

# The US Justice Department brief for the assassination of US citizens

## Part two

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*We publish here the second and concluding part of a two-part article providing a legal, constitutional and historical analysis of the Obama administration's "white paper" supporting its policy of drone assassinations of US citizens. The first part was posted April 18.*

### The "commander in chief"

The white paper embraces the Bush administration's new interpretation of the president's "commander in chief" status under the US Constitution. According to this interpretation, Congress and the judicial branch are not permitted to "interfere" with the president in the exercise of his "wartime" powers, even when the president's actions are patently illegal and unconstitutional.

This doctrine has found its fullest expression thus far in the decision authored by US District Court, District of Columbia Judge John D. Bates dismissing a 2010 lawsuit that sought to prevent the assassination of Anwar Al-Awlaki. Judge Bates, adopting authoritarian doctrines asserted by the Obama administration, declared that "the questions posed in this case do require both expertise beyond the capacity of the Judiciary and the need for unquestioning adherence to a political decision by the Executive."

The Constitution does not, as a matter of fact, grant to the president all powers related to war. In Article I of the Constitution, it is Congress that is given the power to declare war and Congress that is given the power to raise and support armies.

The purpose of the "commander in chief" provision was to guarantee the subordination of the military, including military officers, to civilian government. Under the authoritarian legal doctrines set forth in Obama's white paper, the meaning of the "commander in chief" provision is transformed into its opposite—namely, the domination of the military, with the president at its head, over every other branch of government.

### Killings within the US

The white paper begins with language describing Al Qaeda "leaders" who are plotting terrorist attacks that may kill American citizens. However, the white paper goes on to indicate that "it does not assess what might be required to render a lethal operation against a US citizen lawful

in other circumstances." Then, beginning on page 9 of 16, the white paper turns to the question of when extrajudicial killings may take place "in domestic law enforcement situations."

The paper cites the Supreme Court's decision in the case of *Tennessee v. Garner* (1985) in support of its position that domestic extrajudicial killings may be lawful. In fact, *Tennessee v. Garner* stands for the opposite idea.

Edward Garner was 15 years old when he ran from police after allegedly participating in a burglary. Tennessee police shot him in the back of the head as he attempted to escape. The Supreme Court held that the killing constituted unconstitutional excessive force, and that a police department policy authorizing deadly force against fleeing suspects was likewise unconstitutional.

The Supreme Court reasoned that the killing violated the Constitution because the state's interest in preventing the escape was minor compared with Garner's interest in his own life. In the white paper, the Obama administration reverses the equation, asserting that in the "war on terror" the state's interest in national security is greater than the targeted person's interest in living. This position could justify concentration camps, death squads and orders for the elimination of all persons deemed detrimental to "national security."

### International law and "national self-defense"

The white paper justifies Obama's assassination program under international law by citing Chapter VII, Article 51 of the United Nations charter, which provides that signatory states have the right to defend themselves against armed attack.

The white paper cites a speech by John Brennan, who declared: "As the president has said many times, we are at war with al-Qa'ida. In an indisputable act of aggression, al-Qa'ida attacked our nation and killed nearly 3,000 innocent people. And as we were reminded just last weekend [by an attack on the US Embassy in Kabul], al-Qa'ida seeks to attack us again. Our ongoing armed conflict with al-Qa'ida stems from our right—recognized under international law—to self-defense."

Contrary to Brennan's statements, under international law, including the UN Charter and other treaties, targeted assassinations of individuals on foreign soil outside of armed conflicts is prohibited. The Torture Victim Protection Act (TVPA), for example, is a US codification of a treaty that provides that "an individual who, under actual or apparent authority, or color of law, of any foreign nation... subjects an individual to an extrajudicial killing shall, in a civil action, be liable for damages."

In a February 6, 2013 op-ed piece in the *New York Times*, law expert Mary Ellen O’Connell, a professor at the University of Notre Dame, dismissed the white paper’s arguments as to the legality of the drone assassination program under international law. “When Hellfire missiles were first used in drone strikes to kill outside a combat zone—in Yemen, in 2002—six men died, including an American. A United Nations special rapporteur declared the action unlawful, but CIA drone attacks have increased substantially since then...”

O’Connell noted that drone attacks “have been carried out in Yemen, Somalia, and Pakistan, and may soon begin in Libya, Mali and Nigeria.” She continued, “None of these countries have attacked America, so no right of self-defense can be invoked under the United Nations Charter, as the white paper asserts.”

It is difficult to imagine anything more Orwellian than “self-defense” being invoked as the justification for “taking out” opponents of US policy overseas and people connected with them. Was the killing of 16-year-old Abdulrahman Al-Awlaki a necessary measure of “national self-defense?”

The Obama administration’s “self-defense” argument is made by a regime with the blood of hundreds of thousands of innocent people on its hands. If anyone has a right to “self-defense” it is the populations of Iraq, Afghanistan, Pakistan, Yemen, Somalia, Libya, Syria, the former Yugoslavia and other countries, who have endured horrific violence at the hands of US imperialism. The Obama administration’s argument for drone assassinations as a matter “national self-defense” is roughly equivalent to a burglar claiming to have killed the occupants of a house he was robbing in “self-defense.”

The white paper goes on to claim unlimited authority to violate the sovereignty of any foreign nation. “[A] lethal operation in a foreign nation would be consistent with international legal principles of sovereignty and neutrality if it were conducted, for example, with the consent of the host nation’s government or after a determination that the host nation is unable or unwilling to suppress the threat posed by the individual target,” the Obama administration claims.

In other words, the US government can kill people within a foreign nation if the foreign nation agrees to allow American drones to fly in its airspace and hunt down its citizens. But if the foreign nation refuses to cooperate with these assassinations, then the assassinations can legally be carried out anyway.

## Murder and war crimes

The white paper concludes with an examination of the possibility that Obama and others involved in the drone program might be criminally prosecuted for violating US and international law. The paper, not surprisingly, concludes that no laws have been violated. However, the inclusion of an extended discussion of this subject is itself revealing.

From a legal standpoint, every military, civilian and intelligence official responsible for the implementation of the global drone assassination program—from Obama on down—deserves to be impeached, arrested, charged and put on trial. Future civil and criminal charges related to the Obama drone assassination program could include:

- ? At least 4,700 counts of first degree murder;
- ? Criminal negligence, battery, property damage, trespass, mayhem, and official malfeasance;
- ? Violations of the Fifth and Fourteenth Amendments, which guarantee due process before the state can deprive a person of life, liberty or property;
- ? Violations of the Fourth Amendment, which requires the state to obtain a warrant before carrying out searches and seizures, which is

violated by the use of excessive and unreasonable force;

- ? Violations of the Eighth Amendment, which prohibits cruel and unusual punishment;
- ? Violations of the First Amendment, which protects free speech, including “anti-American” speech;
- ? War crimes, including crimes against peace; and
- ? Violations of international law.

This is only a preliminary list, not including future charges of criminal complicity or conspiracy to engage in any of the above crimes.

It is worth recalling that in 1974, Richard Nixon was impeached for offenses that pale in comparison. While Nixon merely dispatched the Internal Revenue Service to embarrass his enemies, Barack Obama murders his enemies with predator drones and Hellfire missiles.

## What is being planned?

The white paper cites a number of articles discussing the capabilities of drones and the “revolution” in military technology they represent. Indeed, the release of the white paper and the recent confirmation of John Brennan as CIA director were accompanied by reports that hundreds of drones are already actively deployed over the US mainland, with more and more sophisticated drones being developed.

A 2011 Freedom of Information Act (FOIA) complaint filed by the Electronic Frontier Foundation (EFF) cited a description of the military’s A160 Hummingbird drone, which carries “super high-resolution ‘gigapixel’ cameras that can track people and vehicles from altitudes above 20,000 feet... can monitor up to 65 enemies of the State simultaneously, and... see targets from almost 25 miles down range.” Items as small as six-inches wide can be seen from the Hummingbird drone.

Furthermore, the complaint explained, “[O]ne drone unveiled this year can crack Wi-Fi networks and intercept text messages and cell phone conversations—without the knowledge or help of either the communications provider or the customer.”

Jennifer Lynch, an attorney for EFF, explained that the military’s Reaper Drone uses “Gorgon Stare” technology, which is capable of “capturing motion imagery of an entire city.” *Time* magazine reported this month that Boeing is developing a “Solar Eagle” drone which is “scheduled for testing in 2014.” The magazine noted, “Its flights will last for five years.” Northrup Grumman, the article reported, has developed a Long Endurance Multi-Intelligence Vehicle, which can give “more than 21 days of unblinking stare.”

The military is currently contracting with various defense companies to develop drone facial recognition technology, which is to be utilized in conjunction with the Department of Homeland Security’s IDENT database and the Federal Bureau of Investigation’s Next Generation Identification Database, two of the world’s largest collections of biometric civilian data.

A contract between the military and Charles River Analytics stipulates that the army is to be provided with a “human behavior engine” known as Adversary Behavioral Acquisition Collection, Understanding, and Summarization, or ABACUS. The machine calculates “if a subject has enough built up resentment towards the US and its aims to be a potential threat” by making an assessment of adversarial intent based on a series of behavior data.

Not only will the drone spying infrastructure have this range of surveillance abilities, but very small drones are in development that are designed to find their targets and then explode next to them. No missile is required.

## Conclusion

The period since September 11, 2001 has witnessed dramatic shifts in the American political system. Wars have been waged which, under the announced doctrine of “pre-emptive war,” openly flout international law. The US military declines to do body counts, and the government declares that it is no longer bound by the Geneva Conventions.

The Department of Homeland Security was formed in 2002 and immediately began taking steps to integrate local police forces into a national framework. That same year, the Pentagon established a Northern Command (USNORTHCOM) and devised contingency plans for martial law in the US.

Guantanamo Bay and numerous secret “black site” torture camps are now operating, with targeted individuals abducted and “rendered” without trial or charges. The Military Commissions Act of 2006 made kangaroo military tribunals for alleged “terrorists” a permanent fixture of American law. The National Defense Authorization Act of 2011 granted the president the authority to jail US citizens indefinitely without trial or charges.

Under the Bush and Obama administrations, warrantless domestic spying came into practice on a massive scale, with gigantic databases being constructed to process the information gathered.

Certain anti-war groups and individuals associated with the Occupy Wall Street protests have already been labeled “domestic terrorists,” subject to undercover spying, military-style raids, and subpoenas to testify before grand juries. Under the USA PATRIOT Act of 2002, any person who offers “material support” to a person or group that has been designated a “terrorist” can be treated as a terrorist as well.

The Obama administration has accelerated the drive toward dictatorship initiated by the Bush administration. On “Terror Tuesdays” at the White House, Obama participates in the drawing up of “kill lists,” which are then handed over to the military and intelligence agencies, which implement the assassination orders. The administration has now made clear that American citizens living within the US are not exempt.

The international working class has some experience with “kill lists.” In Chile under General Augusto Pinochet, and in Argentina under General Jorge Videla, in the name of “national security” and the struggle against “terrorism,” military and intelligence officials drew up “kill lists” and carried out the murder of tens of thousands of so-called “enemies of the state.” Under the legal doctrines advanced by the Obama administration, such practices would be declared to be consistent with the US Constitution and Bill of Rights.

This rapid shift towards presidential dictatorship—and the demonstrated inability of any American institution, or any section of the American ruling class, to stand in the way—cannot be understood by examining the moral qualities of this or that individual, or the strengths and weaknesses of this or that legal argument. The drive towards dictatorship by the American ruling class has its roots in the historic crisis of US imperialism.

The 2008 financial crash touched off the most acute crisis of the world capitalist system since the Great Depression. The response of ruling classes around the world has been the imposition of austerity programs and the consolidation of more authoritarian forms of rule. In other words, the ruling classes everywhere seek to impose the cost of the crisis of their system on the working class, and prepare to meet mass opposition with mass repression.

The white paper is a clear signal that the American ruling class is prepared to go much farther.

The open assertion by the US government of the power to murder its own citizens without trial should serve as a warning not only to the American people, but to the entire world. It should be read as a clear sign that in its ruthless drive to protect its profits, the US ruling class will allow

no democratic principle to stand in its way.

In the Declaration of Independence of 1776, Jefferson and his fellow revolutionaries declared that when a government violates certain basic rights, it surrenders its own historical right to exist. It is “self-evident” that all men are endowed with “certain unalienable rights,” the declaration states, denouncing the British monarch for violating those rights. The declaration invokes the principle that “whenever any form of government becomes destructive of these ends [i.e., basic rights], it is the right of the people to alter or to abolish it.”

The assertion by the US government of the power to assassinate is, according to the bourgeois democratic principles on which the country was founded, a repudiation of the country's reason for existence. The necessary response—and the only viable one—is the mobilization of the American and international working class on the basis of a revolutionary program that defends and expands democratic and social rights through the struggle to replace the failed capitalist system with socialism.



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