credit card fraud. The charge of lying was based on his denial of FBI accusations that he had telephoned a person named as an “unindicted co-conspirator” in the terrorist conspiracy indictment against Zacarias Moussaoui.

Arrested in December 2001, Marri, married and a father of five, was held incommunicado for a year as a “material witness”—the same legal pretext used to detain hundreds of Muslim immigrants—before the complaint was issued against him. He had been scheduled to go to trial next month.

Attorneys for Marri vowed to challenge the government’s action by filing a writ of habeas corpus in federal court.

They insisted that their client had a strong defense against the government's criminal charges and that much of its justification for labeling Marri an enemy combatant had never been raised before this week.

"There is nothing in the indictment or the discovery that I'm aware of that directly links him to Al Qaeda, or that he is an enemy combatant," said one of the lawyers, L. Lee Smith. "If that evidence exists, it certainly wasn't established in what was turned over to us."

Lawrence Lustberg, a second attorney for the student, told the *Washington Post*: "If the government had proof he was involved in terrorism, they would have charged him with that, but they didn't."

Civil liberties groups denounced the use of the enemy combatant designation to halt a pending trial. Human Rights Watch charged that the action placed Marri in a legal "black hole," depriving him of the most basic constitutional rights.

"The Bush administration has once again done an end run around the criminal justice system," said a spokesman for the group. "It is invoking the laws of war in the United States to justify locking people up without charge and without access to a lawyer. This kind of military detention has no place in a country committed to the rule of law."

In the cases of Marri, Faris and Padilla there are no allegations that they were involved in acts of war, making the "enemy combatant" designation fraudulent on its face. Hamdi is a prisoner of war, captured in the US invasion of Afghanistan, and denied the elementary rights granted to POWs under the Geneva Convention.

In none of these cases has the government presented a shred of evidence in open court that these men were supporters of Al Qaeda, much less involved in acts of terrorism. Instead, Bush, Attorney General John Ashcroft and other US officials have made unsubstantiated and sensationalist accusations of terrorist connections, which were then retailed by the American media as though they were incontrovertible fact.

The timing of these actions is thoroughly suspect. Having held Marri for a year and a half and Faris for three months, the White House decided to announce its extra-constitutional actions against the two men and proclaim them significant victories against terrorism, precisely at the point that it confronts mounting charges of lying to the American people about its reasons for invading Iraq. The obvious intention is to keep the public in a state of confusion and fear, to facilitate the continuation of a policy of military aggression abroad and attacks on democratic rights at home.

With these latest actions, the government is institutionalizing a procedure under which the president, invoking his position as commander-in-chief, can issue an edict and imprison anyone he chooses. To declare someone

an enemy combatant, the president is not even required to present proof of the targeted person's alleged offense. All he has to do is assert the person's guilt.

The USA Patriot Act, rammed through Congress in the wake of the September 11, 2001 attacks, defines terrorism as "acts dangerous to human life that are a violation of the criminal laws" and are intended "to influence the policy of a government." This definition could easily be applied to any of the millions of people who demonstrated against the war in Iraq.

The government can threaten any defendant with being designated an enemy combatant, thrown into a military brig and held indefinitely without legal counsel, in order to coerce him into pleading guilty in court and foregoing his right to a trial.

The administration's actions have provoked little interest, much less protest, from the Democratic Party. Meanwhile, the Pentagon has announced that Deputy Defense Secretary Paul Wolfowitz, one of the chief architects of the invasion of Iraq, will exercise direct control over the military commissions that will try alleged members of Al Qaeda and the Taliban captured by the US and detained at the Guantanamo Bay naval base in Cuba.

These tribunals will deny the accused the right to a jury trial, the right to confront their accusers, and the right to judicial review of their sentences, which could include death. Under the rules outlined by the Pentagon, in the unlikely case that a tribunal hands down an acquittal or a light sentence, US authorities can overrule it and impose their own judgment.

Wolfowitz will play the part of grand jury, chief judge and appeals court. He will decide which detainees go to trial; appoint the military judges; make the final ruling on any procedural or factual motions; and exercise a review and possible alteration of any sentence before handing the case off to Secretary of Defense Donald Rumsfeld and, finally, Bush.



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