

Obama administration invokes “state secrets” doctrine to defend the assassination of US citizens

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The Obama administration invoked the “state secrets” doctrine Friday in an effort to halt court proceedings that call into question its policy of “targeted killings” of individuals around the world, including US citizens.

In April of this year, President Barack Obama gave the order for the “targeted killing” of Muslim cleric Anwar al-Aulaqi. Al-Aulaqi, who was born in New Mexico and attended US universities, is a US citizen.

On orders from Obama, the US Central Intelligence Agency (CIA) fired a cruise missile at a meeting al-Aulaqi was attending in Yemen, but al-Aulaqi survived. While hundreds have been killed in Obama’s “targeted killing” missile attacks, the attempt on al-Aulaqi’s life marked the first time in US history that a president officially ordered the assassination of a US citizen.

The Obama administration claims that al-Aulaqi, now in hiding in Yemen, is a “senior recruiter for Al-Qaeda.” Al-Aulaqi’s father, who remains in the US, told CNN, “I am now afraid of what they will do with my son. He’s not Osama bin Laden, they want to make something out of him that he’s not.”

In July of this year, the Obama administration added al-Aulaqi’s name to the “Specifically Designated Global Terrorist” list. This list was created by the Bush White House via executive order in September 2001 and has been maintained by the Obama administration. Once an individual is designated a “terrorist,” his or her assets can be summarily frozen and seized, and it becomes a crime to render services to that person. Any person can be placed on this list simply on the say-so of the president.

Because Al-Aulaqi has been placed on the “Specifically Designated Global Terrorist” list, it is

illegal for any lawyer to represent him without a special permit. According to new laws enacted as part of the so-called “war on terror,” a lawyer who provides legal services to someone on the “Specifically Designated Global Terrorist” list without a permit can be charged with the crime of “providing material support for terrorism.”

(The recent spate of FBI raids on the homes of anti-war activists was also justified on the grounds that law enforcement officials were searching for evidence of “material support for terrorism.” See “FBI raids homes of antiwar activists.”)

Lawyers from the American Civil Liberties Union (ACLU) and the Center for Constitutional Rights were granted permits in July after substantial delay. They filed a lawsuit against the Obama administration in August on behalf of al-Aulaqi’s father, Nasser al-Aulaqi.

The lawsuit, *Al-Aulaqi v. Obama*, charges that Obama’s policy of issuing extrajudicial death warrants to be carried out by the CIA violates the US Constitution and international law. The Fifth Amendment to the US Constitution provides, “No person shall be ... deprived of life ... without due process of law.” Numerous international treaties and conventions, many dating from the aftermath of the Second World War, prohibit assassination.

Nasser al-Aulaqi demands the disclosure of standards employed by the administration to determine who is targeted for assassination, and seeks to prevent the assassination of his son.

The position taken by the Obama administration is unprecedented. Vince Warren, executive director of the Center for Constitutional Rights, told the *New York*

Times, “The United States cannot simply execute people, including its own citizens, anywhere in the world based on its own say-so.” Director of the ACLU National Security Project Jameel Jaffer observed, “The United States is not at war in Yemen, and the government doesn’t have a blank check to kill terrorism suspects wherever they are in the world.”

The brief filed by Obama administration lawyers on Friday in *Al-Aulaqi v. Obama* is chilling in its open endorsement of numerous authoritarian precepts, including the “state secrets” privilege. The Obama White House also takes the position, echoing those taken by the Bush administration, that courts have no authority to interfere with the executive branch in the exercise of its wartime powers. The brief included a “classified” annex, which cannot be read by the public.

The Obama administration contemptuously refused even to confirm that a “kill list” that contained Nasser al-Aulaqi’s son exists. “At every turn,” Obama’s lawyers wrote, “litigation ... would risk or require the disclosure of highly sensitive and properly protected information to respond to allegations regarding purported secret operations and decision criteria.”

The legal arguments of the Obama administration not infrequently take on an Orwellian character. At one point, Obama’s lawyers argued that the elder al-Aulaqi lacks standing to bring the case on his son’s behalf, and that the case should not be allowed to proceed unless the son initiates the proceedings personally.

Obama’s lawyers promise that “if Anwar al-Aulaqi 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.” This from the same regime that has already attempted illegally to kill Anwar al-Aulaqi with a cruise missile!

The legal positions taken by the Obama administration over recent months are noteworthy both for their far-reaching implications and for their outright contempt for basic democratic principles, as well as constitutional and international law. According to the *Washington Post*, investigative reporter Bob Woodward comments in his upcoming book *Obama’s Wars* that top officials in the Obama administration were even less concerned than their counterparts in the

Bush administration about the consequences of the implementation of a policy of assassination of US citizens by executive order. The Obama administration simply brushed these concerns aside.

The position taken by the Obama administration Friday comes on the heels of the adoption of the “state secrets” doctrine by the Ninth Circuit Court of Appeals earlier this month. In that case, *Jeppesen Dataplan*, the Obama administration successfully invoked the “state secrets” doctrine to block a lawsuit that threatened to reveal the involvement of defense corporations in “extraordinary rendition” torture operations. (See “Obama’s victory for torturers.”)

Judge Michael D. Hawkins, whose opinion was overturned in *Jeppesen Dataplan*, cautioned that the “state secrets” doctrine advocated by the Obama administration “has no logical limit.”

The Obama administration lawyers cited the *Jeppesen Dataplan* case extensively in their brief on Friday.

As the global crisis of capitalism intensifies, the ruling class in the US is faced with rapidly eroding support for its policies of endless war abroad and self-enrichment at all costs at home. As popular opposition intensifies, the political establishment and all of its official institutions march towards more and more dictatorial forms of rule. In this context, the Obama regime’s assertion of the power to unilaterally issue a death warrant for any person anywhere in the world, and for that decision not to be reviewed by any court, should be taken as a dire warning of things to come.



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