

Obama Advisers Set to Recommend Military Tribunals for Alleged 9/11 Plotters

By [Anne E. Kornblut](#) and [Peter Finn](#)

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[President Obama](#)'s advisers are nearing a recommendation that Khalid Sheik Mohammed, the self-proclaimed mastermind of the Sept. 11, 2001, attacks, be prosecuted in a military tribunal, administration officials said, a step that would reverse Attorney General Eric H. Holder Jr.'s plan to try him in civilian court in New York City.

The president's advisers feel increasingly hemmed in by [bipartisan](#) opposition to a federal trial in New York and demands, mainly from Republicans, that Mohammed and his accused co-conspirators remain under military jurisdiction, officials said. While Obama has favored trying some terrorism suspects in civilian courts as a symbol of U.S. commitment to the rule of law, critics have said military tribunals are the appropriate venue for those accused of attacking the United States.

If Obama accepts the likely recommendation of his advisers, the White House may be able to secure from Congress the funding and legal authority it needs to close the U.S. military prison at Guantanamo Bay, Cuba, and replace it with a facility within the United States. The administration has failed to meet a self-imposed one-year deadline to close Guantanamo.

The administration officials, who spoke on the condition of anonymity to discuss internal deliberations, said the president's legal advisers are finalizing their review of the cases of Mohammed and four alleged co-conspirators. Asked about the process, White House press secretary [Robert Gibbs](#) said that "no decisions have been made."

Privately, administration officials are bracing for the ire of disappointed liberals and even some government lawyers should the administration back away from promises to use civilian courts to adjudicate the cases of some of the 188 detainees who remain at Guantanamo.

'A sad day'

Marine Col. Jeffrey Colwell, acting chief defense counsel at the Defense Department's Office of Military Commissions, said it would be a "sad day for the rule of law" if Obama decides not to proceed with a federal trial. "I thought the decision where to put people on trial — whether federal court or military commissions — was based on what was right, not what is politically advantageous," Colwell said.

Administration officials said that an announcement could come soon and that they hoped to finalize their plans before Obama leaves for Indonesia on March 18.

Holder announced in a November statement that Mohammed and his co-defendants would

be tried in a federal court in Lower Manhattan, hailing it as a “significant step forward in our efforts to close Guantánamo and to bring to justice those individuals who have conspired to attack our nation and our interests abroad.”

New York Mayor [Michael R. Bloomberg](#) (I) initially embraced the decision. But when a [grass-roots](#) opposition movement took off and cost estimates for security ballooned, Bloomberg and leading New York Democrats turned against the civilian trial. Others objected on national security grounds, arguing that a Manhattan trial could attract another attack.

Capital charges against Mohammed and his four co-defendants were withdrawn without prejudice and dismissed on Jan. 21 in what military prosecutors thought was a prelude to a transfer to Manhattan. But by February, there was near-universal opposition among activists and lawmakers in both parties to trying the case in New York.

In an interview with The Washington Post on Feb. 11, Holder gave his first public signal that he was open to returning to the military commission system. “At the end of the day, wherever this case is tried, in whatever forum, what we have to ensure is that it’s done as transparently as possible and with adherence to all the rules,” Holder said. “If we do that, I’m not sure the location or even the forum is as important as what the world sees in that proceeding.”

Top Obama advisers have been negotiating with [Sen. Lindsey O. Graham](#) (R-S.C.) — a vocal critic of trying the Sept. 11 suspects in civilian court — in pursuit of a deal that would secure his help in closing Guantanamo. Graham has sought the creation a legal framework that would spell out how the government would detain and try future captives, but an administration official warned that a “grand bargain” is not likely in the immediate future. The official, also speaking on the condition of anonymity, said the talks with Graham have been mostly about “limited issues” involving the Mohammed trial and the future of Guantanamo.

Military lawyers said prosecutors cannot simply reconstitute the case the government dropped in January and will have to re-arraign Mohammed and the others. Facing trial with Mohammed are four other alleged key players in the Sept. 11 conspiracy: Ramzi Binalshibh, a Yemeni; Walid bin Attash, also a Yemeni; Ali Abd al-Aziz Ali, also known as Ammar al-Baluchi, a Pakistani who is Mohammed’s nephew; and Mustafa Ahmed al-Hawsawi, a Saudi. The five defendants were first arraigned in June 2008.

“You start back at square one, but it wouldn’t take long to catch up to where we were,” said a military official who spoke on the condition of anonymity because the administration has made no formal announcement about the case.

It may be that some in the government want to start from scratch. Justice Department lawyers who were preparing for the civilian trial of Mohammed and his alleged co-conspirators planned to avoid using any evidence obtained through the coercive interrogation of the defendants while they were held in CIA secret prisons. Mohammed is one of three known detainees subjected to waterboarding while in CIA custody.

Nothing bars the government from using Justice Department lawyers to help try the case in a military commission.

Moving the Sept. 11 case back to military court could scuttle the administration’s plans to

bring other Guantanamo detainees to federal jurisdictions. Administration officials had said they planned to put about 35 Guantanamo detainees on trial, either in federal court or military commissions. While some of the other suspects are not as well known, it may be hard for the administration to argue that they can be tried in civilian court, having relented on Mohammed.

The case of Ahmed Khalfan Ghailani, a Tanzanian who was transferred to New York from Guantanamo in June to face trial on charges relating to the 1998 East Africa embassy bombings, will continue in federal court.

To close the detention center at Guantanamo, the administration needs funding to acquire and refurbish a prison in the United States, probably a state-owned maximum-security facility in Thomson, Ill. Because Congress has barred the transfer to the United States of all detainees except those destined for prosecution, the White House needs legal authority to move prisoners it plans to hold in some form of indefinite detention.

An interagency review of all cases at Guantanamo Bay concluded that about 50 prisoners will have to be held in some form of prolonged detention without trial, because the evidence against them was obtained through the use of harsh interrogation methods or because its revelation in court would compromise intelligence gathering. The government says the detainees are too dangerous to release.

Anger from the left

A decision to reverse course on Mohammed is likely to dismay civil liberties groups and human rights groups who loudly cheered Obama's election because they thought he would dismantle military tribunals developed during the Bush administration.

"If President Obama reverses Holder's decision to try the 9/11 defendants in criminal court and retreats to using the Bush military commissions, he deals a death blow to his own Justice Department, breaks a clear campaign promise to restore the rule of law and demonstrates that the promises to his [constituents](#) are all up for grabs," said Anthony Romero, executive director of the American Civil Liberties Union. "The military commissions have not worked, they are doomed to failure, and Obama will invariably find himself running for office again while not achieving justice for the 9/11 attacks."

Staff researcher Julie Tate contributed to this report.

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and [Peter Finn](#)

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