

By Craig Whitlock

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The three European men with Somali roots were arrested on a murky pretext in August as they passed through the small African country of Djibouti.

But the reason soon became clear when they were visited in their jail cells by a succession of American interrogators.

US agents accused the men — two of them Swedes, the other a longtime resident of Britain — of supporting al-Shabab, an Islamist militia in Somalia that Washington considers a terrorist group. Two months after their arrest, the prisoners were secretly indicted by a federal grand jury in New York, then clandestinely taken into custody by the FBI and flown to the United States to face trial.

The secret arrests and detentions came to light Dec. 21 when the suspects made a brief appearance in a Brooklyn courtroom.

The men are the latest example of how the Obama administration has embraced rendition — the practice of holding and interrogating terrorism suspects in other countries without due process — despite widespread condemnation of the tactic in the years after the Sept. 11, 2001, attacks.

Renditions are taking on renewed significance because the administration and Congress have not reached agreement on a consistent legal pathway for apprehending terrorism suspects overseas and bringing them to justice.

Congress has thwarted President Barack Obama's pledge to close the military prison at Guantanamo Bay, Cuba, and has created barriers against trying al-Qaida suspects in civilian courts, including new restrictions in a defense authorization bill passed last month. The White House, meanwhile, has resisted lawmakers' efforts to hold suspects in military custody and try them before military commissions.

The impasse and lack of detention options, critics say, have led to a de facto policy under which the administration finds it easier to kill terrorism suspects, a key reason for the surge of U.S. drone strikes in Pakistan, Yemen and Somalia. Renditions, though controversial and complex, represent one of the few alternatives.

"In a way, rendition has become even more important than before," said Clara Gutteridge, director of the London-based Equal Justice Forum, a human rights group that investigates national security cases and that opposes the practice.

Because of the secrecy involved, it is not known how many renditions have taken place during Obama's first term. But his administration has not disavowed the practice. In 2009, a White House task force on interrogation and detainee transfers recommended that the government be allowed to continue using renditions, but with greater oversight, so that suspects were not subject to harsh interrogation techniques, as some were during the George W. Bush administration.

The U.S. government has revealed little about the circumstances under which the three alleged al-Shabab supporters were arrested. Most court papers remain under seal.

In a statement, the FBI and federal prosecutors for the Eastern District of New York said the defendants were "apprehended in Africa by local authorities while on their way to Yemen" in early August. The statement did not spell out where they were detained or why.

The FBI made no mention of any U.S. involvement with the suspects until Oct. 18, when a federal grand jury handed up the sealed indictment. The FBI said its agents took custody of the men on Nov. 14, but the bureau did not specify where or from whom. A spokesman for federal prosecutors in the Eastern District of New York did not respond to a phone message and e-mail seeking comment.

Defense attorneys and others familiar with the case, however, said the men were arrested in Djibouti, a close ally of Washington. The tiny African country hosts a major U.S. military base, Camp Lemonnier, that serves as a combat hub for drone flights and counterterrorism operations. Djibouti also has a decade-long history of cooperating with the United States on renditions.

The Swedish Foreign Ministry confirmed that two of the men — Ali Yasin Ahmed, 23, and Mohamed Yusuf, 29 — are Swedish citizens and were detained in Djibouti in August.

Anders Jorle, a spokesman for the ministry in Stockholm, said Swedish diplomats were allowed to visit the men in Djibouti and New York to provide consular assistance.

"This does not mean that the Swedish government has taken any position on the issue of their guilt or innocence," Jorle said in a telephone interview. "That is a question for the U.S. judicial system."

Lawyers assigned to represent the defendants in federal court in Brooklyn said the men were interrogated for months in Djibouti even though no charges were pending against them — something that would be prohibited in the United States.

"The Djiboutians were only interested in them because the United States of America was interested in them," said Ephraim Savitt, an attorney for Yusuf. "I don't have to be Einstein to figure that out."

Harry Batchelder Jr., an attorney for the third suspect, Madhi Hashi, 23, concurred. "Let's just put it this way: They were sojourning in Djibouti, and all of a sudden, after they met their friendly FBI agents and CIA agents — who didn't identify themselves — my client found himself stateless and in a U.S. court," said Batchelder, whose client is a native of Somalia who grew up in Britain.

The sequence described by the lawyers matches a pattern from other rendition cases in which U.S. intelligence agents have secretly interrogated suspects for months without legal oversight before handing over the prisoners to the FBI for prosecution.

In December 2011, a federal court hearing for another al-Shabab suspect, an Eritrean citizen named Mohamed Ibrahim Ahmed, revealed that he had been questioned in a Nigerian jail by what a U.S. interrogator described as a "dirty" team of American agents who ignored the suspect's right to remain silent or have a lawyer, according to court proceedings.

Later, the Eritrean was interviewed by a "clean" team of U.S. agents who were careful to notify him of his Miranda rights and obtain confessions for trial. Once that task was completed, he was transported to U.S. federal court in Manhattan to face terrorism charges. His U.S. attorneys sought to toss out his statements on the grounds that they were illegally coerced, but the defendant pleaded guilty before a judge could rule on that question.

A diplomatic cable released by the anti-secrecy group WikiLeaks makes clear that Nigerian authorities were reluctant to detain Ahmed and held him for four months under pressure from U.S. officials.

Robin Sanders, the U.S. ambassador to Nigeria at the time, chided high-ranking officials there in a February 2010 meeting for nearly allowing Ahmed to depart on an international flight "because they did not want to hold him any longer," according to a classified cable summarizing the meeting. He was finally handed over to FBI agents, but only after he was indicted by a U.S. grand jury.

In the more recent Djibouti rendition, defense attorneys challenged the jurisdiction of the U.S. courts, saying there is no evidence that the defendants targeted or threatened Americans or U.S. interests.

"That is the \$64,000 question. I said to the assistant U.S. attorney, 'Did he blow up an embassy? No,' " said Susan Kellman, who represents Ali Yasin Ahmed, one of the Swedish defendants. "Why are we holding them? What did they do to insult us?"

The State Department officially categorized al-Shabab as a terrorist organization in 2008, making it illegal for Americans or non-citizens to support the group. Still, Obama administration officials acknowledge that most al-Shabab fighters are merely participants in Somalia's long-running civil war and that only a few are involved in international terrorism.

Savitt, the attorney for Yusuf, acknowledged that his client fought on behalf of al-Shabab against Somali forces backed by the United States. "Oh, yeah," he said. "I'm not going to deny that allegation, put it that way."

But Savitt said that was not a legitimate reason to prosecute Yusuf in the United States. "The last thing in the world we really need to do is apprehend and lock up 10,000 al-Shabab fighters or bring them into the court system," he said.

Authorities in Sweden and Britain had monitored the three men for years as they traveled back and forth to Somalia, but neither country assembled enough evidence to press criminal charges.

"These guys are well known to Swedish security forces," said a Swedish official, who spoke on the condition of anonymity to discuss intelligence matters.

Sweden's security agencies have cooperated in the past with U.S. officials on rendition cases by sharing intelligence about targets. Mark Vadasz, a spokesman for the Swedish Security Police Service, declined to comment on whether the agency played a role in the cases involving Yusuf and Ahmed.

Last summer, before he was detained in Djibouti, British authorities notified Hashi's family that

they were taking the unusual step of stripping him of his citizenship, citing his "extremist" activities.

Hashi and his family have denied the allegation. In 2009, Hashi filed an official complaint of harassment against MI5, Britain's domestic intelligence agency, saying agents had pressured him to become an informant.

A spokesman for Britain's Home Office, which issued the citizenship order, declined to comment or to say whether British officials cooperated with the United States on the rendition.

Asim Qureshi, executive director of CagePrisoners, a British human rights group that has advocated on behalf of Hashi, said the case was too weak to pass muster in a European court.

"A cynic would say it's easier to get a conviction under spurious evidence in the United States than anywhere else," he said. "Just alleging somebody is a member of al-Shabab won't get you very far in the U.K. A judge would just throw out the case before it even gets started."