

Detentions are Appropriate
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The detention of enemy combatants at Guantanamo fully comports with the Constitution and Supreme Court precedent. A foreign terrorist who would harm U.S. soldiers and civilians is an enemy combatant and should be incapacitated from inflicting such harm. By implementing procedures to ensure that only enemy combatants are detained, the government reaffirms that law prevails even in war.

A year ago, I expressed public reservations about detaining U.S. citizens as enemy combatants without any legal process. The Supreme Court took the same view and ordered that U.S. citizens be given a military hearing to contest their detention. The Defense Department has gone further and instituted such hearings even for foreign combatants held at Guantanamo.

If these procedures are adequate for U.S. citizens on U.S. soil, then they amply protect whatever rights foreign fighters have in Guantanamo. Under the Geneva Conventions, countries at war may detain enemy prisoners until active hostilities end. Hostilities with al Qaeda continue. Even though al Qaeda is not a party to the conventions -- terrorist organizations that target civilians tend not to sign such treaties -- the U.S. has given the detainees Geneva-style process.

They have multiple levels of review to evaluate their combatant status, access to information justifying their detention and an opportunity rebut the case against them in a neutral hearing. If a person is not an enemy combatant but an innocent bystander mistakenly captured in the fog of war, then he is released. In addition, there is an annual review to see if a detainee still poses a danger to the U.S. and its citizens. If he does, then he should be locked up. If not, he is released.

The legal authority to detain enemy combatants has always extended beyond active terrorists. The people who plan their operations, buy their guns, cook their food, or give them shelter with the intent to support their war against the United States are as complicit as those who pull the trigger.

The Constitution does not require the government to be blind to the dangers facing the U.S. and its people. The Supreme Court has said that Guantanamo detainees may present their case in court. That does not mean that their case, in light of the recent review procedures, has legal merit. It does not.