

US to hold 50 Guantanamo prisoners indefinitely

By Barry Grey
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The US Justice Department has determined that nearly 50 of the remaining 196 detainees at the military prison at Guantanamo Bay, Cuba are to be held indefinitely, without charges or trial, according to a front-page article published Friday by the *Washington Post*.

The *Post* reports that the decision is the result of a case-by-case review of the remaining Guantanamo prisoners by a Justice Department-led task force set up by President Obama last year. The detainees have been held under barbaric conditions and subjected to torture, most of them languishing in the prison camp for eight years. The *Post* report cites unnamed administration officials, who spoke of the task force's conclusions in advance of the public release of its report.

News of the decision came on the one-year anniversary of Obama's signing of an executive order to close the infamous prison at Guantanamo. That pledge was announced with great fanfare on the second full day of the new administration as evidence that Obama would reverse the Bush administration's legacy of criminality and contempt for democratic rights. It has not been carried out.

Instead, Obama is keeping Guantanamo going while he works to open a military prison on US soil, rightly called "Guantanamo North" by its critics, to which those detainees not repatriated to their home countries or to other countries are to be kept, either to be jailed indefinitely or tried before military tribunals. Others, newly captured in the so-called war against Al Qaeda, and other "extremists" are to be thrown into the new military prison, which the administration plans to set up in Thomson, Illinois.

These moves expose Obama's pledge to close Guantanamo as an empty gesture, designed to refurbish the image of the United States around the world while

his administration continues the police-state methods of Bush.

In holding prisoners indefinitely without trial, Obama is using the same legal pretext that was used by the Bush administration--the Authorization for Use of Military Force passed by Congress one week after the September 11, 2001 attacks. The administration maintains this position even in the face of a 2006 US Supreme Court ruling (*Hamdan v. Rumsfeld*) that there was nothing in the congressional authorization allowing the president to abrogate the constitutional right of due process.

The Center for Constitutional Rights, which has defended a number of the Guantanamo detainees, released a statement Thursday condemning the decision to hold prisoners under indefinite detention. "Today was supposed to be the deadline by which President Obama would close Guantánamo," the Center declared. "Now it will be the anniversary of the president's decision to abandon our most fundamental constitutional principles. Our nation was built on the idea that no president or king should have the power to imprison people solely at will... and that it is up to the courts to determine whether individuals have engaged in acts that justify depriving them of their liberty.

"Guantánamo remains open, and remains a symbol of lawlessness and abuse. Now the president has committed to holding approximately 50 men without any trial not as a result of anything the men have done in the past but because of a fear of what the men may do in the future and because they have been deemed too difficult to prosecute but too dangerous to release. This is... an assault on the rule of law, our principles and our system of justice."

Anthony D. Romero, executive director of the American Civil Liberties Union, said, "There is no

statutory regime in America that allows us to hold people without charge or trial indefinitely.”

The government argues that it cannot try some of the Guantanamo detainees, even in military tribunals that deny defendants basic due process protections, because its “evidence” against them, either hearsay evidence extracted from other prisoners or direct admissions obtained through interrogation, is tainted by prisoner abuse. This is tantamount to an admission that they have been tortured. The additional reason given is that trying the detainees could compromise intelligence-gathering and national security.

There are other reasons. The government fears the political repercussions of testimony from defendants in open court about the torture to which they have been subjected, as well as the danger of defendants revealing information exposing connections between alleged terrorists and US intelligence and police agencies.

The task force that reviewed the Guantanamo cases is comprised of officials from the Pentagon, the State Department, the Homeland Security Department and the Justice Department, as well as agencies such as the CIA and FBI. According to the *Post*, it recommended that the detainees be divided into three main groups: about 35 to be prosecuted in federal or military courts, at least 110 who can be released at some point, and the nearly 50 who are to be detained indefinitely without trial.

Of the 110 who are deemed eligible for release, 60 are Yemenis. Since Obama indefinitely suspended the transfer of Guantanamo prisoners to Yemen after the attempted Christmas Day airliner attack, these detainees have no prospect of release for the foreseeable future. That leaves only fifty whom the government is preparing to repatriate over the next few months.

Even their release is contingent on “variables,” an administration official told the *Post*, including “a changed security situation in a proposed transfer state.”

The administration claims that all of the detainees have the right to challenge their incarceration in habeas corpus proceedings in federal court. However, the US appeals court which has jurisdiction over all such cases, the US Court of Appeals for the District of Columbia Circuit, earlier this month issued a sweeping ruling making it all but impossible for detainees being held as “alien unprivileged enemy belligerents” to prevail in

such suits.

The appeals court upheld the Obama administration in opposing the release of Ghaleb Nassar al-Bihani, a Yemeni citizen who has been imprisoned at Guantanamo since early 2002. In its ruling, the court declared that presidential power to jail alleged terrorists is not limited by international law, and that Guantanamo detainees who seek to contest the legality of their incarceration are not entitled to the constitutional guarantees and legal norms afforded to defendants in criminal cases.

The focus of the government and the media on the remaining Guantanamo detainees obscures the fact that a far larger group of alleged “enemy belligerents” are being held without charge or trial, under, if anything, even more brutal conditions at the US military prison at Bagram Air Base in Afghanistan. Last week, the Pentagon, in compliance with a Freedom of Information request filed by the American Civil Liberties Union, released a redacted list of 645 people being held at the prison.

A McClatchy newspapers investigative report revealed that many of the Bagram prisoners were civilians who were arrested based on false information.

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