The legal implications of the al-Awlaki assassination

By Tom Carter
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On September 30, 2011, the Obama administration, through its military and intelligence apparatus, assassinated US citizen Anwar al-Awlaki in Yemen.

The purpose of this essay is to analyze the legal implications of the assertion by the Obama administration of the power to assassinate US citizens anywhere in the world.

From the standpoint of US and international law as it has developed historically, the killing of al-Awlaki is entirely illegal. Extrajudicial executions violate nearly every fundamental democratic legal protection.

At the request of the Obama administration, a lawsuit filed on al-Awlaki's behalf was thrown out of US courts in September of last year on the basis of authoritarian precepts far exceeding any precedent in the country's history. The decision in that case, left undisturbed, clears the way for the extrajudicial liquidation of opponents of the US government and, ultimately, for presidential dictatorship.

Background

Anwar bin Nasser bin Abdulla al-Awlaki was born on April 21, 1971 in Las Cruces, New Mexico in the US. He maintained dual citizenship in the US and Yemen.

Conflicting accounts are given of al-Awlaki's personal and political history. On the one hand, the US government alleges that he was a "senior recruiter for Al Qaeda" who was "directly involved" in various violent acts over the past two decades, including the Fort Hood shootings, the attempted Christmas Day "underwear bombing," and others.

On the other hand, Al-Awlaki presented himself as an unaffiliated religious scholar who, while advocating "jihad against the West," claimed never to have participated in or advocated terrorism. Ultimately, no allegation against al-Awlaki was ever tested or proven in court.

In 2001, the US government sought unsuccessfully to link al-Awlaki to the September 11 terrorist attacks. While some of al-Awlaki's English-language sermons may have been supportive of violence against the US, the authorities were eventually compelled to release him because no evidence linked him directly with the plot. In 2002 or 2003, al-Awlaki traveled to Britain, and in 2004 he returned to Yemen.

In or around January 2010, according to the *Washington Post*, the Obama administration added al-Awlaki's name to a "shortlist of US citizens" containing the names of individuals whom the CIA was specifically authorized to kill on sight. The "kill list" was drawn up as part of a closed executive process involving secret criteria. The Obama administration officially refused even to confirm or deny that such a list existed.

On May 10, 2010, the Obama administration, through its military and intelligence agencies, arranged for a missile to be fired at a car in which al-Awlaki was riding in Yemen. Two men died in the attack, but al-Awlaki survived.

On July 16, 2010, the Obama administration added al-Awlaki's name to the Specially Designated Global Terrorist list. Under sweeping police-state laws that form part of the Patriot Act, a person placed on this list may have his or her bank accounts summarily frozen, and that person is barred from ever entering the US. In addition, and by far most significantly, it is a crime for any person to render any support to someone who is on the Specially Designated Global Terrorist list without a license.

After al-Awlaki's name was added to the Specially Designated Global Terrorist list, his father, Nasser Al-Awlaki, retained the Center for Constitutional Rights (CCR) and the American Civil Liberties Union (ACLU) to file a lawsuit to stop the killing. The CCR and ACLU sought and obtained, after some delay, the required licenses from the Obama administration and filed a lawsuit against President Obama, CIA director Leon C. Panetta and Secretary of Defense Robert Gates in August.

The CCR and ACLU demanded, on behalf of Nasser al-Awlaki, that the government halt efforts to assassinate his son, remove his son's name from secret "kill lists," and make public the "targeted killing program," including what criteria the president uses to determine whom to assassinate.

The lawsuit directly raised the Bill of Rights, including the Fifth Amendment ("No person shall be…deprived of life…without due process of law"), international treaties prohibiting assassination, and historic limits on the scope of executive power. The Obama administration responded to the lawsuit by asking the judge to dismiss the case, raising the "state secrets" privilege, the "political question" doctrine, and invocations of dictatorial "wartime" powers of the president.

On December 7, 2010, at the Obama administration's request, US District Judge John D. Bates dismissed the lawsuit on the grounds that the father did not have legal standing, that the father had failed to satisfy various onerous procedural obstacles, and that the lawsuit was barred by the "political question" doctrine.

The decision by Judge Bates in this lawsuit will be remembered as a historic renunciation of the American judiciary's centuries-old role as the defender of the Constitution and the Bill of Rights, clearing the way for the assertion of police-state powers by the executive branch.

Judge Bates was appointed by then-president George W. Bush in December 2001. Before becoming a judge, Bates worked for nearly two decades as a federal prosecutor, after which he served as deputy independent counsel for Kenneth Starr during the Clinton impeachment scandal.

During his ten years as a judge before deciding the al-Awlaki case, Judge Bates distinguished himself by dismissing important lawsuits that threatened to reveal government criminality, including dismissing a lawsuit brought by Valerie Plame against top Bush administration officials who, in order to punish her husband Joseph Wilson for exposing official lies regarding alleged "weapons of mass destruction" in Iraq, revealed her identity while she was working undercover as a CIA agent. Judge Bates also dismissed a lawsuit that would have exposed the identities of those with whom Vice President Dick Cheney's infamous

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"energy task force" conferred, and a lawsuit that raised the Bush administration's termination of the Anti-Ballistic Missile Treaty.

On September 30, 2011, after as many as a dozen failed attempts on al-Awlaki's life, the Obama administration Joint Special Operations Command, under the direction of the CIA, dispatched two Predator drones equipped with Hellfire missiles to assassinate al-Awlaki in Yemen. Hellfire missiles, manufactured by Lockheed Martin and each containing a 100-pound warhead designed for destroying tanks, are the Obama administration's favored assassination weapon.

Al-Awlaki and three other men were traveling by car and had stopped for breakfast. The four men spotted the drone and tried to escape by car, but were overtaken by a missile. Among the dead was al-Awlaki, married with five children, as well as Samir Khan, a US citizen born in Saudi Arabia. Commenting on the slaughter, President Obama stated that the event was "further proof that Al Qaeda and its affiliates will find no safe haven anywhere in the world."

As will be shown below, al-Awlaki was not selected for assassination because of any threat he represented to the United States. He was selected as a test case that, if successful, would set a precedent according to which the executive branch of the US government has the unreviewable power to secretly liquidate its political opponents, including US citizens, unimpeded by the Bill of Rights or other historic democratic legal protections.

Citizenship

Al-Awlaki was a US citizen by virtue of the Fourteenth Amendment. The Fourteenth Amendment provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States…" This amendment, passed in the aftermath of the Civil War, was designed to permanently break up the Southern slavocracy by preventing the institution of more than one class of citizen. It places citizenship on a substantially democratic basis, irrespective of race, heritage, religion or political persuasion.

Following a series of cases relating to the Guantanamo Bay prison camp over the past decade, the US Supreme Court was ultimately divided in 2008 in *Boumediene v. Bush* on the question of whether non-citizens in US custody outside the United States are entitled to the protections of the Bill of Rights. However, the court expressly held in 2004 in *Hamdi v. Rumsfeld* that a US citizen in Guantanamo is entitled to the full measure of constitutional protections. In al-Awlaki's case, because he was born in the US, he was a US citizen entitled to the very same democratic rights enjoyed by the rest of the population.

After the "shortlist" of assassination targets was leaked to the press in early 2010, the fact of al-Awlaki's US citizenship was the subject of some concern in certain factions of the political establishment. These factions were concerned with the implications of the premeditated extrajudicial state killing of an American citizen, especially in light of the recent Supreme Court opinions, and urged instead that al-Awlaki be stripped of his citizenship before he was killed.

In April 2010, US Representative Charles Dent of Pennsylvania introduced a resolution calling on the US State Department to issue a "certificate of loss of nationality" to al-Awlaki on the grounds of his "treasonous acts." Similar proposals, for example by Senator Joseph Lieberman, would create a "citizenship-stripping" law, pursuant to which the government could revoke a person's citizenship and all the attendant rights and privileges upon a finding that the individual had committed acts of "treason" or "disloyalty." Such a "citizenship-stripping" law has no precedent in US law and would require the effective abolition of the Fourteenth Amendment. In this case, the Obama administration proceeded with the assassination despite concerns over the fact of al-Awlaki's US citizenship.

The Fifth Amendment and due process

The Fifth Amendment, ratified in 1791 in the wake of the American Revolution, expressly provides: "No person shall be…deprived of life…without due process of law." The principle of due process originates from clause 39 of the Magna Carta in England, and the language of the Fifth Amendment echoes the Declaration of Independence. The outrages perpetrated with impunity by the European aristocracies were fresh in the minds of the American revolutionaries, and it goes without saying that the purpose of the passage in the Fifth Amendment was to prevent secret, lawless, or arbitrary executive actions that threatened "life, liberty or property."

According to the Fifth Amendment, which was designed to work alongside the other provisions of the Bill of Rights, the government could not execute a person without "due process," including the observance of a certain, expressly prescribed procedure.

That procedure included indictment by a civilian grand jury (the Fifth Amendment), an arrest warrant issued by a neutral magistrate (the Fourth Amendment), and a speedy and public trial by an impartial jury (the Sixth Amendment), in which the accused has a right to an attorney (the Sixth Amendment), in which evidence cannot be introduced that was obtained through torture or other unlawful means (the Fourth and Fifth Amendments), in which the accused may confront his accusers (the Sixth Amendment), in which the punishment may not be "cruel or unusual" (the Eighth Amendment), and so on. In addition, under principles descended from the English common law, the accused was to be entitled to the presumption of innocence, and the burden of proof was to rest on the prosecution to prove guilt beyond a reasonable doubt.

Understood in this context, an extrajudicial killing flouts and ignores every single one of the victim's basic legal protections provided by law. The entire centuries-old set of minimum democratic rights described by the Bill of Rights can be circumnavigated and made redundant if, as in al-Awlaki's case, the federal government can carry out executions outside of this framework.

The First Amendment and free speech

Since the Supreme Court's unanimous 1969 decision in *Brandenburg v. Ohio*, which overturned the conviction of a KKK leader who had called for violence against a number of politicians in a speech, the First Amendment has expressly been understood to protect even political speeches that advocate terrorism.

In a recent article, liberal commentator Glenn Greenwald drew a parallel between al-Awlaki's case and the *Brandenburg* case. In *Brandenburg*, a KKK leader was convicted under an Ohio statute that made it a crime to "advocate…the duty, necessity, or propriety of crime, sabotage, violence or unlawful methods of terrorism as a means of accomplishing industrial or political reform."

The Supreme Court struck down the Ohio statute alongside the conviction on the grounds that the statute "purports to punish mere advocacy" and thus "sweeps within its condemnation speech which our Constitution has immunized from governmental control." The Supreme Court expressly held that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force."

In al-Awlaki's case, he was never indicted, much less tried in court, so he never had an opportunity to present a defense or call into question the legitimacy of the theory of the prosecution. Media reports have highlighted the most incendiary portions of al-Awlaki's lectures, e.g., those in which he calls for "jihad against the West," and so on, but it is important to note that these excerpts do not in themselves constitute evidence of a crime.

If al-Awlaki had been put on trial, and no evidence had linked him to any specific terrorist conspiracies, the First Amendment would have

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protected his various pronouncements on "jihad." An important distinction has historically been drawn in US law between advocacy of a certain act and participation in the act itself; the latter may be a crime, but the former is generally protected as free speech.

To the extent that the al-Awlaki killing discourages lawful political speech, because the would-be speakers fear "targeted killing" by the federal intelligence apparatus, the al-Awlaki assassination violates the First Amendment.

US and international law

Numerous international treaties, including perhaps the UN charter itself, prohibit carrying out the targeted killing of individuals on foreign soil outside of armed conflict except in extraordinary circumstances. Such extraordinary circumstances are generally understood to involve imminent threats of physical violence, where no other alternative exists but to employ lethal force.

One such treaty, codified in US law as the Torture Victim Protection Act (TVPA) of 1991, provides that "an individual who, under actual or apparent authority, or color of law, of any foreign nation…subjects an individual to an extrajudicial killing shall, in a civil action, be liable for damages." The TVPA is often cited as evidence of an international legal norm prohibiting extrajudicial killing of any kind.

Executive Order number 12333, signed by then-president Ronald Reagan in 1981 under intense pressure, proscribes assassinations by the US government entirely. It states: "No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination."

Previous executive orders by presidents Gerald Ford and Jimmy Carter had banned assassination by US agents and "involvement" by US agents in assassination. Agents of US imperialism no doubt carried out assassinations during this period, but they did so with the understanding that, if caught, they would be treated as criminals under international law. The executive orders of Reagan, Ford and Carter are cited as further evidence of an unqualified ban on extrajudicial killing under international law.

It is a telling indication of the dramatic rightward shift of official American politics over the past several decades that a Democratic administration now oversteps the order of a president who during his term in office thirty years ago was considered the most right-wing Republican president in US history.

Defenders of the Obama administration argue that the country of Yemen consented to the killing of al-Awlaki, thus waiving any objections that might be raised on behalf of that country. Further, they argue that an "armed conflict" is underway, namely, the so-called "war on terror," which has been sanctioned by various international documents and decisions. Finally, they allege that al-Awlaki presented an "imminent threat" by virtue of his alleged involvement in Al Qaeda.

Leading experts on international law have not accepted the Obama administration's rationale. Most importantly, the concept of an "armed conflict" has historically been understood to mean an openly declared military conflict between two countries. The vague and unending "war on terror," which the US has declared on the entire world, does not suffice to meet this standard.

"Under international law, the killing of [al-Awlaki] through military force is clearly unlawful," Mary Ellen O'Connell, a law professor at the University of Notre Dame, recently told the press. "The United States is not at war in Yemen. This was the killing of a criminal suspect with no attempt to arrest."

The merits of these issues were not reached in the al-Awlaki case. In that case, Judge Bates wrote off the authorities described above on the grounds that they were evidence only that extrajudicial killing itself may violate international norms, and not that "*threatened* future extrajudicial killing" violated any norms. [emphasis in the original]

Al-Awlaki had not yet been killed at the time the case was dismissed. At any rate, Judge Bates also held that the United States was immune from any litigation raising the above principles of international law.

Finally, in a refrain that has become familiar, Judge Bates argued for deference to the executive with respect to international law. It would be "extraordinary," he wrote, "for this Court to order declaratory and injunctive relief against the President's top military and intelligence advisors, with respect to military action abroad that the President himself is alleged to have authorized."

The "state secrets" privilege

In al-Awlaki's case, the Obama administration responded to efforts to force the disclosure of the secret "kill list" and expose the "targeted killing program" by invoking the "state secrets" privilege. "The disclosure of such information reasonably could be expected to harm the national security of the United States," the Obama administration lawyers wrote in their brief. The al-Awlaki case, if allowed to proceed, they continued, "would require the disclosure of highly sensitive national security information concerning alleged military and intelligence actions overseas."

A series of Supreme Court decisions have vastly expanded the "state secrets" doctrine over the past several decades. The same brief was accompanied by a "classified annex" which could be read only by the judge and was not available to Nasser al-Awlaki's lawyers or the public.

In support of this position, the Obama administration cited its recent victory in *Jeppesen Dataplan*. In that case, the Obama administration intervened to protect private defense corporations in a lawsuit that threatened to reveal the involvement of those corporations in illegal "rendition" flights and torture. Jeppesen Dataplan is a subsidiary of the multinational airplane and defense corporation Boeing.

In September 2010, the Ninth Circuit Court of Appeals, which was once known as a decidedly liberal court that consistently defended and expanded democratic legal protections, dismissed the *Jeppesen Dataplan* case at the Obama administration's request on the grounds that "state secrets" might be revealed, setting a precedent that the administration was more than eager to cite in each of the cases where it was alleged to have violated the law.

In al-Awlaki's case, Judge Bates did not actually decide the issue of "state secrets" one way or the other, even though the issue was raised by the Obama administration. For the reasons discussed below, Judge Bates threw the case out at the starting gate for lack of jurisdiction.

The "political question" doctrine and the separation of powers

The "political question" doctrine has a long and complex history. It was crafted following a dual power situation in the Dorr rebellion (1841-1842), which involved a political revolt against the state government of Rhode Island. Following the rebellion, the Supreme Court was essentially asked to determine which power had been legitimate and which power had been illegitimate. The Supreme Court held in *Luther v. Borden* (1849) that the dual power situation created a "political question" that was outside the power of the courts to determine.

Over the last 150 years, the "political question" doctrine became closely linked to the theory of the separation of powers. There once was a time when every secondary school student in the US learned in a civics class the basic theory of the federal government. According to the theory of the "separation of powers," the legislature creates the laws, the executive enforces them, and the judiciary, which is ostensibly neutral, ensures that the actions of other two branches conform to the law.

According to the theory, for example, the legislature may pass a law making it a crime to engage in a certain activity; a prosecutor, a representative of the executive, may investigate and file charges against

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someone who is accused of engaging in that activity; and a judge, a representative of the judiciary who maintains a strict neutrality as between the prosecutor and the accused, presides over the trial. A series of "checks and balances" maintains a theoretical equilibrium. For example, the judiciary may strike down laws that violate the Constitution, according to the doctrine of "judicial review." Finally, each branch is required not to interfere with the operations of the others.

In the recent period, and in particular since the administration of George W. Bush, the "political question doctrine" has been the chief legal vehicle for the codification of the so-called "unitary executive" theory, according to which the judiciary, by reason of "the separation of powers," is admonished not to interfere with the president's exercise of his so-called "wartime powers." Article II of the US Constitution does provide the executive branch with wartime, foreign policy and national security powers. However, the "unitary executive" theory turns the separation of powers into its antithesis. In the name of preserving the separation of powers, the theory concentrates expansive unreviewable power in the hands of the executive.

At the Obama administration's request, the court in al-Awlaki's case determined that it had no jurisdiction to hear the case on the grounds of the "political question" doctrine. The Obama administration lawyers wrote, echoing verbatim the positions adopted by the Bush administration, that whether a US citizen poses an imminent threat, whether a US citizen should be assassinated, and what criteria should be used in making that determination are "all judgments reserved to the President and his military and intelligence advisors" by Article II of the Constitution. That the Obama administration even dared to write these words is itself a damning indication of the decay of democracy and the state of American politics.

Judge Bates agreed with the Obama administration, writing in a lengthy section of his opinion exalting expansive executive powers that "judicial assessment as to the propriety of the Executive's decision to employ military force abroad would be anathema to separation of powers principles." Judge Bates went on to write that "the questions posed in this case do require both expertise beyond the capacity of the Judiciary and the *need for unquestioning adherence to a political decision by the Executive* ." [emphasis added]

In the al-Awlaki case, the president operated as lawmaker, prosecutor, judge, jury and executioner. The "unitary executive" theory purports to be a defense of the principle of the separation of powers, *but in fact it means the abolition of the separation of powers*.

Standing and the rights of those who "decry the US legal system"

Al-Awlaki's father, Nasser al-Awlaki, brought the case discussed above against Obama, Panetta and Gates on his own behalf and as "next friend" of his son. He asserted the right to act on the latter's capacity on the grounds that al-Awlaki was in hiding, that assassination had already been attempted illegally against him, and that he could not access the courts without disclosing his whereabouts and exposing himself to Hellfire missiles.

The Obama administration argued that the elder al-Awlaki lacked "next friend" status to bring the case on his son's behalf, and that the case should not be allowed to proceed unless the son initiated the proceedings personally.

The Obama administration argued that because al-Awlaki called for "jihad against the West" and "decried the US legal system," he would not wish to vindicate his constitutional rights in US courts and therefore his father should not be permitted to exercise "next friend" status. This argument opened the door for Judge Bates to include in his official memorandum opinion an extended diatribe on Islamic fundamentalism and the "war on terror."

At the beginning of his official decision, Judge Bates poses a number of what he calls "stark" and "perplexing" questions, including the following: "Can a US citizen use the US judicial system to vindicate his constitutional rights while simultaneously evading US law enforcement authorities, calling for 'jihad against the West,' and engaging in operational planning for an organization that has already carried out numerous terrorist attacks against the United States?"

This question deserves close scrutiny. To anyone with an ounce of democratic consciousness, the obvious answer is "yes." A person who evades law enforcement authorities and is subsequently put on trial may take full advantage of all legal protections normally afforded a criminal defendant. Likewise, one does not forfeit one's constitutional rights by making anti-American speeches or even by engaging in a criminal conspiracy.

Historically, when a person has been accused of a serious crime, the government has been required to prove in court those accusations to a jury beyond a reasonable doubt. The more serious the crime of which a person is accused, the more important are that person's democratic legal protections.

The records of the US Supreme Court over the past two hundred years are replete with cases in which that court firmly insists that even the most unpopular and controversial people—from serial killers and KKK leaders to anarchists and political dissidents—are entitled to free speech and the full measure of democratic legal protections according to the US Constitution during their trials. It goes without saying that many provisions of the Bill of Rights are designed to protect those who are accused of a crime, so the fact that a person has been accused of a crime cannot be a reason to deny the accused the protection of those provisions.

The fact that Judge Bates considers such a question "stark" and "perplexing" further highlights the erosion of democratic consciousness throughout all the sections of the political establishment in the US, including the judiciary.

Judge Bates goes on to cite a speech by al-Awlaki in which he calls on Muslims to meet "American aggression" not with "pigeons and olive branches" but "with bullets and bombs," and another where al-Awlaki indicates that "the modern civil state of the West does not guarantee Islamic rights." Judge Bates suggests because al-Awlaki criticized US imperialism and the US legal system, al-Awlaki should not be permitted to vindicate his rights in US courts.

Finally, in one of the more Orwellian aspects of the case, Obama's lawyers promised in September 2010 that "if Anwar al-Awlaki were to surrender or otherwise present himself to the proper authorities in a peaceful and appropriate manner, legal principles with which the United States has traditionally and uniformly complied would prohibit using lethal force or other violence against him in such circumstances." Such a statement, coming from a regime that had by that time already made multiple illegal attempts on al-Awlaki's life that had claimed the lives of at least two bystanders, simply cannot be taken seriously. Nevertheless, Judge Bates accepted the Obama administration's assurances as good coin. Within a year, al-Awlaki had been assassinated.

"Providing material support to terrorism"

Included in the USA PATRIOT Act is a provision that is often overlooked by the media and left commentators. The provision, upheld by the Supreme Court in *Holder v. Humanitarian Law Project*, makes it a crime to "provide material support to terrorism," including providing "training," "expert advice or assistance," "service," and "personnel" to persons or organizations that the president has designated as "terrorists." To describe this provision as authoritarian does not go far enough. This provision may prove to be an essential feature of the legal machinery of a future American police state.

In *Holder*, the Humanitarian Law Project had offered legal advice regarding how to "peacefully resolve conflicts" to a number of groups

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around the world, including the Kurdistan Workers Party in Turkey and the LTTE in Sri Lanka. The Supreme Court held that giving legal advice to these groups was a crime under the Patriot Act.

In July 2010, civil rights lawyer Lynne Stewart was sentenced to 10 years in prison for "providing material support to terrorism" for releasing information from her client Sheikh Omar Abdel-Rahman. The same provision of the Patriot Act was used as a basis for the Obama administration's raids on political activists in Minneapolis and Chicago in September 2010.

In al-Awlaki's case, because he had been designated by the Obama administration as a "terrorist," the ACLU and CCR were required to obtain a permit from the administration before they gave any legal advice to al-Awlaki's father, lest the attorneys themselves be convicted for "providing material support to terrorism." In this case, the permit was granted by the Obama administration. However, it was entirely within the realm of possibility for the Obama administration simply to deny the permit, in which case the matter would have never wound up in front of a judge and any efforts to stop the assassination through US courts would have been impossible.

The new framework

Consider the following scenario: While an American journalist critical of US policy is traveling outside the US, it is leaked to the *Wall Street Journal* that his name is on a US government "kill list." The journalist's name has also been added to a list of Specifically Designated Global Terrorists. The country in which the journalist is traveling acknowledges it has agreed to cooperate with the US assassination efforts. The journalist goes into hiding.

The journalist hires an American lawyer, who rushes into court to attempt to prevent an assassination, but that lawyer is immediately led away in handcuffs for representing the journalist without a permit and "providing material support to terrorism."

A second lawyer petitions the federal government for a permit, but the permit is denied without a reason being given. The second lawyer's name may or may not be added to the secret "kill list." A third lawyer makes a petition for a permit, and it is granted after some delay. Meanwhile, assassination attempts are made on the journalist, killing innocent bystanders. The third lawyer's case is thrown out on the grounds that the journalist has made statements "decrying the US legal system" such that standing is denied. The judge cites the al-Awlaki case for the "state secrets" privilege and the "need for unquestioning adherence to a political decision by the Executive."

A car in which the journalist is riding is then overtaken by a Hellfire missile, killing three passengers as well.

Alternatively, imagine a scenario in which the assassination takes place out of the blue, with no warning and no opportunity to attempt to halt it. The administration then denies that it had anything to do with it, and the court refuses to intervene on the grounds of the "state secrets" doctrine.

The legal framework for these scenarios has already been erected and tested by the Obama administration in the al-Awlaki case. This framework is unprecedented, violating nearly every fundamental democratic protection in national and international law.

Conclusion

In the final analysis, the killing of al-Awlaki represents the irrevocable crossing by the Obama administration of a political, judicial and moral Rubicon. It is no exaggeration to state that the policy of extrajudicial assassination of US citizens far from any battlefield calls into question the fundamental achievements of the American Revolution itself.

The great bourgeois revolutions of the 18th and 19th centuries, and the American Revolution in particular, facilitated the rapid development and expansion of bourgeois legal forms of government. Although historically limited in character, these forms represented a revolutionary advance over feudal and church governance.

In this context, the Bill of Rights was not only a national but also an international achievement, justly admired at the end of the 18th century as the codification of the great principles of democratic government, from the separation of powers and the rule of law to freedom of speech and due process. With the Civil War amendments, abolishing slavery and placing citizenship on a democratic basis, bourgeois law in the US achieved the highest point on its historic curve of development.

As the triumphs of bourgeois law coincide with the rise of the bourgeoisie as a class, the great failures of bourgeois law coincide with the historic crisis of capitalism. The assassination of al-Awlaki will be remembered as an important milestone in the advanced stage of that crisis in the US, along with Supreme Court decisions such as *Bush v. Gore* and illegal, undeclared military adventures such as the invasion and plunder of Libya.

With the killing of al-Awlaki, the so-called "war on terror" begins to reveal ever more openly its true face. The "war on terror" was never about protecting American citizens from foreign attack. Its purpose was to serve as a pretext for the assertion of the interests of the US ruling class in the Middle East through military violence and as camouflage for the terrorization of opposition within the United States itself.

Al-Awlaki was not added to the "kill list" because he or his radical sermons posed an imminent danger to the United States. His was selected as a test case to add to the list of police-state precedents that have been piling up in recent years.

The extrajudicial imprisonment and torture of a US citizen was successfully tested in the Padilla case. The extrajudicial assassination of a non-citizen was tested in the murder of Osama Bin Laden, which also went unchallenged in official circles. The invocation of "material support for terrorism" laws against domestic political dissent was tested in the FBI raids in Minneapolis and Chicago—again, no official institution objected or intervened. The logical next step was the assassination of an American citizen.

The decision in al-Awlaki's case by Judge Bates recalls the words Trotsky used to describe the abandonment of the traditions of Jacobinism by the French bourgeoisie. "The bourgeoisie," he wrote, "has shamefully betrayed all the traditions of its historical youth, and its present hirelings dishonor the graves of its ancestors and scoff at the ashes of their ideals." In the 21st century, the same can be said of the American bourgeoisie and all of its political representatives, for whom the Bill of Rights is a moldy piece of paper that has far outlived its purpose.

Al-Awlaki's assassination constitutes an abandonment of the principle of the rule of law. Secret panels are now free to convene within the executive branch and through a closed process and with no oversight of the judiciary, issue death warrants for US citizens.

This new policy represents the tip of the wedge that has been driven deep into the rotting structure of American democracy, pushing aside, at an accelerating pace, the remaining legal obstacles in the path of unlimited executive power.

The proletariat, as Trotsky wrote, must take "the honor of the revolutionary past of the bourgeoisie under its protection." The working class must take the lead in the struggle to defend and expand democratic protections such as those enshrined in the Bill of Rights, rallying behind it all progressive forces in society opposed to the financial and corporate aristocracy's drive toward dictatorship.

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