Written by **Thomas R. Eddlem** on February 16, 2010

Obama Violates Bill of Rights, With Bipartisan Support

The Washington Post took notice of the Obama administration's decision to continue to flout the categorical Fifth and Sixth Amendment prohibitions on imprisoning people without trial, in part because the decision also flagrantly flouts a Supreme Court decision.

The February 12 *Post* story noted that courts have not ruled for Presidential detention policies recently:

> Federal judges, acting under a landmark 2008 Supreme Court ruling that grants Guantanamo Bay detainees the right to challenge their confinements, have ordered the government to free 32 prisoners and backed the detention of nine others. In their opinions, the judges have gutted allegations and questioned the reliability of statements by the prisoners during interrogations and by the informants. Even when ruling for the government, the judges have not always endorsed the Justice Department's case.

In seeking to flaunt the Constitution and the U.S. Supreme Court, Obama can count upon the enthusiastic support from neo-conservative Republicans. "We're beginning to look at the idea we need to change our laws come up with better guidance" South Carolina Senator Lindsay Graham told Politico.com February 15. "I've been talking to the administration for the last couple of days. I'm encouraged that we're going to sit down and do some of the hard things we haven't done as a nation after Sept. 11."

Graham believes he can ignore the clear instructions of the Fifth and Sixth Amendments to the U.S. Constitution as well as past decisions by the U.S. Supreme Court if he can bully the court into accepting a mere congressional statute. "I think we need to change our laws to give our judges better guidance — rules of the road," Graham said. "We need a statute to deal with that."

The *Washington Post* is not so convinced that the administration will prevail in its current effort to consign some detainees to Dredd Scott-style non-person status. "Nobody who has looked at the last 18 months of litigation can emerge with a high confidence level that the government is going to prevail uniformly in cases of people it regards as extremely dangerous," the *Post* quoted Brookings Institute fellow Benjamin Wittes. Obama's plan, according to the *Post*, is release some detainees, try others, and declare 50 as virtual non-persons legally:

> Of the 192 detainees being held at Guantanamo Bay, a Justice Department-led task force has concluded that about 110 can be safely released, either immediately or eventually. It recommended that about 35 be prosecuted in federal or military courts, leaving about 50 who are considered too dangerous to be freed but cannot face trial because the evidence is too shaky to hold up in court. Justice Department officials say they are also concerned that public trials might expose intelligence operations or other classified information.

While some neo-conservative totalitarians claim that the U.S. Constitution doesn't account for the rights of foreigners, this view is plainly against the text of the Constitution as well as long Supreme Court precedent. The Supreme Court has defended the rights of foreigners in U.S. custody for at least the 170 years since the Amistad case. In the Amistad case, slaves were illegally kidnapped from their African home in 1839 (more than 30 years after abolition of the international slave trade) and sold from their Portuguese kidnappers to Spanish slave traders. The slaves violently rebelled on the Spanish ship *La Amistad* transporting them and drifted from Cuba to the U.S. coast. After the ship was taken ashore by a U.S. Navy ship, the surviving slave owners claimed the slaves for themselves. They argued that the rebellious slaves were foreigners who had no rights in the United States and were mere property that needed to be returned to them under the U.S. treaty with Spain. The slave owners were backed up by the Spanish ambassador and the U.S. Attorney General. However, the U.S. Supreme Court ruled that even foreign Africans had a right to a trial and to freedom under the U.S. Constitution. The court ordered the brave men who refused to submit to slavery be freed and given passage back to Africa.

Photo: AP Images