

Obama administration blocks information request on assassination of US citizens

Tom Carter**7 January 2013**

On Wednesday, at the request of the Obama administration, US federal judge Colleen McMahon relied on expansive “national security” privileges to deny requests by the American Civil Liberties Union and the *New York Times* for government records related to the assassination of US citizens.

The US government’s “targeted killing” program, initiated under the Bush administration and expanded under the Obama administration, has so far resulted in the deaths of thousands of people far from any battlefield, including at least three US citizens. The victims, as well as a great many bystanders, have been murdered without being charged with any crime and without trial or judicial review of any kind.

The Obama administration’s ongoing targeted killing program is in violation of the core historic concept of the American legal system, which is contained in the Fifth Amendment of 1791: “No person shall. .. be deprived of life. .. without due process of law.”

The issue before the court was not even the legality of this program, but the ability of the American people simply to have access to the arguments from the Obama administration to justify it.

“I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for its conclusion a secret,” wrote Judge McMahon, US District Judge for the Southern District of New York.

While ruling for the government, this statement is itself a damning indictment of the Obama administration. Judge McMahon, an appointee of former president Bill Clinton, acknowledged the “Catch 22” and “Alice-in-Wonderland nature” of her

ruling in favor of the Obama administration, but she blamed the outcome on “contradictory constraints and rules” outside her control.

The decision does cite extensively from documents and material from the period of the American Revolution, all of which make clear that the framers of the Constitution intended to forbid extrajudicial assassinations. After having reviewed these authorities, Judge McMahon cites numerous public statements by Obama and several senior officials in his administration that clearly indicate that the US government, with the direct involvement of Obama himself, is planning and carrying out extrajudicial assassinations.

The placement of the constitutional prohibition against extrajudicial killing next to the actions and statements of Obama makes a clear case for the impeachment, arrest and criminal indictment of the president and all of the top civilian, intelligence and military officials in his administration.

The case originated as separate and independent requests under the 1966 Freedom of Information Act (FOIA) by the ACLU and *New York Times* journalists for information related to targeted killings, particularly of US citizens, in the wake of the assassination of Muslim cleric and US citizen Anwar Al-Awlaki in September 2011. (See “The legal implications of the al-Awlaki assassination”.)

Citing “national security” exceptions to the Freedom of Information Act, government secrecy statutes, and expansive executive privileges, the Obama administration not only failed to disclose the requested documents, but refused even to number or list the documents that were being withheld, on the grounds that to acknowledge that any of the requested documents exist would compromise national security.

The provocative nature of the “no number, no list”

response is underscored by dozens of public statements in which the US government alluded to information in its possession regarding the activities of Anwar Al-Awlaki before his assassination, as well as public statements suggesting that internal legal memoranda had been prepared regarding the legality of the targeted killing program.

The lawsuits to compel disclosure of the requested records were ultimately consolidated because the requests were of a similar nature. Except with respect to one minor category of documents, Judge McMahon's ruling of January 2 effectively disposes of both lawsuits.

The ACLU had requested several broad categories of documents in October 2011 related to the targeted killings of US citizens. These categories included: records pertaining to the presumed legal basis for assassination of US citizens and records pertaining to the process by which US citizens can be targeted, including who is authorized to make such decisions and what evidence is needed to support them.

The ACLU also requested internal documents related to the killing of Anwar Al-Awlaki, "including discussions of. .. The Fifth Amendment Due Process Clause. . ."

Finally, the ACLU requested "records pertaining to the factual basis for the targeted killing of Abdulrahman Al-Awlaki," the 16-year-old son of Anwar Al-Awlaki, whom the Obama administration murdered along with a large number of bystanders in a missile strike in Yemen in October 2011. (A separate lawsuit brought by the ACLU challenging that killing under the Fifth Amendment remains pending.)

The public naturally has every right to see these documents, which evidence the participation by Obama and others in war crimes and a conspiracy against democratic rights. However, Judge McMahon dismissed the ACLU requests as "facially overbroad." She dedicated the bulk of her decision to the *Times* requests, which were significantly narrower.

In denying the *Times* requests, Judge McMahon cited interests of "national defense and foreign policy," government secrecy statutes such as the National Security Act and the CIA Act, and other executive expansive privileges in support of her decision. "This Court is constrained by law, and under the law, I can only conclude that the Government has not violated

FOIA by refusing to turn over the documents sought in the FOIA requests," McMahon wrote.

In a footnote in her decision, Judge McMahon indicates that she sent a draft of her decision to the Obama administration for approval before issuing it, "in order to give the Government an opportunity to object to the disclosure of any classified information that may have inadvertently found its way into this document."

The judge also issued a secret "appendix" to her ruling that is not publicly available. She indicates in her decision that the secret appendix "is being filed under seal and is not available to Plaintiffs' counsel [i.e., lawyers for the ACLU and *New York Times*]."

"This ruling denies the public access to crucial information about the government's extrajudicial killing of U.S. citizens and also effectively green-lights its practice of making selective and self-serving disclosures," stated Jameel Jaffer, ACLU deputy legal director, in a press release Wednesday. The ACLU and the *Times* intend to appeal the decision.



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