

Obama administration to respond to lawsuit challenging assassination program

By Tom Carter
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The Obama administration is expected to file its response by the end of the month to a lawsuit brought by relatives of three US citizens murdered in the course of the administration's "targeted killing" program. It is expected that the administration will demand that the case be thrown out on the grounds of "state secrets" and the president's "unreviewable" powers respecting matters of national security.

The administration has adopted the unprecedented position that the constitutional requirement that "[n]o person shall be ... deprived of life ... without due process of law" (the Fifth Amendment) does not bar the president from carrying out unilateral assassinations, including of US citizens, without judicial review.

Obama's attorney general, Eric Holder, in a speech last March declared: "Some have argued that the president is required to get permission from a federal court before taking action against a United States citizen.... This is simply not accurate. 'Due process' and 'judicial process' are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process."

The invented distinction between "due process" and "judicial process" and the claim that the Constitution does not guarantee the latter amount to a pseudo-legal formula for police state rule. According to the Obama administration, the constitutional requirement of due process is satisfied by secret meetings between the president and his military and intelligence advisors in which assassination lists are drawn up.

The complaint filed July 18 in the *Al-Aulaqi v. Panetta* lawsuit—which has received virtually no media attention—directly challenges the Obama administration's asserted power to carry out unilateral extrajudicial assassinations.

The American Civil Liberties Union (ACLU) and Center for Constitutional Rights (CCR) have filed the lawsuit on behalf of Nasser al-Awlaki, the father of Anwar al-Awlaki and grandfather of Abdulrahman al-Awlaki, and Sarah Khan, the mother of Samir Khan. The three victims of US drone strikes in Yemen were American citizens.

The Obama administration claims that Anwar al-Awlaki was a leader of an Al Qaeda affiliate in Yemen. However, no charges were ever brought and no evidence released to

substantiate this allegation (See: "of citizens killed in drone strikes sue US officials")

"Since 2001, and routinely since 2009, the United States has carried out deliberate and premeditated killings of suspected terrorists overseas," the complaint states. "The US practice of 'targeted killing' has resulted in the deaths of thousands of people, including many hundreds of civilian bystanders," it continues.

The complaint further states: "These killings rely on vague legal standards, a closed executive process, and evidence never presented to the courts. The killings [of three American citizens] violated fundamental rights afforded to all US citizens, including the right not to be deprived of life without due process of law."

The Obama administration killed Anwar al-Awlaki and Samir Khan along with two other people in a drone missile attack in northern Yemen's al-Jawf province on September 30, 2011. The assassination of Anwar al-Awlaki followed a number of unsuccessful attempts by US intelligence agencies to kill him with missiles, including an attack on May 5, 2011 that killed two other people.

The administration killed Abdulrahman al-Awlaki, Anwar al-Awlaki's 16-year-old son, in a separate CIA-led drone attack four hundred miles away on October 14, 2011. That attack killed nine other people.

While the murders of all three US citizens were incontrovertibly illegal, the killing of the youth Abdulrahman al-Awlaki stands out as particularly heinous. According to family members, the boy was killed on his way to a barbecue with his 17-year old cousin, who was also killed.

In a video recently posted by the ACLU and CCR, Abdulrahman's grandfather, Nasser al-Awlaki, the father of Anwar al-Awlaki, challenges the killing of his grandson. "I want Americans to know about my grandson," Nasser al-Awlaki declares. "I never thought that one day this boy, this nice boy, would be killed by his government for no wrong he did, certainly."

"It has tremendous impact on us, that small boy being killed by an American drone, away from his home, away from his family," Nasser al-Awlaki continues, his voice breaking. "He didn't even get the best burial we could have hoped for

because his body was cut into pieces.”

The assassination of Anwar al-Awlaki was a test case by the Obama administration of its asserted power to assassinate any person, anywhere in the world, including US citizens, without anything resembling due process.

The ACLU and CCR filed an earlier lawsuit on behalf of Nasser Al-Awlaki in August 2010 in an attempt to prevent the killing of Anwar al-Awlaki. The lawsuit directly raised the Fifth Amendment requirement of due process as well as clear prohibitions on assassination in US and international law.

The Obama administration responded to the earlier lawsuit by demanding that the suit be thrown out on the grounds of the “state secrets” privilege and the assertion that actions taken by the president in the course of the so-called “war on terror” are essentially unreviewable by any court. (See: “The legal implications of the al-Awlaki assassination”). At that time, the Obama administration referred to the prospect of Anwar al-Awlaki being assassinated as “speculative and hypothetical.”

The fascistic “unitary executive” legal doctrine of unreviewable presidential authority in matters respecting national security, introduced by the Reagan administration and further developed by the George W. Bush administration, has been adopted in full by the Obama administration.

Federal District Judge John D. Bates threw out the earlier lawsuit without dealing with the merits of the constitutional claims, citing the “need for unquestioning adherence to a political decision by the Executive.”

Perhaps more than any other case, the litigation surrounding the Anwar al-Awlaki assassination illustrates the evisceration of bourgeois democracy across all branches of government, including the judiciary, simultaneous with the erection of the scaffolding of a police state.

Under the legal system that existed from the late 18th century until recently in the United States, before the US could legally kill one of its citizens outside a war zone, the accused was entitled to due process. Due process, a centuries-old concept, includes basic rights such as the right to a neutral judge and jury, the right to confront witnesses, the right to an attorney, the right to exclude unlawfully obtained evidence, and the presumption of innocence.

“Assassination, poison, perjury,” wrote Thomas Jefferson in a 1789 letter to James Madison, “all of these were legitimate principles in the dark ages which intervened between ancient and modern civilizations, but exploded and held in just horror in the eighteenth century.”

In 1975, revelations in the course of the Watergate scandal that the FBI and CIA had been involved in attempted assassinations of foreign leaders resulted in the famous Church Committee investigations, 50,000 pages of reports, and an executive order signed by President Gerald Ford banning assassination.

Over the intervening decades, marked by the growth of social

inequality and a deepening crisis of American capitalism, the US ruling class and political establishment have moved ever more sharply to the right, embracing militarism abroad, class war at home and a buildup of the repressive powers of the state at the expense of democratic rights.

The Obama administration now asserts the power to unilaterally designate any person, on the president’s own say-so, a “terrorist.” That designation is based on secret criteria, secret discussions with military and intelligence advisors, and secret evidence (including warrantless surveillance, torture and anonymous tips). There are no trials, no records, no attorneys, no judges, no juries, no indictments, no briefs, no rights, and no appeals.

Lawyers who attempt to represent a designated “terrorist” without a special permit to do so (issued at the discretion of federal authorities) are themselves subject to being labeled “terrorists” under the “material support for terrorism” provisions of the USA PATRIOT Act.

After the president designates someone a “terrorist,” according to the Obama administration, he can place that person on a secret “kill list.” The very existence of the list is publicly denied, and allegations of its existence are declared to be “speculative and hypothetical.”

Nevertheless, dozens of administration officials were cited anonymously by the *New York Times* in a long, detailed account published May 29 of Obama’s personal role in selecting the individuals to be placed on “kill lists” and authorizing their murder.

With political protesters and dissidents increasingly labeled “terrorists,” and tens of thousands of drones slated to be deployed over the US mainland, the ruling class is positioning itself to respond to social upheavals with political killings and repression on a mass scale.

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