



Written by [Thomas R. Eddlem](#) on March 8, 2011

Obama: Prison for Life Without Trial Is Okay

Obama's [executive order](#) allowed "the executive branch's continued, discretionary exercise of existing detention authority in individual cases" without any time limit — even for life — without ever giving the detainees a trial. Obama tried to justify taking away a man's freedom for life without a trial by [stressing](#) that "detainees at Guantánamo have the constitutional privilege of the writ of *habeas corpus*, and nothing in this order is intended to affect the jurisdiction of Federal courts to determine the legality of their detention." Obama also [initiates](#) "a process to review on a periodic basis" detainment that includes a government review of the detention every three years (and a paper review every six months) by a new bureaucracy called a "Periodic Review Board" that will be managed by a "secretariat" from a variety of agencies such as Defense, Homeland Security, State, and Intelligence.



Obama [promised as a presidential candidate](#) and days after becoming President that he would close the Guantanamo Bay prison within a year of becoming President, yet the prison remains open more than two years after he took office. President Obama [promised on January 22, 2009](#) — two days after becoming President — that "Guantanamo will be closed no later than one year from now." The recent executive order drew sharp criticism from some otherwise friendly voices for Obama, such as the ACLU. "It is virtually impossible to imagine how one closes Guantanamo in light of this executive order," Anthony Romero, executive director of the American Civil Liberties Union, [told](#) the *Washington Post*. "In a little over two years, the Obama administration has done a complete about-face."

The decision to imprison detainees for life without any trial is a clear violation of the [Fifth](#) and [Sixth](#) Amendments to the U.S. Constitution. The Fifth Amendment [guarantees](#) that "no man shall be ... deprived of life, liberty, or property, without due process of law." The Sixth Amendment [outlines](#) that due process by requiring that "the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

The details of Obama's decision to initiate his own "military commissions" system have yet to be released, but unless these military commissions follow the same rules that America's own troops must follow under the [Uniform Code of Military Justice](#), they are clearly unconstitutional. Under [Article I, Section 8](#) of the U.S. Constitution, only Congress is given the power "to constitute Tribunals inferior to the supreme Court" and "to make Rules for the Government and Regulation of the land and naval Forces." In short, the President has no constitutional authority to create a military commission to try anyone. Moreover, trying people who have been detained for as long as nine years without charges in



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courts that were created many years after the crimes were allegedly created is problematic from the standpoint of the [Sixth Amendment](#), which guarantees that a court "district shall have been previously ascertained by law" for someone to be tried on charges. Creating courts to try specific individuals already detained is close to creating a ["bill of attainder,"](#) a provision [explicitly banned by Article I, Section 9](#) of the U.S. Constitution.

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