

Obama administration preparing executive order to authorize indefinite detentions

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The Obama administration is drafting an executive order, scheduled for release early in 2011, which authorizes indefinite detention without charge of prisoners currently held at Guantánamo Bay, Cuba. The new order means that the prison will remain open, or that these prisoners will be transferred to permanent locations in the US.

The prisoners would be given a “periodic review” of their imprisonment in a procedure that makes a mockery of due process and basic democratic rights.

According to reports first published Tuesday evening by the *Washington Post* and *ProPublica*, unnamed US officials have revealed that the executive order, which will for the first time establish indefinite detention as an Obama administration policy, has “been in the works for more than a year.”

With typical contempt for the democratic rights of the population, the announcement was released through anonymous backdoor channels on the eve of the Winter holidays. It is aimed at preparing public opinion for yet another extension of the anti-democratic policies of the Bush administration.

Guantánamo Bay has grown into an internationally despised gulag since the first jail, Camp Delta, was opened by the Bush administration in early 2002 under the pretext of jailing “enemy combatants” in the so-called “war on terror.” The “enemy combatant” category had no precedent either in domestic or international law, and was adopted solely for the purpose of placing people in legal limbo—stripped of protection under both the US Constitution and the Geneva Conventions.

Guantánamo Bay has become synonymous with the most flagrant attacks on core democratic rights, including denials of habeas corpus, detention without legal authority, denial of counsel, sensory deprivations,

abusive interrogations and outright torture.

During his campaign for president, Obama repeatedly pledged to close the Guantánamo Bay prison camps, promising shortly after his inauguration to complete the task by January 2010. With the proposed new order, there is no closure in sight.

More Guantánamo inmates are facing lifelong detention and fewer are facing charges than the day Obama was elected.

Obama press secretary Robert Gibbs confirmed the reports on December 22, announcing “There are some prisoners that will require indefinite detention,” although closing the Guantánamo prisons, according to Gibbs, “remains the president’s goal.”

Some of the prisoners transferred might be transferred from Guantánamo to prisons in the United States. There is no indication that the executive order would not continue to apply—meaning that Obama would be vastly expanding the scope of indefinite detention.

“If the Obama administration succeeds in establishing indefinite detentions on US soil,” according to a statement by the Center for Constitutional Rights (CCR), an organization that has represented a number of Guantánamo prisoners, “it will be difficult to hold the line at the 48 men at Guantanamo.

“This proposal lays the groundwork for US prisons to become places where people from around the world are brought and imprisoned without charge or trial, eroding our Constitution and adherence to international law beyond recognition,” according to the CCR statement.

As usual, anonymous administration sources claim that Obama’s hand is being forced because the still Democrat-controlled House of Representatives passed a defense authorization bill that bans transferring Guantánamo prisoners to the United States for trial, a crucial component of Obama’s earlier plan to close the

concentration camps. The provision was added quietly to the bill during negotiations over repeal of “Don’t ask, don’t tell.”

The administration, however, has never sought to overturn the content of the anti-democratic policies implemented by Bush. Sections of the political establishment have favored closing Guantánamo because of its international reputation, while keeping the essence of the policy intact.

According to reports, the new executive order directly affects 48 prisoners the Obama administration has classified as too dangerous to be released but who cannot be put on trial. According to the *Washington Post*, “unnamed officials” said that the prisoners cannot face trial because torture was used to obtain the evidence against them. Without the torture evidence, the cases against them “would not meet legal standards.”

There are at least 126 other prisoners incarcerated at Guantánamo whose status remains uncertain.

The anonymous administration sources claim that the executive order will expand the rights of prisoners by establishing a “detainee review process” which will allow limited access to evidence and lawyers for hearings at designated intervals, perhaps once a year. A *New York Times* report characterized the executive order as setting up “something like a parole board to evaluate whether each detainee poses a continued threat, or whether he can be safely transferred to another country.”

Under the Constitution, however, parole boards, which are usually stacked with political employees and give very limited consideration to the cases before them, come into play only after someone is convicted of a crime. Under the Obama administration plan, prisoners can be held for the rest of their lives without a civilian trial, or even a military commission.

There is no reason to believe that the executive order will be limited only to current Guantánamo prisoners. For more than a year the Obama administration has insisted it has the power to hold anyone it designates as a “terror suspect” 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. This is the same rationale used by the Bush administration.

The news of the proposed executive order has been denounced by advocates of civil liberties.

Jameel Jaffer, a national security lawyer at the American Civil Liberties Union, said that the executive order would “normalize and institutionalize indefinite detention and other policies,” set in place by the Bush administration. Laura W. Murphy, director of the American Civil Liberties Union’s Washington legislative office, added, “Our Constitution requires that we charge and prosecute people who are accused of crimes. You cannot sell an indefinite detention scheme by attaching a few due-process baubles and expect that to restore the rule of law.”

The executive order is an extension of the attack on democratic rights carried out by the Obama administration since it first came to office.

While refusing to initiate a single criminal prosecutions for any of the war crimes committed, the Obama administration has intervened in court proceedings to block civil lawsuits against Bush administration officials for torture and domestic spying. Recently released WikiLeaks documents show that the administration collaborated with governments in Spain and Germany to prevent legal challenges to these same policies.

Obama has signed a death warrant for US citizen Anwar Al-Awlaki, and used Catch-22 arguments to prevent his father from challenging the extra-judicial assassination order in court.

Obama administration lawyers have authorized FBI raids of the homes and offices of antiwar activists on the basis that by opposing US imperialism they are providing “material support” for terrorist organizations.



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