

Statement of

The Honorable Dianne Feinstein

United States Senator
California
June 9, 2009

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Senate Judiciary Committee Hearing:
"The Legal, Moral, and National Security Consequences of Prolonged Detention"
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Mr. Chairman, thank you for having this hearing. I think it is important to examine what process should be used to hold individuals captured as a result of a conflict, whether it's those at Guantanamo or those picked up in the future.

As I have stated previously, I believe that closing Guantanamo is important. But, in doing so, we must also establish safeguards to ensure that we aren't releasing those who will simply return to the battlefield.

In addition, the Obama Administration inherited detainees who have been subjected to enhanced interrogation techniques - this inevitably will inhibit the government's ability to prosecute - even when we know that the detainee has committed crimes against the United States.

We must acknowledge that some of the people we have detained could pose a grave threat to the United States.

In these limited cases, "enemy combatants" should be detained for a prolonged period of time so long as they are provided due process and given the opportunity to have their status reviewed by a court.

It is important to strike a balance between preserving the rule of law and releasing individuals who we know are determined to harm our nation.

The Supreme Court has ruled that such detentions may be allowed if the following considerations are addressed:

1. There has been a determination that the individual presents a danger to the community.

2. There has been a showing of "some other special circumstance" to justify their indefinite detention.
3. There is proof of "dangerousness" by clear and convincing evidence and the presence of judicial safeguards.
4. The detention applies to a narrow subset of individuals, such as is the case of individuals from Guantanamo.
5. Congressional intent to grant the Executive branch the power to hold someone indefinitely is unambiguous.
6. The individual cannot be considered to have "entered into" or "landed in" the United States and treated legislatively as other aliens who attempted to enter the United States illegally, or as civilian or military belligerents under the Geneva Conventions and the Laws of War.

Let me be clear. I am not in favor of indefinite detention without judicial review. However, preventive and prolonged detention - under narrow and specific circumstances - and with appropriate court oversight is necessary.

I believe that we can - and we must - create a statutory framework for prolonged and preventive detention in certain situations. As members of the Judiciary Committee, it is our responsibility to be unambiguously clear that in these narrow circumstances the Executive branch has the duty to hold detainees who continue to pose a security threat but cannot be prosecuted for past crimes and to do so within the boundaries of the Constitution.