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Obama Should Oppose Preventive Detention

by Sheldon Richman

Speculation is rampant over what will be President-elect Barack Obama's first bold move when he takes power January 20. Will he bail out Detroit? Will he move to revamp the health-care system? Will he unveil a comprehensive plan to revive the economy?

Here's a good way to start, Mr. Obama: categorically oppose preventive detention.

According to the *New York Times*, Obama's hope for closing the prison at Guantanamo raises concerns among his advisors over what to do with the 250 detainees being held there. Specifically, what about the ones who might be acquitted if tried in a criminal court or who can't be prosecuted at all? With typical criminal suspects, either of those two outcomes means release. But, "Even some liberals are arguing that to deal realistically with terrorism, the new administration should seek Congressional authority for preventive detention of terrorism suspects deemed too dangerous to release even if they cannot be successfully prosecuted," the *Times* reports. "The president-elect's transition office would not comment on whether that idea was even under discussion. But human rights groups have been mounting arguments to counter pressure that they say is building on Mr. Obama to show toughness, perhaps by echoing the Bush administration's insistence that some detainees may need to be held indefinitely.... But particularly inasmuch as the Bush administration invoked that authority [of international law] as a basis for its much-criticized detention policies, a move by Mr. Obama to seek explicit authorization for indefinite detention without trial would be seen by some of his supporters as a betrayal."

Indeed.

Obama, like Bush, has talked about closing Guantanamo, a symbol of American barbarity throughout the world. Some of the prisoners have been locked up there without being charged since 2001. People assume the prisoners are terrorists, but for many of them that may not be true. Some number of them are held on the basis of, at best, meager evidence. As a McClatchy Newspapers investigation found, "Dozens of men — and, according to several officials, perhaps

hundreds — [have been] wrongfully imprisoned in Afghanistan, Cuba, and elsewhere on the basis of flimsy or fabricated evidence, old personal scores, or bounty payments.”

But assume there are men being held who have committed violence against Americans. What should be done with them? We have a precedent already. The men accused in the 1993 bombing of the World Trade Center were tried in American criminal courts. They were given the same protections that ordinary criminals are given, and the government obtained convictions and prison sentences. The same with Zacarias Moussaoui, the so-called 20th hijacker of the 9/11 attacks. Why not the Guantanamo prisoners? One common response is that some evidence against them is classified. That claim is too easily made and can be used by officials to abuse authority. But in any case, it is a pseudo problem because procedures exist for privately introducing classified evidence at a trial. It’s been done before.

That’s not good enough for the preventive-detention advocates, who want to hold prisoners acquitted in court or for whom there is too little evidence to take to trial. But that would be an outrageous abuse of government power. What could be more contrary to the American legal tradition than holding people indefinitely without charge or trial on the suspicion they might commit a crime? The Supreme Court has already ruled that the detainees at Guantanamo must be accorded habeas corpus rights, enabling them to contest their imprisonment. But they have not been given all the same rights as criminal suspects, so the protection is incomplete.

Too many people fought and died throughout history to stop governments from engaging in this form of tyranny. Are we ready to discard basic rights just because the people involved (at the moment) are foreigners picked up in a foreign land?

Mr. Obama, you can put a stop to this by vowing to veto any preventive-detention bill.

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