

Associated Press

Obama, Congress divided over terror suspects

By Donna Cassata
October 5, 2011

WASHINGTON—The Obama administration has tracked down and killed Osama bin Laden, Anwar al-Awlaki and other al-Qaida leaders. Yet, in spite of those successes, Republicans and some Democrats in Congress remain intent on challenging the administration's policies for handling captured terror suspects.

Those lawmakers insist that as a post-Sept. 11 nation wages war in Iraq and Afghanistan, captured terror suspects should be held at the U.S. prison at Guantanamo Bay, Cuba, and prosecuted by military tribunal. They have repeatedly rejected President Barack Obama's push to shutter Guantanamo as well as the administration's effort to detain suspects at facilities in the United States and try them in federal courts.

"It's the ultimate NIMBY situation," said Sen. John McCain, R-Ariz., referring to the not-in-my-backyard argument. Guantanamo is "not going to close. ... I favor closing, but I also favor before announcing its closure finding a place where they could be kept."

Facing fierce congressional resistance, the administration has accepted restrictions on detention of terror suspects. Last year's defense bill and the omnibus spending bill that Obama and Congress agreed to in April barred the transfer of terror suspects from Guantanamo to the United States, prevented construction or modification of U.S. facilities to house suspects, and required the defense secretary to notify Congress before moving a terror suspect to a foreign country. Now, however, the administration is pushing back by opposing detainee provisions in the latest defense bill. The fight could jeopardize the sweeping \$683 billion legislation that would authorize spending on military personnel, weapons systems and the two wars in the fiscal year that began Oct. 1.

Citing administration opposition as well as his own reservations, Senate Majority Leader Harry Reid, D-Nev., said Tuesday he would hold up the bill until concerns over the detainee provisions are settled.

The administration insists that lawmakers are trying to tie the hands of the military, law enforcement and intelligence agents after they've succeeded in killing bin Laden in May and al-Awlaki in Yemen last week, delivering two body blows to al-Qaida. Republicans counter that their efforts are necessary to respond to an evolving, post-Sept. 11 threat and that the administration is being too rigid in ignoring viable options like military commissions.

The dispute comes as a Guantanamo Bay prisoner accused of planning the October 2000 attack on the USS Cole prepares to be arraigned later this month before a military judge at the U.S. Navy base. Abd al-Nashiri, who is charged with murder in violation of the law of war for

allegedly planning the attack that killed 17 sailors, would face the first death-penalty war crimes trial for a prisoner at Guantanamo under Obama.

The administration also is considering a military trial in the United States for a Hezbollah commander now detained in Iraq. The administration's opposition to congressional efforts was clearly spelled out by White House counterterrorism chief John Brennan, who in a Sept. 16 speech at Harvard University argued for a case-by-case approach in prosecuting terrorist suspects.

"We have established a practical, flexible, results-driven approach that maximizes our intelligence collection and preserves our ability to prosecute dangerous individuals," Brennan said. "Anything less -- particularly a rigid, inflexible approach -- would be disastrous." The disagreement centers on two competing defense bills, one passed by the Republican-controlled House in May, the other produced by the Democratic-controlled Senate Armed Services Committee in June.

Specifically, the administration finds three provisions -- two in the House bill and one in the Senate -- to be the most problematic.

The House bill would prohibit the transfer or release of terror suspects from Guantanamo to the United States and would prohibit the transfer of terror suspects to foreign countries unless the defense secretary makes several certifications to Congress, including the country's record on terrorism and its detention facility. The Senate bill's provision would require military custody for a terror suspect identified as a member of al-Qaida or an affiliate, or an individual who planned or carried out an attack on the United States.

The Obama administration is trying to sway the opposition by arguing that the House provisions would potentially make it impossible to try terror suspects in federal courts, which in some cases could be the better venue for prosecution, an administration official said. The administration, according to the official, also is sketching a scenario that it argues could take place under the Senate provision: The FBI arrests an individual on a terrorism charge and is eliciting critical information on al-Qaida when, suddenly, the interrogation stops and the FBI has to locate someone in the military to take custody of the suspect.

Various departments and agencies have been in touch with congressional committees, spelling out their concerns with the provisions, the official said. The official spoke on condition of anonymity to describe strategy and discuss private conversations.

Civil liberties groups and other organizations also have weighed in on the provisions. Eleven retired generals, admirals and former judge advocate generals have expressed their opposition to the legislation, saying it "would transform our armed forces into judge, jury and jailor for foreign terrorist suspects. The military's mission is to prosecute wars, not terrorists."

The group argued that suspects could be tried in federal courts on such charges as money laundering and trafficking.

"If Al Capone has been a member of al-Qaida, military commissions would not have been able to convict him of tax evasion," they wrote.

Rep. Adam Smith of Washington state, the top Democrat on the House Armed Services Committee, repeatedly points out that the United States has succeeded in more than 400 cases in federal courts, compared with a handful through military commissions -- which largely haven't been operating for about two years during the Obama administration.

"Why take proven tools out of the toolbox?" Smith said. "The FBI has done an amazing job ... the courts have done an amazing job locking them up."

Republicans argue that Americans overwhelmingly back keeping terror suspects at Guantanamo and out of the United States, and the policy should remain no matter what success Obama has had in killing terrorists. There are 171 prisoners at Guantanamo, and the government has said about 35 could eventually face war crimes charges.

"I applaud everybody involved in killing these terrorists of late. We've been seeking them out and killing them for over a decade and we need to continue," said Rep. Tim Griffin, R-Ark., a member of the House Armed Services Committee. "I don't see how that relates to (federal) courts. The way it's currently constituted is working just fine."

Said Sen. Lindsey Graham, R-S.C.: "We have to have a detention system that allows the warfighter an option other than killing a terrorist. If you captured someone tomorrow, where would you put him? The only available jail is Guantanamo Bay."

With some 12 weeks left in the congressional session, Sen. Carl Levin, D-Mich., the chairman of the Senate Armed Services Committee, and McCain, the panel's top Republican, are trying to come up with a compromise to deal with the detainee provision problems. ■

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