

Obama administration asserts unlimited war powers without Congressional authorization

By Joseph Kishore
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In testimony before the US Congress on Wednesday, top Obama administration officials asserted that the president has unlimited war powers without even the fig-leaf of Congressional authorization.

Speaking before the Senate Foreign Relations Committee, the administration officials—State Department Deputy Legal Adviser Mary McLeod and Defense Department General Counsel Stephen Preston—declared that the 2001 Authorization for the Use of Military Force (AUMF) was not required for any of the drone attacks, troop deployments and other war operations carried out by the Obama administration.

For more than a decade, the AUMF has been a catch-all justification for all the illegal and unconstitutional activities of the Bush and Obama administrations—military invasions, indefinite detention (including at Guantanamo Bay), torture and drone assassination. Congress is currently considering revising or ending the AUMF as part of an effort to shift these operations onto a more permanent foundation.

In the course of questioning from senators on the future of AUMF, McLeod and Preston indicated that, in the administration's view, there are in fact no additional powers that the executive has as a result of the AUMF that it does not already have from Article II of the US Constitution—an assertion of unlimited executive power.

Preston testified, “I am not aware of any foreign terrorist group that presents a threat against this country that the president lacks authority to defend against simply because they are not covered by the AUMF. If the group presents a threat the president does have authority to take steps against that threat.”

When asked by Republican Senator Bob Corker

whether the president could continue to “carry out the counter-terrorism activities he is carrying out today” if the AUMF were repealed, McLeod replied, “Yes, I believe he could.”

“The US has the authority to target individuals, *including Americans*, who pose an imminent threat to attack our country,” McLeod added (emphasis added).

In the language of administration lawyers, “imminent” has been redefined to render this condition meaningless. McLeod did not say whether the killing of Americans could take place within the United States.

A report in *Rolling Stone* on the hearings noted: “When asked by Senator Tim Kaine (D-Virginia) ‘what could [the president] not do without the AUMF,’ Preston didn’t have an immediate answer. Kaine then asked if the US could continue to hold detainees at Guantanamo Bay if the AUMF were repealed. Preston dodged; McLeod added that the US can continue to detain prisoners ‘as long as we’re in an armed conflict with Al Qaeda.’”

“I think it would be fair to say that with or without an AUMF, to the extent that it grants authority for use of military force against al Qaeda, and the Taliban, and associated forces in which we’re in armed conflict ... the president does have constitutional authority to act,” said Preston.

Asked whether the executive could unilaterally attack any country that it declares is “harboring” terrorists, without Congressional approval, McLeod replied, “We would have to think about whether individuals in that state or in that government of that state actually posed an imminent threat.” That is to say, the executive would have an internal deliberation and decide on whether to wage war based on its definition of “imminent.”

McLeod added that in the administration's view it

had the authority to wage war against Syria without Congressional authority based on the spurious allegations of chemical weapons use (in an internal civil conflict) last year. In the Syrian civil war, it was the United States, and not the Syrian government, that was directly allied with Al Qaeda and its “associated forces.”

Wednesday’s testimony is part of an internal debate within the political establishment over how to justify endless war. Testifying before the Senate Armed Services Committee almost exactly one year ago, Assistant Defense Secretary Michael Sheehan argued that the AUMF gives the administration virtually unlimited war powers anywhere in the world, including within the United States. He added that the war authorization would go on indefinitely, “at least 10 to 20 years.”

Thus, according to Sheehan at the time, further authorization from Congress was not required to launch drone strikes or wage war in the future, as long as these military operations could be connected in some way to Al Qaeda or its “associated forces”—a phrase that does not appear in the AUMF itself. Sheehan specially referred to the recent bombing of the Boston Marathon to extend the “battlefield” to the United States.

Later the same month, Obama delivered a speech at the National Defense University, dedicated to a defense of drone assassination. For the first time, Obama publicly acknowledged that he ordered the killing of Anwar al-Awlaki, a US citizen. Stating that “America is at a crossroads,” Obama said his administration intended to “engage Congress” about the AUMF in order “to determine how we can continue to fight terrorism without keeping America on a perpetual wartime footing.”

The testimony of McLeod and Preston makes clear that the administration is in fact seeking a mechanism for rooting unending war, drone assassination and associated illegal activities in the Constitutional powers of the president.

This legal rationale for what amounts to presidential dictatorship has been an underlying theme in the memoranda drawn up by both the Bush and Obama administrations. Bush’s Vice President Dick Cheney and his lawyers in particular sought to argue that the AUMF was essentially superfluous, a formality, and that the ability to torture and kill came from Article II.

These pseudo-legal arguments have been continued and extended under Obama, particularly as they relate to extrajudicial assassination. On Wednesday, the US Senate voted 52-43 to clear the way for a confirmation vote on Obama’s appointee for the First US Circuit Court of Appeals, David Barron. Barron is the author of the still secret memoranda drawn up to justify the killing of al-Awlaki and other US citizens without due process.

The vote on Wednesday was almost entirely along party lines, with Democrats voting for and Republicans against. Because of changes to Senate rules made late last year, the procedural vote prior to confirmation required only a simple majority, not a supermajority of 60 votes.

In order to facilitate confirmation, the administration said on Tuesday that it would cease its efforts to block the court-ordered declassification of one of the several memos drawn up by Barron during his tenure in the Justice Department’s Office of Legal Counsel from 2009 to 2010. This declassification, the White House announced, would take place at some indefinite point in the future.

The administration’s promise was enough to satisfy critics within the Democratic Party. Their basic agreement with the White House’s claims of unlimited executive power were summed up Senator Ron Wyden, who announced after voting for Barron’s nomination to go forward: “I believe that every American has the right to know when their government believes it has the right to kill them.”

A full confirmation vote on Barron will likely take place today.

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