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Serious Problems with Obama's Plan to Move Guantánamo to Illinois **by Andy Worthington**

Last Tuesday, in a letter to Illinois Governor Pat Quinn, five senior Obama administration officials — Secretary of State Hillary Clinton, Attorney General Eric Holder, Defense Secretary Robert Gates, Director of National Intelligence Dennis Blair, and Secretary of the Department of Homeland Security Janet Napolitano — [announced](#) that “the president has directed, with our unanimous support, that the federal government proceed with the acquisition” of Thomson Correctional Center, a maximum-security prison about 150 miles north-west of Chicago, to house prisoners from Guantánamo.

In off-the-record briefings, officials suggested that between 35 and 90 of the [198 prisoners still held](#) at Guantánamo would be moved to Illinois, and, in [a conference call](#) with reporters, to accompany the release of the letter, two government officials explained that “Thomson is not for individuals who will be [tried in U.S. criminal courts](#). It’s for individuals who will be [tried in the military commissions](#).” On Thursday, in [a memo from the White House](#) to members of the Illinois congressional delegation, the administration elaborated, explaining,

If Thomson is selected, we do not anticipate that any detainees currently at Guantánamo Bay who are transferred to Thomson would be prosecuted in civilian courts. Instead, detainees who will be prosecuted in Federal court would be transferred directly to the jurisdiction where they would be prosecuted.”

With reference to the military commissions, the memo stated:

Although a final decision has not yet been made on where reformed military commissions will take place, one option under consideration is to hold military commissions at the detention facility selected for detention. If Thomson is that facility, it has existing space that could be used to try military commission cases as

well as significant administrative space and other amenities that could provide support to military commissions.

The authors added, “Detainees prosecuted in reformed military commissions would be held at the same location where they are being tried. If the Thomson facility is selected for such detainees, they would be held securely before, during, and after trial within the facility.”

In Tuesday’s conference call, the two government officials also explained what would happen to two other categories of prisoners. The first are those who, the government hopes, will be “transferred to our friends or allies overseas” — [103 of the prisoners](#), at the last count, who have been cleared for release by the government’s interagency Task Force. These men, the officials explained, will remain at Guantánamo, until arrangements for their release have been negotiated.

Those in the second category, who will also be transferred to the prison in Illinois, subject to congressional approval, are those who, as President Obama described them in [a national security speech](#) in May at the National Archives, “cannot be prosecuted for past crimes, in some cases because evidence may be tainted, but who nonetheless pose a threat to the security of the United States.”

Republicans, predictably, sought to capitalize on the fearmongering that has sustained them throughout most of this year, despite the fact that the prison has largely stood empty since its construction in 2001. Senate Minority leader Mitch McConnell, for example, complained that the administration had “failed to explain how transferring terrorists to Gitmo North will make Americans safer than keeping these terrorists off of our shores in the secure facility in Cuba,” conveniently forgetting to mention that the government does not need to provide an explanation, because, by 307 to 114 votes in the House, and 79 to 19 in the Senate, [lawmakers voted in October](#) to allow prisoners to be brought to the mainland to face trials, as part of a \$42.8 billion bill for Homeland Security.

If McConnell’s wailing was rather toothless, critics on the left had more to savage in the plans, seizing on the proposals to transfer prisoners “who cannot be prosecuted ... but who nonetheless pose a threat to the security of the United States” as an example of the Obama administration’s bringing the worst aspects of Guantánamo to the U.S. mainland. In a statement, [Amnesty International](#) explained:

The only thing that President Obama is doing with this announcement is changing the zip code of Guantánamo. A fundamental principle of the rule of law is that people cannot be held without charge or trial. The Founding Fathers knew it, the greatest generation fought for it, candidate Obama campaigned for it and the president needs to remember it.

However, although this criticism is certainly accurate with regard to the government's intent, it does not address whether the administration will be able to achieve its aim. At present, Congress has only approved the transfer to the U.S. mainland of prisoners facing trials, as the government officials who spoke to reporters on Tuesday acknowledged, when they stated that currently "it would be a violation of the law to transfer prisoners to Thomson for the purpose of anything other than prosecution." They added that, as a result, the administration acknowledges that it "will need some change of law.... Ultimately the facility would allow for the detention of some number of detainees who the President outlined in the Archives speech as not being triable either in federal courts or in military commissions."

It remains far from clear that lawmakers will approve the "change of law" required by the administration to fulfill its plan, and even if congressional approval is forthcoming, it is not entirely certain that the government has thought out what its proposal actually means.

Despite being inexplicably proud of its plans to hold some prisoners indefinitely without charge or trial, which has been [mentioned with alarming regularity](#) since that speech at the National Archives in May, senior officials have generally been reluctant to acknowledge that the majority of the prisoners that it proposes to transfer to Illinois for the rest of their natural lives — around 55, on the basis of the figures bandied about last week — have habeas corpus petitions pending in U.S. District Courts, and that judges may, if the [78 percent success rate to date](#) is anything to go by, grant the petitions of some of these men and order their release.

In its memo on Thursday, the White House finally acknowledged the role of the courts, but only, it appeared, as a supplement to the administration's right to detain prisoners indefinitely under the [Authorization for Use of Military Force](#). (AUMF), enacted by Congress in September 2001, which authorized the president to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States." The memo also pointed out that, in [Hamdi v. Rumsfeld](#), in June 2004, the Supreme Court had concluded that "Congress has clearly and unmistakably authorized detention" of individuals covered by this legislation.

As a result, the memo stated that the "interagency review panel is in the final stages of determining the number of detainees who will continue to be held, and for whom no prosecution is planned," under the AUMF, and tagged on, almost as an afterthought, was the following passage: "In addition, the Supreme Court ruled in [Boumediene v. Bush](#) [in June 2008] that all detainees currently held at Guantánamo have the right to file petitions for habeas corpus to challenge their detention in federal court. Detainees will continue to have that right when they are transferred to the United States."

If, as can be expected, some of these men win their habeas corpus petitions, the administration will then be left holding innocent men — or, at least, men whose guilt cannot be established by a court — in a maximum-security prison with no obvious means of release, especially if, as with dozens of the 103 cleared prisoners already at Guantánamo, they cannot be repatriated because they hail from countries with notoriously poor human rights records, where they face the risk of torture.

Admittedly, this is not necessarily any better or worse than remaining in Guantánamo, but it appears to be an outcome that has not been fully thought out by senior officials, including the president, while they have been banging on endlessly about continuing the Bush administration's disgusting and disgraceful policy of holding men without charge or trial, and I doubt that it will be as easy as it is in Guantánamo to continue to deprive prisoners cleared by the courts of all rights when they are on U.S. territory.

The government should have thought about all of this months ago, of course, but senior officials seem to have regarded the courts with a Bush-like disdain, preferring to conduct their own inter-agency Task Force review of the prisoners' cases, and doing nothing to prevent Bush-era lawyers in the Justice Department from [continuing the same policy of obstruction](#) in the habeas cases that typified the previous administration.

The result is that, of those 55 cases of proposed indefinite detention, only nine — [those who have lost](#) their [habeas petitions](#) — have any sort of basis in law. Even in these cases, I doubt that the government will be able to maintain forever that it has the right to hold prisoners indefinitely, when their habeas petitions demonstrated only that they had some sort of tangential or minor connection with either al-Qaeda or the Taliban, but the oddest thing about these nine cases is that they do not seem to have been considered by the government at all.

On Tuesday, in their briefing to reporters, one of the two government officials stated, in response to a question regarding “indefinite detention” from Jake Tapper of ABC News,

The last category which the president suggested may — you called “indefinite detention,” and which the president indicated in his speech at the Archives — we may, in fact, have to address. The fact of the matter is, this review is ongoing. There are no specific cases, to date, that meet that standard that the president has signed off on, and so I don't want to jump to any conclusions on that.

This suggests that the administration is not prepared to make a decision about these nine men until the interagency task force completes its review, indicating that senior officials regard the District Court rulings in these men's habeas corpus petitions as less significant than the administration's own, unaccountable Executive review of their cases.

This is actually rather disturbing, because for now these nine men are, at least, detained on a legal basis that has involved the U.S. courts, and are not merely subjected to indefinite detention at the whim of the government, based on eight-year-old legislation passed by Congress in the immediate aftermath of the 9/11 attacks. From my own point of view, I think we actually need to be having a new conversation, to point out that these men should either be prisoners of war, protected by the Geneva Conventions, or terrorists who should be put forward for trials, rather than remaining, essentially, the unique class of human being known as “enemy combatants” — whatever the Obama administration [now chooses to call them](#) (“alien unprivileged enemy belligerents” being [the latest twist](#)).

As it stands, however, the omission of these men from the government’s statements in the past few days suggests that senior officials think so highly of the AUMF that they not only believe that it authorizes them to bring prisoners to the U.S. mainland and imprison them indefinitely, but have also fooled themselves into thinking that this will do anything meaningful to remove the taint of Guantánamo.

The reason why it was so important to close Guantánamo in the first place was to bring to an end the ruinous and unjust policy of indefinite detention without charge or trial, and it amazes me that President Obama has, apparently, fooled himself into thinking that a sleight of hand that perpetuates the same policy as that established by George W. Bush will be any more acceptable when he is its architect, or that a change of scenery — from Guantánamo Bay to Thomson, Illinois — can help to accomplish such a brazen betrayal of the fundamental values on which the United States was founded.

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