

Obama asserts power to detain suspects without trial

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The Obama administration announced this week that it intends to continue the Bush administration policy of holding terrorism suspects indefinitely without charge or trial.

On Wednesday, the Justice Department said that President Obama may continue to hold “terror suspects” indefinitely and without judicial review based on the congressional Authorization to Use Military Force that came in the wake of the September 11, 2001 terrorist attacks on New York and Washington—the same rationale used by Obama’s predecessor, George W. Bush.

The move aims to institutionalize the previous administration’s assault on habeas corpus—the bedrock principle of democratic rights and the civil liberties laid down in the US Constitution’s Bill of Rights.

The announcement is a shift from a position Obama outlined in a May 22 speech at the National Archives. There he said he would go to Congress to obtain legislation to carry on the policy of indefinite detention, which he claimed was the only way of dispersing a section of the Guantánamo prison population too “dangerous” to try in civil courts.

In reality, the administration does not want to try these prisoners in normal civilian courts because such trials would expose the use of torture against the defendants, the evidence based on torture would be inadmissible, and civil trials might reveal embarrassing facts about the activities of US intelligence agencies.

“I want to be very clear that our goal is to construct a legitimate legal framework for Guantánamo detainees,” Obama said three months ago. “[G]oing forward, my administration will work with Congress to develop an appropriate legal regime.”

Obama’s new “legal regime,” sources said, would likely have included a special “National Security

Court,” in which hearsay evidence and testimony extracted through torture would be admissible.

In Wednesday’s statement, the Justice Department declared the administration “is not currently seeking additional authorization,” but would “rely on authority already provided by Congress” under the Authorization to Use Military Force. That resolution was, in fact, proposed and passed as a measure only to provide congressional backing for the invasion of Afghanistan.

Obama has decided to rely on this subterfuge and go around Congress in order to avoid hearings and the public controversy that would be aroused by such legislation. By simply asserting executive power, the administration is carrying out a fundamental attack on democratic rights without any public debate.

According to one account, the administration’s decision to carry on indefinite detention would apply only to current Guantánamo detainees. However, there is nothing in the underlying legal rationale—that the Authorization of Force allows the president to arrest without charge or trial those he declares to be members or supporters of Al Qaeda or the Taliban—preventing Obama from applying indefinite detention to new detainees.

It is noteworthy that this rationalization was explicitly repudiated by the Supreme Court in its 2006 ruling against the Bush administration’s military commissions in the case *Hamdan vs. Rumsfeld*. Justice John Paul Stevens, writing for the majority, declared that there was nothing in the Authorization to Use Military Force that “even hinted” at allowing the president to expand his war powers to override due process.

Some civil liberties spokesmen welcomed the announcement from the Obama administration on the grounds that legislation would be even more destructive of democratic rights than the bare assertion of executive

power. In response, ACLU Lawyer Jonathan Hafetz, who represented Guantánamo prisoner Mohammed Jawad in his habeas case, said, “In fact, Obama is continuing to make the same core assertion Bush did: the right to seize individuals anywhere in the world and deny them a fair trial based on the notion of a global ‘war on terror.’”

Obama’s decision marks an intensification of the assault on habeas corpus, the “great writ,” which underlays all civil liberties and dates back to the Middle Ages. Habeas corpus stipulates that the state must produce an arrested individual in an independent court and show just cause for imprisonment. Failing this, the arrested individual has “the right to have his body,” and must be released.

Also on Wednesday, the Justice Department outlined what it presented as a democratic reinterpretation of the executive “state secrets” privilege, which allows the federal government to deny certain evidence from court proceedings based on the assertion that it may endanger national security.

Rather than using the privilege to block particular pieces of evidence, both the Bush and Obama administrations have invoked “state secrets” as a means of shutting down entire court cases launched by the victims of torture, extraordinary rendition, and warrantless wiretapping.

The new parameters do not restrict the use of the privilege to thwart court cases that challenge government abuse. Like the Bush administration, Obama has taken the position that US methods in the “war on terror” are beyond legal review.

“They don’t anywhere say, ‘we will not seek dismissal on state secrets grounds at the outset [of a case]’” said Ben Wizner, an ACLU attorney. “They say we’re going to make an effort to apply it as narrowly as possible. But that doesn’t change what they’ve been doing all along.”

Obama’s reassertion of indefinite detention and an expansive state secrets doctrine underscores the administration’s deeply reactionary character. These actions join a long list of antidemocratic policies carried over from the Bush administration.

The Obama administration has declared it has the right to carry on illegal domestic spying operations and the practice of rendition. It has rejected the habeas corpus rights of prisoners held at the notorious Bagram

prison in Afghanistan. And Obama has declared his determination, in the name of “moving on,” to defend the Bush administration and CIA agents who oversaw a global regime of torture and murder.

These are not mistaken policies, as some liberal critics assert. The antidemocratic abuses of the “war on terror” emerge inexorably from the American ruling class’s turn toward aggressive war as the means of offsetting the erosion in its economic position.

The Obama administration’s main target is not terrorism. Instead, the framework of a police state—being prepared under conditions of mass unemployment and deepening social misery—is to be used against political and social opposition within the US.



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