

# Obama seeks to institutionalize indefinite detention

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Press reports have revealed that the Obama administration is considering the creation of a prison and court complex on US soil to process and hold current and future terrorist suspects. It would include a facility to indefinitely detain people held without trial or any other constitutionally mandated due process rights.

The reports underscore the profoundly antidemocratic agenda of the Obama administration, which is not only carrying on the Bush administration's sweeping and quasi-dictatorial assertions of executive authority, but is seeking to institutionalize them.

Administration officials have referred to the proposal as “a courtroom within a detention facility” that would be jointly operated by the departments of Defense, Homeland Security, and Justice. It would combine civilian courts and military commissions, further eroding the principle of a constitutionally independent civilian judiciary. It would mark a further assault on the bedrock democratic right of habeas corpus, i.e., the right to challenge one's detention in a court of law.

The plan is being considered by a presidential task force, which is at the same time entertaining other possible measures to deal with the current Guantánamo prison population, numbered at 229, as well as future prisoners seized in the “war on terror.” The task force could make public some of its proposals this month.

In the context of the Obama administration's insistence that the president, as the commander in chief, has the prerogative to order the arrest and incarceration of “terror suspects”—US citizens included—the proposal for the maximum security prison and court complex is especially ominous.

While Obama has dropped formal use of the term “enemy combatant,” his administration has in all

essentials carried on the Bush administration policy, as a federal judge pointed out in a recent ruling in the case of Abdul Rahim al Janko. (See: “A change in name only: Obama administration ends use of ‘enemy combatant’ designation”).

Similarly, the administration defends the practice of rendition, in which alleged terrorists are abducted by US intelligence agents and transported for interrogation—and torture—to other countries. And it opposes any investigation or prosecution of Bush administration officials who approved and oversaw the use of torture at Guantánamo, US military prisons in Iraq and Afghanistan, and secret CIA-run black sites around the world.

Within the proposed prison-court complex, detainees could be subjected to federal criminal trials, military commissions or indefinite detention without trial, administration sources say. This third category would apply to prisoners the administration declares to be dangerous, but for whom incriminating evidence is scant or was gathered through torture.

Additionally, prisoners cleared of all terrorism-related charges, but who find no country willing to accept them, could also be jailed at the new facility.

The indifference of the US political establishment and the media to democratic rights is such that a plan for indefinite detention even of those *declared by the government to be innocent* raises barely a murmur of criticism, with the *Washington Post* offhandedly noting that “a new stateside facility could include a lower-security unit...for detainees who have been cleared for release.”

Administration sources indicate that the Obama administration may seek some form of congressional approval should it move the plan forward, the transparent aim being to lend a democratic veneer to

profoundly antidemocratic policies that would establish the framework for the suppression of political dissent and repression on a massive scale.

The proposal exposes the token and cynical nature of Obama's executive order to close Guantánamo, issued the week he entered office—to great media fanfare. The action was driven by a desire to remove what had become an international symbol of American lawlessness and brutality, with negative consequences for the aims of US imperialism around the world. Behind the effort to improve Washington's image, the antidemocratic substance remains.

The prison-court complex proposal is in line with a general assertion by the administration of sweeping and virtually unchecked executive powers. Obama's Justice Department has made clear its determination to broaden the judicial interpretation of the "state secrets" privilege, on the basis of which the government has moved to shut down, in the name of national security, court challenges lodged by victims of the Bush administration's policies of rendition, torture and domestic spying.

Last month, Justice Department lawyers filed a friend-of-the-court brief in a Supreme Court case dealing with attorney-client privilege. The last five pages of the brief were dedicated to a defense of the state secrets doctrine—even though it was not germane to the case at hand.

The brief aims to elicit a directive from the Supreme Court on state secrets to the effect that the privilege is rooted in the Constitution—the dubious position Obama has carried on from Bush—and that therefore government appeals of lower court rulings rejecting state secrets claims should be allowed to go directly to higher courts, rather than waiting for the case in question to first be resolved.

The Justice Department brief cites a decision by the US Court of Appeals for the Fourth Circuit upholding the dismissal of a lawsuit mounted by a German citizen, Khaled el-Masri, who charged that he had been abducted and tortured by the CIA. A report by the Council of Europe confirmed Masri's claims. But the case was dismissed on the basis of the Bush Justice Department's assertion of state secrets.

Attorney Jon B. Eisenberg called the Obama administration brief a recapitulation of "the good old Bush-Cheney inherent presidential power theory."

Eisenberg represents a charity, Al-Haramain Islamic Foundation of Oregon, that claims it was the object of warrantless electronic surveillance during the Bush administration. Obama administration lawyers invoked the state secrets privilege in a bid to prevent the charity's attorneys from viewing government evidence against their clients.

The implications of the state secrets claim are clear enough. "By giving the executive branch close to unilateral power to have lawsuits dismissed on national security grounds, the privilege can become a way to conceal government misconduct," writes *New York Times* legal correspondent Adam Liptak.

Here again, Obama's rhetoric about "change" stands exposed. "On the campaign trail and in more recent statements, President Obama has indicated that he wants to limit the use of the state secrets privilege," Liptak notes. "In courtrooms, however, there has been little evidence of a new approach."

If anything, Obama has intensified his predecessor's attack on democratic rights. This is because, in the most fundamental sense, basic democratic principles are incompatible with the central policies of the American ruling class—the expansion of militarism and war abroad, and a further redistribution of wealth from the working class to the financial elite at home.

Obama's latest moves once again demonstrate the impossibility of defending basic liberties within the framework of the existing political and economic setup, and the need for an independent political movement of the working class to defend democratic rights.

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