



Written by [Thomas R. Eddlem](#) on May 22, 2009

Obama: Preventive Detention Is My Policy

Starring Tom Cruise, *Minority Report* is a science fiction film where powerful psychics called “precogs” are able to detect crimes before they happen, and the role of the police is to arrest the perpetrators before the crimes are actually committed.

Obama’s new policy proposes the same thing: to imprison people — not for crimes they’ve already been tried for, or even for crimes that have already been committed — but for crimes Obama suspects that these persons might commit some day commit. Who would decide such a thing? The same man whose Department of Homeland Security put out a [terrorist threat report](#) in April that termed pro-lifers, people who buy a firearm, political conservatives and military veterans as “the most dangerous domestic terrorism threat in the United States.”



Department of Homeland Security Janet Napolitano told congressional leaders in a May 12 defense of the memo that DHS was trying to create “situational awareness” but not to target groups with this memo. “What there was,” Napolitano told congressional leaders, “was an understanding that veterans are sometimes targeted for recruitment — that is an assessment.”

Two days later Napolitano announced the memo had been withdrawn. She had already announced to congressional investigators that the [DHS intelligence operatives are working on a new memo](#) that would have the old one “replaced or redone in a much more useful and much more precise fashion.”

“We do need to update our institutions to deal with this threat,” Obama told a loyal audience of government employees during the May 21 speech. The proximate reason for the detention of people who haven’t committed crimes but are being imprisoned indefinitely without trial is the backlog of cases at Guantanamo Bay. “There are 240 people there who have now spent years in legal limbo. In dealing with this situation, we don’t have the luxury of starting from scratch,” Obama noted. That is, he’s going to continue the Bush policy of imprisoning people who haven’t committed any prosecutable crimes, but bring them into U.S. prisons to mix with other U.S. prisoners. “There remains the question of detainees at Guantanamo who cannot be prosecuted yet who pose a clear danger to the American people,” Obama [elucidated](#). “I am not going to release individuals who endanger the American people.”

How does he know if someone presents a threat to the American people? Does he possess some special psychic powers like Spielberg’s “precogs”? Obama apparently thinks so, and he failed to outline any difference between foreigners deemed to have committed “pre-crime” and American conservatives deemed to be “the most dangerous domestic terrorism threat in the United States.” The U.S. Constitution and Bill of Rights makes no such distinction, it should be noted. All [it says](#) is that everyone



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is entitled to a jury trial. But the institutions of our criminal procedures need an “update,” Obama has reminded us.

In enunciating such a policy, Obama sounds increasingly like the Bush-Cheney regime’s rhetoric in justifying the Bush-Cheney trampling of the Bill of Rights. In Obama’s words:

My administration has begun to reshape the standards that apply to ensure that they are in line with the rule of law. We must have clear, defensible, and lawful standards for those who fall into this category. We must have fair procedures so that we don’t make mistakes. We must have a thorough process of periodic review, so that any prolonged detention is carefully evaluated and justified.... I want to be very clear that our goal is to construct a legitimate legal framework for the remaining Guantanamo detainees that cannot be transferred. Our goal is not to avoid a legitimate legal framework. In our constitutional system, prolonged detention should not be the decision of any one man.

That last phrase is a keystone of Obama’s strategy to avoid prosecution of executive branch officials for his attack on the Constitution:

If and when we determine that the United States must hold individuals to keep them from carrying out an act of war, we will do so within a system that involves judicial and congressional oversight. And so, going forward, my administration will work with Congress to develop an appropriate legal regime so that our efforts are consistent with our values and our Constitution.

Vice President Dick Cheney noted in a May 21 address to the American Enterprise Institute that “Some are even demanding that those who recommended and approved the interrogations be prosecuted, in effect treating political disagreements as a punishable offense and political opponents as criminals. It’s hard to imagine a worse precedent filled with more possibilities for trouble and abuse than to have an incoming administration criminalize the policy decisions of its predecessor.”

Cheney’s attempt to whitewash the [crime of torture](#) as mere “politics” is risible, but Obama is pursuing a much more sophisticated strategy to justify his crimes against the Constitution. Obama’s proposal to allow “congressional oversight” is an attempt to immunize himself against prosecution by bringing politics into the mix in a way the Bush-Cheney regime never invited. It’s a way for Obama to spread the blame around if his open policy of indefinite detention of people not accused of a crime ever gets out of hand. If Congress can be put on the hook for this trampling of constitutionally-guaranteed liberties, then the likelihood he’d ever be prosecuted is virtually nonexistent.

Photo of Obama at National Archives: AP Images



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