Justice Department memo sanctions state assassinations of US citizens

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A confidential Justice Department white paper on the legality of "lethal operations" against US citizens made public Monday night argues that virtually unlimited power is placed in the hands of the American president to order the assassination of perceived enemies of the state anywhere around the globe.

While spelling out certain conditions that would purportedly make the targeted killing of an American citizen legal—such as the target being an "operational leader of Al Qaeda or an associated force" who poses an imminent threat of violent attack and whose capture is not feasible—the paper goes on to provide arguments that essentially render these conditions meaningless and non-restrictive.

As if that were not enough, the term "associated force" is defined so broadly that a member of virtually any armed movement deemed hostile to US interests can be targeted. Moreover the paper specifically states that while the conditions it presents are "sufficient" to make such a state killing legal, the absence of one or all of them does not mean that an assassination would be illegal.

"This paper does not attempt to determine the minimum requirements necessary to render such an operation lawful, nor does it assess what might be required to render a lethal operation against a US citizen lawful in other circumstance, including an operation against … a US citizen who is not a senior operational leader of such [Al Qaeda] forces." it states.

In other words, the document leaves the selection of assassination victims—including non-Al Qaeda opponents of US imperialism—to the discretion of the president and his military and intelligence operatives.

The document, first reported by Michael Isikoff of NBC News, was prepared by the Obama administration as a summary of a legal memo issued by the Justice Department's OLC. It was given last summer to members of the Senate Intelligence and Judiciary committees on condition that its contents be kept secret from the American public.

The memo upon which the white paper is based was prepared to provide a pseudo-legal justification for the Obama administration's order to assassinate New Mexico-born cleric Anwar al-Awlaki in Yemen in a September 2011 drone strike. Samir Khan, a naturalized American citizen, was murdered in the same missile attack, and al-Awlaki's 16-year-old son, born in Colorado, was assassinated two weeks later in another drone strike in Yemen.

Questioned repeatedly about the white paper at a White House press briefing Tuesday afternoon, Obama spokesman Jay Carney offered a prepared defense of the entire drone killing program, which by conservative estimates has claimed the lives of nearly 5,000 men, women and children around the globe. Carney insisted that the drone killings "are legal, they are ethical and they are wise."

US Attorney General Eric Holder said Tuesday that the Obama administration only takes "these kinds of actions when there is an imminent threat, when capture is not feasible and when we are confident that we're doing so in a way that is consistent with federal and international law."

Neither Carney nor Holder directly addressed the leaked document or dealt in any detail with the legal sophistry it advances to justify the assassination of American citizens.

"This is a chilling document," Jameel Jaffer, deputy legal director of the ACLU, said of the white paper Tuesday. "Basically, it argues that the government has the right to carry out the extrajudicial killing of an American citizen … It recognizes some limits on the authority it sets out, but the limits are elastic and vaguely defined, and it's easy to see how they could be manipulated."

The Obama administration has gone to enormous lengths to keep documents relating to the drone killing program from the American public. Lawsuits brought by the *New York Times* and the American Civil Liberties Union under the Freedom of Information Act to force release of these documents were dismissed last month by a federal judge in Manhattan who complained in her ruling that laws and legal precedents dealing with national security and state secrets "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."

The release of the white paper coincided with a demand by 11 US senators—eight Democrats and three Republicans—for the administration to provide Congress with all legal opinions supporting "the President's authority to deliberately kill American citizens."

It also comes just days before John Brennan, Obama's counter-terrorism adviser and nominee for director of the Central Intelligence Agency, is to appear at a Thursday confirmation hearing convened by the Senate Select Committee on Intelligence.

Brennan has served as the architect and director of the

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administration's drone killing program, and he became its first public defender. Under his leadership, the killing campaign has become systematized under a program known as "disposition matrix," while procedures governing assassinations have been codified in a "rule book."

While Brennan's confirmation is generally regarded as assured, the hearing is expected to feature questions about the assassination campaign as well as his defense of extraordinary rendition and torture while serving a top official at the CIA under the Bush administration. Four years ago, Democratic opposition over this record forced Obama to drop his bid to make Brennan CIA director when he first entered the White House. The acceptance of Brennan now is an unmistakable measure of the shift to the right by the Democratic Party and the entire political establishment.

In both its criminal content and its pseudo-legalistic tone, the white paper resembles nothing so much as the so-called "torture memos" that were drafted under Bush and released by the Obama administration in April 2009 in what it claimed at the time was the inauguration of a new era of "transparency and openness."

The administration has defended those responsible for torture and other crimes ever since, while establishing the tightest reign of secrecy in American history. As the summary of the assassination memo make clear, the criminality that existed under Bush has escalated sharply under his successor.

The conditions that the white paper sets for declaring a targeted assassination lawful are predicated on the proposed victim being a "senior operational leader of al-Qaeda or an associated force." The paper simply presumes that the target is such a leader, without explaining how that designation is decided. The implication is that unidentified "high-level officials" of the US government, in other words, Obama, Brennan and their aides, make such determinations on their sole discretion, without the target of state murder having any knowledge of the proceeding, let alone an opportunity to rebut the charge.

In the case of al-Awlaki, no evidence was ever presented that he played an "operational" role in al-Qaeda, and experts on Yemen dispute this description. What is clear from the rest of the conditions, however, is that once the US president or his underlings make such a designation—without presenting charges, much less proving them—assassination is "lawful" according to the Justice Department.

Cast aside are the most fundamental democratic rights enshrined in the US Constitution and Bill of Rights, first among them the Fifth Amendment's guarantee that "No person shall ... be deprived of life ... without due process of law." The paper essentially reduces "due process" to the discussions now taking place in the so-called "terror Tuesday" sessions at the White House, where Obama and his military and intelligence aides secretly pick victims to be killed by Hellfire missiles.

As for the supposed "conditions" that the paper purports would make an assassination legal, all of them are fraudulent. First it states that a targeted individual must present "an 'imminent' threat of violent attack against the United States." This determination, the paper explains, "does not require the United States to have clear evidence that a specific attack on US persons and interests will take place in the immediate future." Having to produce such evidence, it argues, "would not allow the United States sufficient time to defend itself."

The condition of "imminent," the white paper continues, is determined not by known crimes past, present or future attributed to the individual targeted for assassination, but rather by the classification of the targeted victim as a "senior operational leader" and the "limited window of opportunity" that the US military and intelligence apparatus has to murder this individual. Under this "broader concept of imminence," preemptive killing is permitted once the president or an "informed high-level official" has fingered someone as an enemy of the state.

The supposed condition of capture of the targeted individual being infeasible is likewise an empty shell. The white paper includes in this definition the problem of a capture not being possible during the "window of opportunity," refusal of the country where the targeted individual is to allow a capture operation and "undue risk to US personnel" of attempting such a capture. In short, wherever assassination is deemed expedient, it is "lawful."

The white paper argues that Authorization of the Use of Military Force passed by Congress in September 2001 justifies assassinations and drone strikes anywhere on the planet. It recycles the claims made by the Bush administration that the entire world is a battlefield in the war on terror.

Among the sources cited in support of this contention are speeches given by Nixon administration officials in defense of the 1970 invasion of Cambodia. That Nixon's Cambodia policy was subsequently an article in his impeachment apparently doesn't faze Obama and his underlings.

The document asserts that there "exists no appropriate judicial forum" to consider whether presidentially ordered assassinations of US citizens raises constitutional issues. Any court review, either before or after the killings, it states, would improperly interfere with "specific tactical judgment" of the president and "officials responsible for operations."

The rest of the paper consists largely of assertions that the extra-judicial executions of US citizens by means of drone strikes violate neither the US Constitution, nor the US ban on assassinations, nor international law and cannot be construed as war crimes. Much like the torture memos drafted a decade ago, these claims are meant to reassure those following the criminal orders of the White House.

What is spelled out here is a presidency which has arrogated to itself the "right" to act as judge, jury and executioner in carrying out secret assassinations of American citizens as well many thousands of other human beings around the globe. The overturning of any limitations on this power of life and death lays the groundwork for a police-state dictatorship.

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