



Why Are We Finding Americans Guilty Without a Trial?

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Equating mere allegations of misconduct with definitive evidence is a growing habit in the United States.

That tendency is most prevalent regarding national security matters, and the trend has been building since the onset of the so-called war on terror following the 9-11 attacks.

Conservatives are especially prone to assert that “ terrorists ” are not entitled to constitutional rights, even if they are American citizens. The obvious problem with that argument is that until a fair and impartial trial is held, the individuals in question are merely accused terrorists.

The whole point of due process is to determine whether a defendant is guilty or not.

Alarmingly, George W. Bush’s administration asserted the authority to jail suspected terrorists without trial or even a hearing before an independent tribunal.

In the case of Jose Padilla, an American citizen apprehended at Chicago’s O’Hare International Airport, the government designated him an “ enemy combatant ” and held him (as well as inflicted torture) for nearly four years at a military prison in South Carolina before bringing charges to a grand jury.

Even then, the administration’s belated application of due process occurred only in response to the U.S. Supreme Court’s prodding.

It would be a mistake, though, to assume that only right-wing leaders embrace the notion that accusation equals guilt. The Obama administration escalated its predecessor’s contempt for due process.

President Bush merely asserted his alleged authority to imprison American citizens without trial. President Barack Obama asserted an authority to execute such people without trial.

That point was underscored when he authorized a September 2011 drone strike that killed radical Islamic cleric Anwar al-Awlaki, an American citizen, in Yemen. A separate strike the following month killed Alwaki’s 16-year-old son.

There is little doubt that the elder Awlaki was a committed terrorist. (The indications regarding his son are less clear.) But that’s really not the point.

Giving the president of the United States the power to execute an American citizen based on nothing more than his determination (or more accurately, a determination by bureaucratic

appointees) that the individual is guilty of terrorism sets a horrifying precedent. It is the ultimate in the accusation- equals-guilt thesis, with devastating consequences.

An American's right to life would then be wholly dependent not only on the reasonableness, but the infallibility, of U.S. leaders. The republic's founders knew better than to rely on such factors for guaranteeing liberty.

The erosion of due process in the name of national security continues to spread.

People are placed on the arbitrary terrorist watch list, and its subset, the "no-fly" list, based on the most opaque criteria. Most cannot even discover through legal proceedings how or why they were marked for scrutiny and restrictions.

An MQ-9 Reaper takes off August 8, 2007 at Creech Air Force Base in Indian Springs, Nevada. The Reaper is the Air Force's first 'hunter-killer' unmanned aerial vehicle (UAV), designed to engage time-sensitive targets on the battlefield as well as provide intelligence and surveillance. The jet-fighter sized Reapers are 36 feet long with 66-foot wingspans and can fly for up to 14 hours fully loaded with laser-guided bombs and air-to-ground missiles. They can fly twice as fast and high as the smaller MQ-1 Predators, reaching speeds of 300 mph at an altitude of up to 50,000 feet. The aircraft are flown by a pilot and a sensor operator from ground control stations. The Reapers are expected to be used in combat operations by the U.S. military in Afghanistan and Iraq within the next year. Ethan Miller/Getty

And it is a list riddled with errors. Individuals prevented from flying have included several pre-teen children and California Republican State Senator (now U.S. Representative) Tom McClintock. Even the late U.S. Senator Ted Kennedy was repeatedly flagged for additional screening because of faulty information.

Proponents of the accusation-equals-guilt thesis apparently are not content with violating an implied constitutional right to travel unhindered in the United States.

Gun control advocates now favor using the terrorist watch list to bar gun purchases. Last year, congressional Democrats, including Senators Diane Feinstein and Charles Schumer, pushed legislation to impose such a restriction, a move that would deprive citizens of an explicit constitutional right under the Second Amendment.

Fortunately, the Senate rejected their measure, but the sentiment in favor of using the no-fly list for that purpose continues unabated in progressive circles.

The growing, casual indifference to basic due process standards threatens liberties that have been hard-won over centuries since the Magna Carta. It is imperative to establish an unyielding standard that distinguishes mere allegations from proof of guilt.

Everyone, even the most suspicious or unpleasant people, are entitled to the presumption of innocence until guilt clearly has been established. We erode that standard at our great peril.

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