

Federal appeals court dismisses drone lawsuit

By Tom Hall
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On Thursday, the federal appeals court for Washington, DC dismissed a longstanding lawsuit by the American Civil Liberties Union (ACLU) to compel the CIA to release documents pertaining to its criminal drone assassination program.

The unsigned five-page ruling justified its decision with the now-standard claim that revelations about the program of extrajudicial murder, which has claimed the lives of thousands of people, including American citizens, throughout the Middle East, would endanger “national security.”

The appeals court declined to determine this for themselves through an actual review of the records in question. Instead, the three-judge panel accepted the Obama administration argument on the basis of a secret affidavit from a CIA official which, according to the ruling, demonstrates that “the agency’s explanations as to why the records are classified are both ‘logical’ and ‘plausible’ and uncontroverted by evidence in the record.”

In other words, the court ruled in favor of the government on the basis of the government’s say-so, the latest in a long line of court rulings covering up and abetting the criminal activities of the military-intelligence apparatus.

An additional concern behind the court’s decision was the possibility that a ruling in favor of the ACLU would pre-empt the Obama administration’s proposed release of figures on civilian death tolls due to drone strikes “outside of areas of active hostilities” (such as Iraq, Afghanistan and possibly Pakistan, depending on the administration’s definition of the latter term). Officials announced last month that the figures would be made public at some point in the coming weeks.

“My hope is, is that by the time I leave office there is not only an internal structure in place that governs these standards that we’ve set, but there is also an institutionalized process whereby the actions that the

U.S. government takes through drone technology are consistently reported on, on an annualized basis so that people can look,” Obama said during a speech at the University of Chicago last month.

While calculated to create the impression of a commitment to transparency, this statement amounts to a declaration that extralegal assassination will continue to be a favored tool of American foreign policy for the indefinite future, embodied in an “institutionalized process,” with the administration deigning to release to the public whatever data on the illegal program that it sees fit.

The ACLU originally filed its lawsuit in January 2010, more than six years ago, after the CIA refused to release documents containing both information on the agency’s drone assassination program and the secret legal memoranda purporting to justify them.

“Secret law is always invidious, but it’s particularly so here because of the subject matter,” ACLU Deputy Legal Director Jameel Jaffer, who headed the ACLU’s case, told the *Washington Post*. “These legal memos describe the circumstances in which the CIA believes it has authority to carry out extra-judicial killings.”

At first, the CIA responded through simple stonewalling, refusing to officially confirm or deny the existence of such documents despite the fact that numerous government officials, including President Obama, had already admitted to the existence of the program.

The pretense that the existence of the program could neither be confirmed nor denied was so absurd that it was rejected by the DC appeals court in 2013. In the court’s written opinion, Judge Merrick Garland, currently Obama’s nominee for the Supreme Court and a consistent supporter of state repression, wrote that the CIA was asking the court “to give their imprimatur to a fiction of deniability that no reasonable person would regard as plausible.”

Since then, the CIA has acknowledged the existence of twelve legal memoranda and thousands of records pertaining to its drone assassination program. However, Garland's opinion left open the CIA's current defense, that the release of the documents would be a danger to national security.

The program of extrajudicial drone assassination is a hallmark of the foreign policy of the Obama administration, which has massively expanded the powers of the executive. The Obama White House has justified the practice on antidemocratic and authoritarian grounds, with former Attorney General Eric Holder publicly defending the administration's murder of Muslim cleric Anwar al-Awlaki and his son, both American citizens, on the spurious grounds that the Constitution's guarantee of "due process" is met by secret deliberations within the executive branch. Internal memoranda justifying this flagrantly illegal practice, such as those sought after by the ACLU's lawsuit, have been kept secret.

According to the Bureau of Investigative Journalism, as many as 4,000 people and more than 200 children have been killed by CIA drone strikes in Pakistan alone since 2004, with 372 out of 423 confirmed strikes occurring since Obama took office in 2009. More than 300 confirmed strikes have taken place within Afghanistan since 2015, killing as many as 1,886 people; hundreds more have been killed in Somalia, Yemen, and other countries.

While drone assassinations have been trumpeted by the government as a less lethal alternative to "conventional" warfare, leaked internal government documents from last October acknowledge that ninety percent of people killed in drone strikes were not direct targets.

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