



Written by [Dennis Behrendt](#) on July 21, 2008

Supreme Court Decision on Guantanamo Detainees

The Fifth Amendment explicitly prohibits detaining any person outside of the criminal or military justice systems: “No person shall be held to answer for a capital or other infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the [military].” The Fifth Amendment, notes Thomas R. Eddlem on [LewRockwell.com](#), “establishes two systems of justice, criminal and military. It requires that all men receive a criminal trial unless it arises under the military justice system, and bans other systems of pretended justice. And the Fifth Amendment redundantly bans precisely what the executive branch has explicitly sought for more than six years, unlimited detention without due process.” (The Fifth Amendment also asserts: “Nor shall any person ... be deprived of life, liberty or property without due process of law.”)



However, notes Eddlem, “the MCA does not accord detainees either status as military detainees, nor as criminal detainees under the Sixth Amendment, as the Fifth Amendment clearly requires.”



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