



Written by [Joe Wolverton, II, J.D.](#) on May 8, 2013

Drone Strikes or Guantanamo: Is President Choosing One Over the Other?

A former member of the George W. Bush administration has an idea about why President Obama claims to want to shutter the prison at Guantanamo Bay, Cuba.

“This administration has decided they don’t want to do detention, because the Bush administration got into trouble with detention, so now they’re just going to kill people,” said John Bellinger. Bellinger worked as a legal advisor at the State Department from 2005 to 2009 and held the same post in the George W. Bush White from 2001 to 2005.



Bellinger made these remarks on May 1 during [a conference on the legality of drone strikes held at the Bipartisan Policy Center in Washington, D.C.](#)

Although his comments demonstrate a disdain for the president’s use of drones to strike names from his infamous “kill list,” Bellinger is no enemy of assassination by drone. In fact, Bellinger was the primary architect of the legal justification for such killings adopted by the George W. Bush State Department after the attacks of September 11, 2001.

Bellinger made clear later in his remarks that he was not against summary execution by drone at all. In his opinion, the problem is one not of lack of due process, but of lack of due diligence in convincing our “allies” in the “War on Terror” that drone strikes are a necessary part of the prosecution of that war.

“We are about the only country in the world that thinks we are in an armed conflict with al-Qaida,” Bellinger said. “We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law,” he added.

“These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem,” Bellinger said.

In other words, the drone strikes shouldn’t go away, but the president should do a better job of explaining them away.

There is little doubt that President Obama will continue to rely on drone-fired missiles to eliminate those he suspects of posing a threat to the national security of the United States. One of the speakers at the Bipartisan Policy Center made that clear in his response to a question regarding the legal restrictions on the use of drones.

Here’s [the story as told by the Guardian](#):

Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests.



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When asked by the *Guardian* whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would.

“Yes. But it would be an act of war, and they would suffer the consequences,” he said during the debate at the Bipartisan Policy Center in Washington. “Countries under attack are the ones that get to decide whether they are at war or not,” added Zelikow.

Fortunately for Zelikow and his boss in the Oval Office, no “state of war” exists for a couple of reasons. First, only Congress can declare war — something it has not done since World War II — and there is no “country” that can decide whether or not we are committing acts of war against it. The enemy — the government insists — is not a nation, but an ideology. There are militants operating throughout the globe who desire nothing more than to terrorize the United States. These are the enemy.

Using the president’s logic, then, every nation — including our own — is a potential theater in the “War on Terror,” but traditional rules of warfare need not apply because we’re not at war with any nation that can assert a claim against the United States for violating those rules. Brilliant.

As for the prison at Camp Delta at Guantanamo Bay, President Obama recently declared that it should be closed.

As [reported by *The New American*](#):

On April 30, President Obama announced that Camp Delta is no longer ensuring America’s safety and has in fact become counterproductive in that extremists are pointing to it as a reason to unite and recruit.

President Obama told reporters that the detention center is “contrary to who we are,” and that it is a “lingering problem.” “It is inefficient, it hurts us in terms of our international standing, it lessens cooperation with our allies on counter-terrorism efforts, it is a recruitment tool for extremists, it needs to be closed,” said Obama. “I think it is critical for us to understand that Guantanamo is not necessary to keep America safe.”

Of course, this isn’t the first time President Obama has called for the closing of the detention center. Again, from *The New American*:

As many Americans likely remember, closing Guantanamo Bay had been one of President Obama’s passionate promises. In August 2007, then-Senator Obama declared, “As president, I will close Guantanamo, reject the Military Commissions Act and adhere to the Geneva Conventions. Our Constitution and our Uniform Code of Military Justice provide a framework for dealing with the terrorists.” He reiterated that promise a number of times throughout his campaign.

Two years ago, President Obama signed an executive order that established review procedures for detainees that would determine if continued detention was necessary. The process was to begin with hearings before an interagency Periodic Review Board, which were to begin in March of 2012. But no hearings have been announced thus far.

Although representatives of two presidential administrations argue over which is more offensive to American values — indefinite detention in Guantanamo or death by drone strike — the debate is [a false dialectic](#).

The value placed by Americans on life is set forth in the [Fifth Amendment to the Constitution](#). There need be no either/or discussion when it comes to which reduction of those rights by our government we



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will tolerate.

The Fifth Amendment clearly restates our principle that “no person shall be deprived of life, liberty, or property, without due process of law.” No person. That is the standard. Person means person. It does not mean good person, person who agrees with us, person who lives the way we want them to live, and it doesn’t even mean American citizen.

Every time an agent of the government of the United States kills or detains someone suspected of posing a threat to the security of the homeland without affording that person the due process of law — charges, access to legal counsel, a right to defend oneself against the charges, a right to have the merit of those charges heard by an impartial judge and jury, among others — then we have abandoned our principles.

Whether such betrayal of our most fundamental expression of the sanctity of life and the demands of due process occurs in a prison in Cuba or in a village in Yemen destroyed by a Hellfire missile launched from a Predator drone, the loss of liberty is the same.

So as long as the government is permitted to frame the argument as a this-or-that choice between the lesser of two evils rather than subject any such policy to the scrutiny of the Constitution, Guantanamo (or similar prisons) will remain full and functional and drone strikes will continue culling the kill list.

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