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Detained U.S. citizen in legal limbo at Navy brig in Virginia

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WASHINGTON — Yasser Esam Hamdi sat in a Navy brig in Norfolk, Va., Tuesday, a captive in legal limbo and apparently without legal representation.

A reported U.S. citizen captured in Afghanistan, he is not a POW and is not charged with any crime.

As of late Tuesday there were no indications that he had an attorney.

"But that could change any day — and a petition on his behalf could be filed quickly," said Michael Ratner, a human

rights lawyer who represents three other Guantánamo detainees.

"You can't keep people in limbo forever, and this could become a good test case against indefinite detention," said Ratner, who heads the Center for Constitutional Rights in New York.

According to the Pentagon, Hamdi is a "captured enemy combatant." Pentagon spokeswoman Victoria Clarke on Tuesday said the U.S. military can hold Hamdi, as a battlefield captive, "for the duration of the conflict."

But legal experts aren't so sure. The Justice Department

has no plans to charge him and U.S. officials admit they know very little about the 22-year-old member of a Saudi family born in Louisiana.

"How long can they hold him? As long as a court will let them," said John Hutson, a retired admiral and former judge advocate general in the U.S. Navy. "There is not a good rule on this."

Hamdi was whisked out of the Guantánamo Bay Naval Base and transported to Virginia on Friday after U.S. officials learned he was probably a U.S. citizen, based on a birth certificate. He may also be a dual citizen of Saudi Arabia,

Clarke said.

Bush administration officials were concerned that Hamdi, as a U.S. citizen, would have standing to challenge his Guantánamo detention in federal court, and that could open the door to a judge examining the treatment and status of 299 detainees there.

Hutson, now dean of the Frankim Pierce Law Center in New Hampshire, predicted that "there will have to be some sort of charge against Hamdi and a resolution of that charge."

The Pentagon could try Hamdi before a court martial as a U.S. citizen who "aided the enemy," or try to send him

back to Saudi Arabia where he spent most of his life — a possibility raised by Defense Secretary Donald Rumsfeld.

Hamdi, like John Walker Lindh, could not be tried by a military tribunal under the rules set out by the Bush administration. Those proceedings are for noncitizens.

Clarke said the Pentagon was in no rush to decide what to do with Hamdi, and added there is precedent for holding him as a dangerous combatant who might "do further harm."

"It's fairly common under the Geneva Convention that for the duration of the conflict you could hold people you have

captured," Clarke said. "If you look at previous conflicts, people were held for quite a long time."

But the Bush administration has decided not to classify Hamdi or any of the other detainees held in Guantánamo or Afghanistan as POWs with rights under the Geneva Convention. Officials have described them as al Qaeda fighters, Taliban soldiers, suspected terrorists and "killers," in the words of President Bush.

"Hamdi is being treated as a non-POW POW — a combatant whose status is still to be determined," said Eugene Fidell, a military law expert.