

Judge dismisses lawsuit challenging drone assassinations of US citizens

By Tom Carter
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On Friday, federal Judge Rosemary M. Collyer entered an order dismissing a civil rights case that challenged the Obama administration's "targeted killing" program. Judge Collyer ruled that there is no legal remedy for the extrajudicial killings of US citizens, endorsing a battery of totalitarian pseudo-legal doctrines advanced by the Obama administration.

The case was brought by Nasser al-Awlaki on behalf of his dead son, Anwar al-Awlaki, and his dead grandson, Abdulrahman al-Awlaki, together with Sarah Khan on behalf of her dead son, Samir Khan. Anwar al-Awlaki, Abdulrahman al-Awlaki and Samir Khan were each killed in the course of the Obama administration's "targeted killing" program, and all three were US citizens.

The administration placed Anwar al-Awlaki on a secret military "kill list" around January of 2010, and after several failed attempts, assassinated him in Yemen on September 30, 2011. A missile fired from a Predator drone exploded the vehicle in which Anwar al-Awlaki was traveling, killing Awlaki and three other people, including Samir Khan. On October 14, 2012, another drone-fired missile killed Abdulrahman, who was 16 years old. The administration claims that the boy was "collateral damage" in a drone strike directed against another individual.

Nasser al-Awlaki and Sarah Khan, who were represented by attorneys from the American Civil Liberties Union (ACLU) and the Center for Constitutional Rights (CCR), named former CIA Director Leon Panetta as well as other senior Obama administration officials as defendants. The lawsuit alleged that the government killed these three citizens far from any war zone and without "due process of law" as guaranteed by the US Constitution and the Bill of Rights. The case was assigned to Judge Collyer, a federal district court judge for the District of Columbia, who is a Bush appointee.

The Fifth Amendment, part of the 1791 Bill of Rights, on its face clearly prohibits assassination. It states, "No person shall be...deprived of life...without due process of law."

As the *World Socialist Web Site* wrote at the time of the assassination of Anwar al-Awlaki, the Obama administration's program of extrajudicial assassination represents an unprecedented attack on fundamental rights and a sharp departure from democratic and constitutional forms of rule.

(See: The legal implications of the al-Awlaki assassination) Nasser al-Awlaki had filed a previous lawsuit in an effort to stop the assassination of his son, but his lawsuit was thrown out on the basis of newly established pseudo-legal doctrines promoted in the course of the so-called "war on terror."

The case decided on Friday, *Al-Aulaqi v. Panetta*, was filed in July 2012. (See: Relatives of American citizens killed in drone strikes sue US officials) When the case was brought, Nasser al-Awlaki penned an op-ed piece that was published in the *New York Times*, entitled "The Drone that Killed My Grandson."

"The government has killed a 16-year-old American boy," al-Awlaki wrote. "Shouldn't it at least have to explain why?"

After the case was filed, the Obama administration immediately went out of its way to intervene, filing sealed documents as well as briefs demanding that the case be dismissed. The administration argued that the judicial branch cannot "interfere" with the president in the exercise of his "wartime" powers. These and similar doctrines, promoted initially by the Bush administration, have been further elaborated and expanded under the Obama administration.

The administration has also sought to justify its assassination program on the basis of a supposed distinction between "due process" and "judicial process." Under this theory, announced for the first time in a 2012 speech by Attorney General Eric Holder, the nearly thousand-year-old legal concept of due process (which incorporates the presumption of innocence, the right to an attorney, the right to a public trial by jury, the right to confront one's accusers, fair play and decency, and so forth) is replaced with a procedure by which death warrants are approved in secret meetings between the president and his national security advisors. (See: Military tribunals and assassination)

At a July 2013 hearing, Judge Collyer appeared critical of the Obama administration's positions, especially the position that the judiciary had no power to enforce the constitutional rights of the three citizens killed by the government. "I'm really troubled," she said, "that you cannot explain to me where the end of it is... That, yes, they have constitutional rights but there is no remedy for those constitutional rights." At another point, Collyer said, "The problem is, how far does your argument

take you?”

Deputy Assistant Attorney General Brian Hauck put forward the administration’s theory that the executive operates as a “check” on itself. He argued that decisions to issue death warrants for US citizens “are made at the highest levels of the executive branch, with robust consultation with Congress.”

“No, no, no, no,” Collyer responded. “The executive is not an effective check on the executive when it comes to individual constitutional rights.” Significantly, the judge’s 41-page ruling issued Friday (available here) takes exactly the position that the author argued against at the hearing.

“The persons holding the jobs of the named Defendants,” Collyer wrote, “must be trusted and expected to act in accordance with the US Constitution when they intentionally target a US citizen abroad at the direction of the President and with the concurrence of Congress. They cannot be held personally responsible in monetary damages for conducting war.”

The founding fathers of the United States were convinced (and at one time American high school students were taught) that in order to prevent tyranny, which was understood to be the natural tendency of government, it was necessary to divide up state power among the executive, legislative, and judicial branches. A system of “checks and balances” was designed to enforce limits on the powers of each branch.

The “separation of powers” theory put forward by the Bush and Obama administrations turns this concept into its opposite, with the judiciary admonished not to “interfere” with the executive branch in the exercise of its unlimited wartime powers.

Judge Collyer pointed to “separation of powers, national security, and the risk of interfering with military decisions” as reasons why the case had to be dismissed. She cited a growing list of precedents set by recent cases—some brought by Guantanamo detainees and other victims of torture or incommunicado detention—that were dismissed on similar grounds.

In her decision, Judge Collyer devoted special attention to the case of Jose Padilla, a US citizen who in 2002 was jailed without charges or trial, “questioned at length, repeatedly abused, threatened with torture, and deprived of basic necessities while in military custody.” Padilla’s lawsuit challenging his treatment was dismissed by judges who cited “national security” concerns, and his appeal was ignored by the Supreme Court in 2012.

Nasser al-Awlaki responded to Friday’s ruling in a statement released by the ACLU. He wrote: “I am deeply disappointed by the judge’s decision and in the American justice system. What I am asking is simply for the government to account to a court its killings of my American son and grandson, and for the court to decide if those killings were lawful. Like any parent or grandparent would, I want answers from the government when it decides to take life, but all I have got so far is secrecy and a

refusal even to explain.”

“This is a deeply troubling decision that treats the government’s allegations as proof while refusing to allow those allegations to be tested in court,” ACLU National Security Project Director Hina Shamsi declared. “The court’s view that it cannot provide a remedy for extrajudicial killings when the government claims to be at war, even far from any battlefield, is profoundly at odds with the Constitution. It is precisely when individual liberties are under such grave threat that we need the courts to act to defend them. In holding that violations of US citizens’ right to life cannot be heard in a federal courtroom, the court abdicated its constitutional role.”

Judge Collyer’s ruling underscores the danger, now well advanced, of the establishment of a police state in the United States. As the *World Socialist Web Site* has previously warned, de facto dictatorial rule could be implemented in America while changing little in terms of America’s current institutions, legal doctrines and personnel. The same judges could sit on the same benches, the same reporters could appear on the same nightly news shows, and the same politicians could sit in the same offices.

The Constitution and Bill of Rights would perhaps remain sealed behind museum glass without being formally abolished, but these documents would simply cease to have any practical relevance in the new pseudo-legal framework of death panels, total surveillance, “state secrets,” “qualified immunity,” “deference to the executive in wartime,” “kill lists,” the “global war on terror,” and “balancing” democratic rights against “national security.”

The announcement that there is no legal remedy in cases of state assassination should be taken with the utmost seriousness. The al-Awlaki assassination was a test case. The perpetrators, encountering no resistance from anywhere within the American political establishment, are now emboldened to carry out broader and deeper attacks on democratic rights and institutions. If the government can assassinate one person without due process, then there is nothing in principle that stands in the way of state assassinations of dozens, hundreds or thousands.

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