



## Obama: Life Imprisonment Without Trial

President Obama's Guantanamo Review Task Force has "unanimously" concluded that 48 detainees at Guantanamo should be detained indefinitely — in essence, a life sentence — without trial, including lifetime detention for some detainees who, the commission concluded, hadn't committed any crimes that "constitute a chargeable offense in either a federal court or military commission." The Washington Post revealed May 28 that the Task Force decided to repatriate the majority of the 240 detainees they investigated, while other detainees should be tried in criminal court or by "military commissions" the Obama administration would reconstitute.



Most Guantanamo detainees have already languished in prison for eight years without trial, and the commission — consisting of officials from the intelligence, military, Defense, Homeland Security, State and Justice departments — [concluded](#) the following of the 48 detainees who would remain in prison without trial indefinitely:

Generally these detainees cannot be prosecuted because either there is presently insufficient admissible evidence to establish the detainee's guilt beyond a reasonable doubt in either a federal court or military commission, or the detainee's conduct does not constitute a chargeable offense in either a federal court or military commission.

In other words, the Obama administration officials think the detainees might have committed a crime but can't be sure, or they are sure the detainees didn't commit a crime and want to keep them in prison for life anyway.

The untrammelled power of government to throw people into prison without a trial by jury was a key grievance the Founding Fathers cited in their reason for separating from Britain, charging the British with "depriving us in many cases, of the benefit of trial by jury" in the [Declaration of Independence](#). Therefore, the Founding Fathers sought to require both due process of law for all those arrested in the [Fifth Amendment](#) to the U.S. Constitution:

No person shall be ... be deprived of life, liberty, or property, without due process of law.

And they also guaranteed an unqualified right to trial by jury in the [Sixth Amendment](#) to the U.S. Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.



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Of course, the 48 designated for life imprisonment without trial is only the beginning. The U.S. government holds hundreds of other detainees at other prisons around the world, such as those at Bagram Air Force Base in Afghanistan (which has [more detainees](#) than Guantanamo). The “unanimous” but blatantly unconstitutional precedent set by this ruling could mean that these other detainees — or anyone else the Obama administration detains — could also receive life imprisonment without trial under the Obama policy.

The Task Force [concluded](#) that 126 detainees should be approved for repatriation to their home countries (of which 44 have already been released), 44 should be prosecuted (prosecution of six in federal court and six more in “military tribunals” has already been announced), and 48 are designated for indefinite detention without trial. An additional 30 Yemeni detainees were deemed to be eligible for repatriation to their home country when the Yemeni government stabilizes.

The trial by “military commissions” would also be a blatant violation of the Sixth Amendment’s requirement of trial by jury of peers as well as its requirement that the “district shall have been previously ascertained by law.” In the case of the military tribunals, the district will be created eight years after the offense and specifically to get convictions in alleged crimes that occurred years earlier.

The Task Force reviewed the cases of the 240 who remained in the Cuban military base in early 2009 when President Obama ordered the review. Of the 779 people who were detained at Guantanamo since 2002, [not one has yet been given a criminal trial](#) under either the ordinary criminal (civilian) process or the Uniform Code of Military Justice reserved to members of armed forces. Two-thirds of the detainees (530 of the 779) were released or repatriated to their home countries. Several detainees were convicted under unconstitutional “military commissions,” first by the Bush administration and later by Congress’ Military Commissions Act of 2006, but the Supreme Court ruled the military commissions unconstitutional in successive cases, ending in the famous [Boumediene](#) case in 2008.

The Obama administration’s justification for holding the 48 detainees for life without a trial is the 2001 Authorization of the Use of Military Force (AUMF) passed by Congress. In essence, the Obama administration claims that a mere law passed by Congress overcomes the explicit and unequivocal wording of the Constitution’s Bill of Rights. The Task Force rationalized the decision for indefinite detention this way:

As the Supreme Court has held, inherent within the authorization of the AUMF to “use all necessary and appropriate force” is the power to detain any individuals who fall within the scope of the statute. As the Supreme Court observed, “by universal agreement and practice,” the power to wage war necessarily includes the authority to capture and detain combatants in order to prevent them from “returning to the field of battle and taking up arms once again.”

This determination by the Guantanamo Review Task Force represents the final victory of the policies of George W. Bush in the Obama administration, and is in many respects constitutionally worse than the Bush policy. The Bush administration talked about holding people indefinitely, but there was always the hope that trials or release would eventually be obtained. The Guantanamo Review Task Force makes the Bush policy explicit, bipartisan, and permanent. It constitutes the first case in American history where the U.S. government has explicitly concluded that it has the power to lock up anyone for life without ever holding a trial of any kind.

There is no greater mark of tyranny than a government that can throw a person into prison for life at the whim of an executive without any sort of impartial review. But the Obama administration makes this



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arbitrary power worse when its Guantanamo Review Task Force admits that some of those it is throwing into prison for life have not committed a crime. That's precisely what the review said when it admitted that some detainees being selected for lifetime detention without a trial had not committed anything that would "constitute a chargeable offense in either a federal court or military commission."

Many should now be asking: If this decision is allowed to stand, can we still call America the "land of the free"? And if freedom-loving Americans don't work to return their government to the Constitution, are we still the "home of the brave"?

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