

By Josh Gerstein

From [Politico](#) | Original Article

The White House is considering endorsing a law that would allow the indefinite detention of some alleged terrorists without trial as part of efforts to break a logjam with Congress over President Barack Obama's plans to close the Guantanamo Bay prison, Sen. Lindsey Graham (R-S.C.) said Monday.

Last summer, White House officials said they had ruled out seeking a "preventive detention" statute as a way to deal with anti-terror detainees, saying the administration would hold any Guantanamo prisoners brought to the U.S. in criminal courts or under the general "law of war" principles permitting detention of enemy combatants.

However, speaking at a news conference in Greenville, S.C., Monday, Graham said the White House now seems open to a new law to lay out the standards for open-ended imprisonment of those alleged to be members of or fighters for Al Qaeda or the Taliban.

"We're beginning to look at the idea we need to change our laws, come up with better guidance" for judges handling cases of enemy combatants, Graham said. "I've been talking to the administration for the last couple of days. I'm encouraged that we're going to sit down and do some of the hard things we haven't done as a nation after Sept. 11."

"I think we need to change our laws to give our judges better guidance — rules of the road," Graham said. "We need a statute to deal with that."

Asked whether the White House is again considering a preventive detention statute, spokesman Ben LaBolt said: "Sen. Graham has expressed interest in habeas reform and other policy ideas. We will review constructive proposals from Sen. Graham and other members of Congress that are consistent with the national security imperative that we close Guantanamo and ensure the swift and certain justice the families of victims have long deserved."

Graham also suggested that administration officials who recently completed the review of all prisoners at Guantanamo believe that a new law would be a better way to keep those inmates locked up if they are transferred to the U.S.

"I think the Obama administration, after they looked at the cases at Guantanamo Bay, understands the need for a statute like that," he said.

Taken as a whole, Graham's comments appeared to sketch the outlines of a potential

overarching deal to resolve most of the issues surrounding Guantanamo Bay. Confirming earlier reports, he said he is in discussions with the White House about legislation he has proposed to force a trial for alleged Sept. 11 plotters like Khalid Sheikh Mohammed out of civilian courts. His proposal failed on a 54-45 vote last November, but congressional sources say the White House has expressed concern that it might not prevail if the legislation is put forward again.

While Graham has long favored closing Guantanamo, he said Monday that his support for doing so is contingent on a new law to govern the detention of those the government wants to keep in custody outside the criminal justice system. He also said that, with such a statute in place, he could support Obama's plan to convert a state prison in Illinois to a federal facility for former Guantanamo inmates.

"I think Thomson, Ill., in the hands of the military, could become a secure location," he said. "My view is we can start to close Guantanamo only after we reform our laws."

Civil liberties advocates and many who back Obama's effort to close Guantanamo have opposed a preventive detention law as a departure from the tradition of prosecuting and punishing individuals for specific crimes. Some critics have also expressed worries that such a law would be hard to limit and could be extended well beyond Al Qaeda operatives.

Asked why the administration had become more open to a detention statute, Graham cited recent court rulings and comments by several federal judges who said the legal standards for detaining enemy prisoners are too vague.

"The judges are just absolutely beside themselves," Graham said. "I think that is something new the administration is listening to — the judiciary. ... I do believe there is a willingness by some in the administration to sit down and reform our habeas statutes."

Some human rights advocates said Monday that they didn't doubt Graham had discussed a detention statute with the White House but were skeptical that officials there are actively considering it.

"I'm sure that that's what Sen. Graham thinks, [but] I don't have any reason to think the administration has changed its view on this. The president was quite clear he does not want to legislate a system of preventative detention," said Elisa Massimino of Human Rights First. "In both private conversations and in public, the attorney general and other people in the administration said they're committed to driving the people detained without charge to zero. I think that would be inconsistent with a pledge to do that."

Massimino also said Graham and others appeared to be trying “hold hostage” the Sept. 11-related cases in order to achieve other legislative goals.

Graham did not say explicitly whether the law under discussion with the White House would cover only the men currently detained at Guantanamo Bay or others who might be captured in the future.

Tom Malinowski of Human Rights Watch suggested that a law allowing future detentions would be of the greatest concern.

“If they are in fact considering preventive detention legislation today, I think it would be a mistake both substantively and politically,” Malinowski said. “Legislating preventive detention for the future would turn the Guantanamo anomaly into a permanent legal norm. It would give every future president an authority that hasn’t existed since the Alien and Sedition Acts — the authority to detain people without trial not because they were captured on a military battlefield but because they are considered a threat to national security. There is no way to write that law (especially in this Congress) to prevent a less scrupulous president from abusing such authority in a moment of national crisis.”

At least four federal court judges handling cases in which Guantanamo inmates challenged their detention have complained recently that the courts and the prisoners have no clear understanding of the legal standards to apply.

“It is unfortunate, in my view, that the legislative branch of the government, and the executive branch, have not moved more strongly to provide uniform, clear rules and laws for handling these cases,” Judge Thomas Hogan said at a hearing in December.

"It's an honor to have the responsibility of blazing the trail in determining how justice should be administered in these cases," Judge Ricardo Urbina said last month [in an interview with ProPublica](#). "By the same token, it's also at times frustrating when not all the rules are clear and not all the specifics of how a matter should be dealt with are before us."