

“Bush Pardons Himself”: Detainee Legislation Provides Retroactive Immunity for Bush Administration War Crimes

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WOLF BLITZER

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Let's check in with Jack Cafferty right now.

Jack, I'm beginning to think maybe I shouldn't have done these interviews yesterday and today. Should I feel guilty?

JACK CAFFERTY, CNN ANCHOR: Yes, I don't know, Wolf. If war breaks out between Pakistan and Afghanistan, you know, you may have some guys coming by and knocking on your door asking for transcripts.

Ordinarily, we don't do a question two days in a row, but this is important enough to be an exception. The House just passed President Bush's bill to redefine the treatment of detainees, and the Senate's expected to do the same thing tomorrow. Buried deep inside this legislation is a provision that will pardon President Bush and all the members of his administration of any possible crimes connected with the torture and mistreatment of detainees dated all the way back to September 11, 2001.

At least President Nixon had Gerald Ford to do his dirty work. President Bush is trying to pardon himself.

Here's the deal.

Under the War Crimes Act, violations of the Geneva Conventions are felonies. In some cases, punishable by death.

When the Supreme Court ruled the Geneva Conventions applied to al Qaeda and Taliban

detainees, President Bush and his boys were suddenly in big trouble. They had been working these prisoners over pretty good. In an effort to avoid possible prosecution, they're trying to cram this bill through Congress before the end of the week when Congress adjourns. The reason there's such a rush to do this, if the Democrats get control of the House in November, well, this kind of legislation probably wouldn't pass.

You want to know the real disgrace of what these people are about to do or are in the process of doing? Senator Bill Frist and Congressman Dennis Hastert and their Republican stooges apparently don't see anything wrong with this.

I really do wonder sometimes what we're becoming in this country. The question is this: Should Congress pass a bill giving retroactive immunity to President Bush for possible war crimes?

E-mail your thoughts to CaffertyFile@CNN.com or go to CNN.

Wolf.

BLITZER: Jack, thank you.

Jack Cafferty will be back shortly.

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Two Major Lawsuits Challenge Congress' Detainee Act

Warren Richey

The Christian Science Monitor

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WASHINGTON - President Bush has yet to sign into law Congress's new terror-detainee legislation, but defense lawyers are already asking federal judges to strike down key parts of the measure as unconstitutional.

Two suits were filed this week in US District Court here. At issue: Whether the new antiterror legislation retroactively strips the courts of jurisdiction to hear detainee cases, and if so, would that amount to an unconstitutional suspension of the writ of habeas corpus.

Lawyers rushed to file suit before the measure, the Military Commissions Act of 2006, was signed into law.

"By filing when we did, we wanted to make sure that at least we preserved the retroactivity argument," says Michael Ratner of the New York-based Center for Constitutional Rights, which filed both suits.

The new legislation, passed a week ago Friday, bars judges from hearing detainee lawsuits. Instead, it sets up a much more limited appeals process for detainees who are seeking to challenge their designation as an enemy combatant or to challenge a war crimes conviction by a military commission.

One suit was filed on behalf of Majid Khan, one of the 14 so-called high value Al Qaeda suspects recently transferred from secret Central Intelligence Agency prisons to the terrorist detention camp at Guantánamo Bay, Cuba. The other was filed on behalf of 25 detainees being held among some 500 men at Bagram Air Force Base in Afghanistan.

The new suits join more than 400 other detainee cases filed on behalf of prisoners at Guantánamo currently pending before US district or appeals court judges in Washington. Lawyers in each of those cases are also expected to mount legal challenges to the Military Commissions Act.

All of the Guantánamo suits had been put on hold pending the US Supreme Court's ruling in the Hamdan case, which was announced last June. In that particular case, the high court struck down the Bush administration's military commission process as illegal and ruled that a December 2005 law, the Detainee Treatment Act, had not retroactively stripped the Supreme Court of authority to decide the Hamdan case.

While preserving its own jurisdiction in the Hamdan case, the high court did not make clear whether other courts retained jurisdiction to hear and decide existing detainee cases.

The Military Commissions Act seeks to eliminate any ambiguity on the issue. It says no court, justice, or judge shall have jurisdiction to consider a writ of habeas corpus or any other action by a non-US citizen detained by the US as an enemy combatant. The law says it applies "to all cases, without exception, pending on or after the date of enactment of this act."

If upheld, it would mean the elimination of hundreds of lawsuits.

Bush administration officials have long complained that the suits were becoming a major distraction in the war on terror. They argued that Al Qaeda suspects are no more entitled to litigate legal claims against the US in American courts than were German POWs in World War II.

Lawyers for the detainees say that many of those being held in US custody are innocent and are only seeking a fair opportunity to demonstrate their innocence before a neutral judge.

The Military Commissions Act doesn't just bar suits challenging an individual's detention. It also limits the ability to obtain an independent probe of alleged abusive treatment, including torture.

The two new lawsuits seek to challenge these procedures in different ways.

The Bagram Air Force Base suit tests the scope of a 2004 Supreme Court ruling that extended habeas protections to detainees at Guantánamo. Prior to that ruling, habeas suits filed by noncitizens were only permitted by those detained within US sovereign territory.

The Bagram suit argues that the 2004 ruling made habeas protections available any place in the world under US jurisdiction and control.

The issue is significant because the Military Commissions Act seeks to overturn the 2004 high court ruling by eliminating habeas protections for all non-citizen enemy combatants, regardless of their geographical location.

The Guantánamo suit filed on behalf of Mr. Khan is also aimed at testing the habeas-stripping provisions. The suit says that despite being held in secret CIA detention for 3-1/2 years, Khan, whose family lives in Baltimore, has never had a hearing before a neutral judge or military panel to determine the legality of his detention.

The lawsuit says that as a CIA prisoner Khan was subjected to torture and cruel, inhuman, or degrading treatment. He was coerced into making false and unreliable statements, the suit says. "Khan has not, nor has he ever been, an enemy alien, a lawful or unlawful belligerent, or a combatant of any kind," the suit says.

The US government has a different view of Khan. A declassified profile of Khan by American intelligence officials says he was an Al Qaeda operative selected by 9/11 mastermind Khalid Sheikh Mohammad to participate in a plan to blow up gas stations in the US and poison US water reservoirs. He was also considered for an Al Qaeda attempt to assassinate Pakistani President Musharraf, the profile says.

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