

# THE “DETAINEES SUBJECT TO THE REVIEW”

MadDog linked to the letter that Dennis Blair and Eric Holder sent the Senate describing the process by which 6 agencies and a 100 staffers meticulously decided the ultimate fate of Gitmo detainees—who could be released or imprisoned elsewhere, who could be tried, and (presumably) who had to be held indefinitely. It might be a reassuring letter for its portrayal of the deliberation and rationality applied to Gitmo detainees.

Except for this phrase, repeated twice: “all 240 detainees subject to the review.”

After carefully considering each case, the six agencies reached unanimous agreement on disposition determinations for all 240 detainees subject to the review.

[snip]

After all of the deliberations described above, the DNI-either personally for cases considered by Principals or by delegation to the ODNI official on the Review Panel-agreed with the other five agencies on disposition determinations for all 240 detainees subject to the review.

This process, apparently doesn't apply to all detainees. Only the detainees “subject to the review.” Now perhaps they're just making the distinction between Gitmo detainees and those in some black hole in Bagram or some other secret site. But it sure seems to be referring just to Gitmo detainees. In which case, there must be other Gitmo detainees, outside of the 240, who are not “subject to the review.”

Why? Who are they?

Executive Order 13492, which instituted this review, provides two potential hints. First, it provides this definition:

(c) "Individuals currently detained at Guantánamo" and "individuals covered by this order" mean individuals currently detained by the Department of Defense in facilities at the Guantánamo Bay Naval Base whom the Department of Defense has ever determined to be, or treated as, enemy combatants.

This would seem to leave out detainees held by CIA or contractors (maybe?). And it would seem to leave out those detainees whom DOD had simply never called nor treated as an enemy combatant. You know those family members Mary keeps asking about? They wouldn't be enemy combatants, would they?

The EO also suggests DOD would have authority over any other detainees.

(a) Nothing in this order shall prejudice the authority of the Secretary of Defense to determine the disposition of any detainees not covered by this order.

So while this letter to the Senate sounds like a wonderful work of rational deliberation, it also seems to hint at some remaining Kafkaesque hole, whereby some people who have **not** been deemed enemy combatants remain in some arbitrary limbo not covered by this great display of rational deliberation.

Update: Hmmm is right: the EO lets the Secretary of Defense do what he will with all the other detainees (which I guess makes it especially useful if your Secretary of Defense is an old Chief Spook). I've fixed the post accordingly.