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U.S. Suffers Setback in Case Of Alleged Enemy Combatant

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With one of his fellow detainees transferred to a criminal court and another deported to Saudi Arabia, the last man held as an enemy combatant on U.S. soil is poised to take center stage in the ongoing fight over presidential powers in a time of war.

Ali Saleh Kahlah al-Marri, 40, is a Qatari national who has been held in a military brig in South Carolina since June 2003. He is accused of being an al-Qaeda "sleeper" sent to the United States to mount attacks after the Sept. 11, 2001, hijackings.

An immigrant student who lived in Peoria, Ill., Marri has maintained his innocence since he was first arrested on fraud charges in December 2001. He is challenging the government's right to hold him as an enemy combatant. His case has received relatively little attention, compared with the high-profile legal fights by Yaser Esam Hamdi and Jose Padilla, two U.S. citizens who took their claims all the way to the Supreme Court.

But that is likely to change, in part because of a remarkable document filed in federal court in South Carolina this month.

In the declassified 16-page document, the government portrays Marri as an important terrorist soldier who trained for more than a year at al-Qaeda camps. It says he met Osama bin Laden and was specifically chosen by Khalid Sheik Mohammed, the mastermind of the Sept. 11 hijackings, to help other operatives carry out attacks and to hack into computers or deliver poisons.

Mohammed allegedly favored Marri because, as a married father of five who had studied in the United States, he could blend in more easily than a single man, according to a sworn statement by Jeffrey N. Rapp, director of the Joint Intelligence Task Force for Combating Terrorism.

Rapp's declaration, dated September 2004, was released only after a federal magistrate ordered the government to produce the evidence for Marri, and it provides a rare glimpse at the allegations against him. Magistrate Judge Robert C. Carr is slated to forward a recommendation to a higher-ranking judge, who will decide Marri's fate.

But the fact that the allegations were revealed at all is a setback for the government. It has argued in Marri's case and in others that enemy combatants have no right to see such evidence or even to challenge their confinement in criminal courts.

The Supreme Court decided in 2004 that Hamdi should have access to a lawyer and other rights, a ruling that formed the basis for the order to release evidence in Marri's case. Hamdi was deported to Saudi Arabia, of which he is also a citizen; Padilla was abruptly charged with supporting terrorism in federal court this year, and the high court declined this month to hear his challenge to his military confinement.

Many legal experts say that, given the Hamdi ruling and the order to produce evidence in the case, it may be difficult for the government to prevail against Marri.

"I really think this is more smoke than fire," said Eric M. Freedman, a law professor at Hofstra University who has advised the attorneys of some U.S. detainees. "If the district judge

continues to pursue the path of implementing full-disclosure requirements, the government will either fold or lose."

Although Marri is not a U.S. citizen, the fact that he was arrested on U.S. soil probably gives him a stronger legal footing than that possessed by the hundreds of detainees being held at Guantanamo Bay, Cuba, who were picked up overseas. (Those detainees include Marri's brother, Jarallah, who is also alleged to have attended an al-Qaeda camp.)

Douglas W. Kmiec, a Pepperdine University law professor and former Justice Department official, said that Marri has a "reasonable basis" to demand a proceeding to determine his status, but that his chances of forcing a release or transfer to a criminal court are small.

Justice Department and Pentagon officials have consistently declined to comment on the case.

Marri's attorneys dismiss the newly disclosed allegations as "triple hearsay evidence" inadmissible in court and say many of them may have been obtained through torture. Although the document does not identify its sources, much of the information revolves around two al-Qaeda leaders being held in overseas CIA prisons: Mohammed and alleged al-Qaeda financier Mustafa Ahmed al-Hawsawi.

"Thus far, there is no evidence," said Jonathan Hafetz of the New York University School of Law, one of the attorneys representing Marri. "All there is now is a hearsay statement, a list of allegations. . . . They think they can hold him without charge for essentially the rest of his life, and obviously we dispute that."

Marri lived in the United States in the 1990s and graduated from Bradley University in Peoria. He returned to the country on Sept. 10, 2001, the day before the attacks on the World Trade Center and the Pentagon. He was arrested on credit-card fraud charges in December of that year, but a month before his trial was to start he was transferred into military custody.

Rapp's court filing calls Marri "an al Qaeda 'sleeper' agent sent to the United States for the purpose of engaging in and facilitating terrorist activities," and it alleges that he volunteered for a martyr mission during a meeting with bin Laden and trained at al-Qaeda camps in Afghanistan for as many as 19 months from 1996 to 1998. According to the filing, Marri was trained in the "use of poisons" at one camp.

During a search of Marri's laptop computer, the document says, the FBI found files on how to make a deadly toxin; more than 1,000 credit card numbers; and lists of Web sites related to jihad, weapons and satellites.

"The highly technical information found on Marri's laptop computer far exceeds the interests of a merely curious individual," the filing says.