

Civil Rights in America: Senate Debates Indefinite Detentions

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NEW YORK, Mar 5, 2010 (IPS) – Civil liberties advocates and U.S. constitutional law scholars lost no time in condemning proposed legislation introduced in the Senate Thursday that would hand the government the power to indefinitely detain terrorism suspects without charge and to conduct trials through military commissions only.

Typical was the response from the American Civil Liberties Union (ACLU), which said the proposed legislation would “deal a swift blow to due process and the rule of law.”

And Larry Cox, executive director of Amnesty International USA (AI), said, “Military commissions were created to consider evidence too inadequate to submit to a valid court. The commissions do not conform to the due process standards established under international law and do not have legitimacy in the eyes of the global community.”

The “Enemy Belligerent Interrogation, Detention and Prosecution Act of 2010,” introduced by Republican Senator John McCain of Arizona and Independent Joseph Lieberman of Connecticut, would also create a new system of interrogation, requiring intelligence officials to be consulted about how to handle terrorism suspects after their capture.

The bill was precipitated by the Senators’ objections to the Barack Obama administration’s decision to charge accused Christmas Day attacker Umar Farouk Abdulmutallab in the criminal court system.

Abdulmutallab, while in FBI custody, was read his rights, including his right to remain silent and his right to an attorney. These constitutional rights are enjoyed by all persons, whether they are citizens or not, who are arrested on U.S. territory.

U.S. officials insist Abdulmutallab provided valuable intelligence under civilian questioning despite being told he had the right to remain silent.

The McCain-Lieberman legislation would have a “high value detainee” team, made up of members of different intelligence agencies, interrogate and determine whether alleged terrorist suspects are “unprivileged enemy belligerents.” If so, and if the suspect is then charged, the legislation would mandate the use of the military commissions for trial.

President Obama has already created such a team. Last summer, Obama announced a new interagency interrogation task force for extracting information from the most important terrorist suspects in its custody.

Known as the High-Value Detainee Interrogation Group (HIG), the team draws on interrogators, intelligence analysts, linguists and cultural experts to interrogate detainees without torturing them. The unit is housed in the Federal Bureau of Investigation (FBI).

Laura W. Murphy, director of the ACLU Washington Legislative Office, said the bill was “a direct attack on the Constitution.”

Chip Pitts, president of the Bill of Rights Defence Committee (BORDC), told IPS, “This bill’s warped understanding of international law and its mistaken predicate still blur actual wars – such as those in Afghanistan and Iraq today – with the politically appealing yet misleading and overbroad chimera of an endless and geographically unlimited ‘global war on terror’.”

He added, “Particularly when seen along with the Obama administration’s rumored reversal of its prior decision to try 9/11 suspects in civilian courts as opposed to military commissions, it’s another leg in the terrible race to the bottom in which politicians compete to seem ‘tougher’ on terrorism while really diminishing national security.”

Constitutional law experts were equally critical.

Prof. Peter Shane of the Ohio State University law school told IPS, “There seems to be a fundamental philosophical difference between those who believe that the rule of law threatens our fight against terrorism and those who regard it as one of our most potent weapons.”

The Bush administration, he added, “convicted over 300 terrorist suspects apprehended in the United States using our criminal justice system to prosecute terror-related crimes. We should continue to leave these decisions to the discretion of federal prosecutors and investigators.”

Another legal scholar, Prof. Frances Boyle of the University of Illinois law school, told IPS that the current controversy had its roots in the administration of President George W. Bush, who created a universe of “legal nihilism where human beings – including U.S. citizens – can be disappeared, detained incommunicado, denied access to attorneys and regular courts, tried by kangaroo courts, executed, tortured, assassinated and subjected to numerous other manifestations of state terrorism.”

“This category of ‘unlawful enemy combatants’ negates almost the entirety of the post-World War II regime for the International Protection of Human Rights established by the U.N. Charter in 1945 and most of the major international human rights treaties,” he noted. In introducing the proposed legislation, Sen. McCain said it “seeks to ensure that the mistakes made during the apprehension of the Christmas Day bomber, such as reading him a Miranda warning, will never happen again and put Americans’ security at risk.”

The legislation, McCain declared, “would authorise detention of enemy belligerents without criminal charges for the duration of the hostilities consistent with standards under the law of war which have been recognised by the Supreme Court.”

He added, “What we saw with the Christmas Day bomber was a series of missteps and staggering failures in coordination among the most senior members of the administration’s national security officials that have continued to be compounded by administration apologists who still don’t seem to understand that repeating the same mistakes that were made in 2001 and 2002 is going to lead to the deaths of many more Americans.”

The proposed legislation was introduced at a time of fierce election-year acrimony over how the United States should handle alleged terrorists.

In addition to attacking President Obama over the treatment of the so-called Christmas Day bomber, Republicans have also denounced the administration's call for trial in a civilian court of Khalid Sheikh Mohammed, the self-proclaimed mastermind of the Sep. 11, 2001 attacks.

Democrats have responded by pointing out that U.S. civilian courts, under both the Bush and Obama administrations, have tried and convicted more than 300 terrorists. They have said that favouring military trials hands terrorists a propaganda victory.

But the Washington Post is reporting that Obama's advisers are nearing a recommendation that Mohammed be prosecuted in a military tribunal, thus reversing Attorney General Eric H. Holder's plan to try him in civilian court in New York City.

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