



Written by [Thomas R. Eddlem](#) on December 4, 2011

Gingrich Favors Juries, But Not for Americans ... Just for Illegal Aliens

During the forum Florida Attorney General Pam Bondi asked Gingrich if his proposal to create neighborhood boards to legalize the residency status of illegal immigrants would undermine the rule of law. Gingrich's [campaign website](#) proposes the following proposal to make illegal immigrants legal residents: "Applicants must first pass a criminal background check, and then the local committees will assess applications based on family and community ties, and ability to support oneself via employment without the assistance of Social Security, Medicare, Medicaid, and other entitlement programs."



Gingrich, who is the Iowa frontrunner (25 percent) in a *Des Moines Register* [poll](#) over second place Rep. Ron Paul (18 percent), [replied](#) that he wanted the local committees to be analogous to jury trials.

That is what we do in a jury trial. That's the whole point. That's why the founding fathers who distrusted judges insisted on juries. Because ultimately, in a free society, the citizens have to bear responsibility for their own culture and their own society. And ultimately, they are — I believe they are — more trustworthy. If you ask me would I trust a jury or a Washington bureaucrat, I would rather have my fate decided by a jury of my peers than have my fate decided by a Washington bureaucrat.

It was an eloquent defense of a jury trial, though a full-blown jury trial has never been legally necessary for deportation of an illegal alien. But interestingly, Gingrich has long been far less supportive of cases where a jury trial is explicitly required by both the original [U.S. Constitution](#) and [Bill of Rights](#). In cases involving U.S. citizens, Gingrich has more faith in Washington bureaucrats than a jury of his peers.

In a November 22 CNN [debate](#), Gingrich came out against trials for terrorist suspects, even American citizens. "I think it's desperately important that we preserve your right to be innocent until proven guilty, if it's a matter of criminal law. But if you're trying to find somebody who may have a nuclear weapon that they are trying to bring into an American city, I think you want to use every tool that you can possibly use to gather the intelligence," Gingrich said, concluding with the ridiculous implication that there are terrorists wandering our streets with nuclear weapons. In the case of American citizens on terrorist cases, Gingrich added, "You come up with a very different answer. Again, very sharp division. Criminal law, the government should be frankly on defense and you're innocent until proven guilty. National security, the government should have many more tools in order to save our lives. "

The idea that the United States government might apprehend U.S. citizens and detain them without the trial by jury explicitly guaranteed by [Article III, Section 2](#) of the U.S. Constitution and the [Fifth and Sixth Amendments](#) is not merely an academic question. The U.S. Senate [voted](#) 55-45 to approve the



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detention without trial of U.S. citizens accused of terrorism this past week. Only five Republican Senators, including [Tea Party hero Rand Paul of Kentucky](#) (son of presidential candidate Ron Paul of Texas), voted to retain the right to trial by jury in that vote.

Moreover, several U.S. citizens have been detained by Presidents without charges or trial already. Donald Vance and Nathan Ertel were [detained and tortured](#) (beaten via a process called "walling" and denied food for days at a time) by the Bush administration for several months in 2006 at Iraq's Camp Cropper, though they later proved to be innocent whistleblowers working on behalf of the FBI. The Seventh U.S. Court of Appeals recently [advanced Vance and Ertel's lawsuit](#) against former Defense Secretary Donald Rumsfeld.

Likewise, Brooklyn native Jose Padilla [served five years in prison without trial](#) before the Bush administration faced a losing Supreme Court case over whether he was entitled to a jury trial (Padilla was later convicted of terrorism charges in that jury trial and is currently in federal prison).

But Gingrich has claimed he would ignore Supreme Court decisions defending the explicit guarantee of a jury trial. At the October 7 Values Voters Summit, Gingrich [stressed](#) that "I would instruct the national security officials in a Gingrich administration to ignore the recent decisions of the Supreme Court on national security matters, and I would interpose the presidency in saying, as the commander in chief, we will not enforce this." Gingrich added that his source of inspiration for ignoring the Supreme Court was left-wing Democratic President Franklin Delano Roosevelt. "In 1942 a group of German saboteurs were landed in Florida and Long Island. They were all picked up within two weeks. Roosevelt brought in his attorney general and said: They will be tried in a military court, they will be executed, it should happen within three weeks, and tell the Supreme Court if they issue a writ of *habeas corpus*, I will not honor it, and therefore they should not issue it. I am the commander in chief in wartime. They aren't."

One of those German saboteurs was a native-born U.S. citizen.

Gingrich has flip-flopped on a number of issues, and the debate played host to several of them (see below), but the right of Americans to a *habeas corpus* hearing and trial by jury isn't one of them. When the Supreme Court ruled against military commissions for terror suspects in the [Boumediene case](#) back in 2008, Gingrich [exploded](#) on CBS' *Face the Nation*, claiming "This court decision is a disaster which cost us a city. And the debate ought to be over whether or not we are prepared to losing an American city on behalf of five lawyers — it was a five-to-four decision — on five lawyers who have decided that the Supreme Court counts more than the Congress and the President combined on national security. That has never been true in American history. That ought to be a principled argument between McCain and Obama."

The Fox News forum also served as an opportunity to highlight some of Gingrich's shifting positions over the years. Gingrich advocated moving "education largely back to the states," even though he had actually [voted to create the U.S. Department of Education back in 1979](#). Gingrich also had to repudiate his [2008 commercial with Nancy Pelosi](#) to promote global warming legislation.

And the December 3 forum featured a false claim by the former Speaker of the U.S. House of Representatives. During the forum Gingrich claimed "I've never favored cap and trade." But Gingrich actually had favored carbon-based taxes in the past, [telling PBS](#) on February 15, 2007 that "I think if you have mandatory carbon caps combined with a trading system, much like we did with sulfur, and if you have a tax-incentive program for investing in the solutions, that there's a package there that's very, very good. And frankly, it's something I would strongly support."



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While Gingrich's position against jury trials for American citizens is not widely known, and appears not to be hurting him politically, he is being stung by the flip-flopping charges. Gingrich's campaign is calling Republican households with a recording of his voice claiming that "Many of my Republican opponents ... are choosing to focus upon sound bytes and gotcha campaigns." That may have been a reaction to a Web commercial by the Ron Paul campaign called [Newt Gingrich: Serial Hypocrisy](#) that has highlighted some of the above inconsistencies as well as Gingrich's [promotion of Freddie Mac's business model](#) while he was a paid consultant with the housing giant. The latter has prompted criticism across the conservative spectrum, with George Will [commenting on the Laura Ingraham Show](#) that "Newt Gingrich was a willing, rented spokesman for the housing crisis."

Photo of Newt Gingrich: AP Images

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