

OBAMA FORMALIZES HIS INDEFINITE DETENTION BLACK HOLE

Hot on the heels of the big DADT victory in Congress, which pretty much got passed in spite of Obama instead of because of him, comes this giant lump of coal for the Christmas stockings all those who believe in human rights, due process, the Constitution, and moral and legal obligations under international treaties and norms. From the Washington Post:

The Obama administration is preparing an executive order that would formalize indefinite detention without trial for some detainees at the U.S. military prison at Guantanamo Bay, Cuba, but allow those detainees and their lawyers to challenge the basis for continued incarceration, U.S. officials said.

The administration has long signaled that the use of prolonged detention, preferably at a facility in the United States, was one element of its plan to close Guantanamo. An interagency task force found that 48 of the 174 detainees remaining at the facility would have to be held in what the administration calls prolonged detention.

This is certainly not shocking, as the Obama Administration long ago indicated there were at least 48 or so detainees they felt too dangerous to release and their cases unable to be tried in any forum, Article III or military commission. This is, of course, because the evidence they have on said cases is so tainted by torture, misconduct and lack of veracity that it is simply not amenable to any legal process. Even one of their kangaroo courts would castigate the evidence and the US government proffering it. That is what happens when a country becomes that

which it once stood against.

Pro Publica fills in some of the details:

But the order establishes indefinite detention as a long-term Obama administration policy and makes clear that the White House alone will manage a review process for those it chooses to hold without charge or trial.

Nearly two years after Obama's pledge to close the prison at Guantanamo, more inmates there are formally facing the prospect of lifelong detention and fewer are facing charges than the day Obama was elected.

That is in part because Congress has made it difficult to move detainees to the United States for trial. But it also stems from the president's embrace of indefinite detention and his assertion that the congressional authorization for military force, passed after the 2001 terrorist attacks, allows for such detention.

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"It's been clear for a while that the government would need to put in place some sort of periodic review, and that it would want it to improve on the annual review procedures used during the previous administration," said Matthew Waxman, a professor at Columbia Law School who worked on detainee issues during the Bush administration.

Unfortunately, it does not appear as if this ballyhooed "review" amounts to anything meaningful to the detainee. Although the detainee would have access to an attorney, it would obviously not be unfettered access, completely on the government's self serving terms, there would be only limited access to evidence, and, most critically, the "review" would only weigh the necessity of the detention,

not its lawfulness. In short, it is a joke.

So, the next time you hear Mr. Obama, or some spokesperson for his Administrations decrying the horrible Congress for placing a provision in legislation prohibiting the transfer of detainees to the US for civilian trial, keep in mind how quickly Mr. Obama rose up to take advantage of it – before the measure was even signed – and also keep in mind how Obama stood mute when he could have threatened a veto of such an inappropriate invasion of Executive Branch power by the Legislative Branch. Keep in mind that this is likely *exactly* what the Obama Administration wants to cover feckless and cowardly indecision and so they do not have to make the difficult political choice of actually protecting the Constitution and due process of law.