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Senator Seeks to Bar Detainees from U.S. Courts

Lindsey Graham said he was against "criminalizing the war." Some Republican colleagues disagreed.

Liz Sidoti
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WASHINGTON -- A Senate Republican wants to bar suspected foreign terrorists held at the U.S. prison in Guantanamo Bay, Cuba, from challenging their detentions in U.S. courts. The proposal is drawing protest from human-rights groups and opposition from the Bush administration.

The senator, Lindsey Graham of South Carolina, said he also faced some resistance from Senate GOP colleagues as he considered whether to try attaching his proposal to a defense bill that the Senate is debating this week. Senators could vote on the proposal as early as today.

"What I object to is criminalizing the war," said Graham, a 20-year Air Force lawyer. "Enemy combatants, POWs have never had access to federal court before."

His effort comes as the GOP-led Senate prepared to rebuff the White House a second time by approving another defense bill that would ban the cruel, inhuman or degrading treatment of foreign prisoners in U.S. custody. The measure also would require U.S. troops to follow interrogation procedures in the Army Field Manual.

The administration has threatened to veto any bills containing the provisions. Top House Republicans have indicated their opposition, too.

The proposals, sponsored by Sen. John McCain (R., Ariz.), are in Senate versions of a \$445 billion military spending bill that was passed last month, and in a defense policy bill that is before the Senate. The House bills do not include the provisions.

McCain yesterday voiced worries that efforts to kill the provisions could succeed.

Under a scenario that McCain said was possible, House-Senate negotiators would strip the provisions from the must-pass spending bill, then never complete the other bill that includes the detainee language, the defense policy bill.

"That's what I am told the strategy is," McCain said, declining to say who had told him that. "I hope that it's not true. I hope that they won't do that."

McCain said he did not yet support Graham's detainee proposal. "We need to go slow on this a little bit," McCain said.

Graham said he accelerated his work on the proposal after Monday's Supreme Court decision to review a challenge to the administration's planned military trials for foreign terrorism suspects held at Guantanamo.

Initially, the administration refused to allow the 500 or so detainees at the U.S. naval base to challenge their imprisonment by filing habeas corpus petitions. The Supreme Court in 2004 ruled that U.S. courts were open to filings from the detainees. Many detainees were captured in Afghanistan and have been held at Guantanamo for several years without charges.

Lawsuits have piled up since.

Graham said the administration wanted to deal with the issues instead of having Congress involved.

The American Civil Liberties Union and other rights groups oppose the proposal. The Center for Constitutional Rights said that it would "only serve to reinforce the growing perception that the United States has become an enemy of human rights."