

Obama nominates author of drone memo for appellate court judge

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President Barack Obama has nominated David Barron, the author of pseudo-legal memos that authorize the drone assassination of US citizens, as a judge for the United States Court of Appeals for the First Circuit. The court, based in Boston, covers New England and Puerto Rico.

Barron, now a Harvard Law professor, wrote one memo in 2009 to provide a fig leaf for the killing of Anwar al-Awlaki, a US citizen in Yemen, while outlining a legal rationale for extra-judicial killing of citizens without due process. The memo has never been publicly released.

On Tuesday, the White House announced that it would allow members of the US Senate to see this memo—only one of those drawn up by Barron—in an effort to speed up the confirmation.

The Obama administration killed al-Awlaki in a 2011 drone strike in Yemen. Attorney general Eric Holder infamously claimed at a speech at Northwestern University that such drone killings satisfied the due process clause of the US constitution because the executive branch deliberated about their propriety even though there was no trial or judicial process.

A statement released by the American Civil Liberties Union (ACLU), calling for a delay in the confirmation vote, noted, “At least in the modern history of the United States, there are no reports of any other president, based on a claim of Executive Branch authority, ordering the killing of a United States citizen away from a battlefield. By extension, there are no reports of any other federal government lawyer in modern American history, other than Mr. Barron, signing a legal opinion authorizing, without any judicial order, the killing of an American citizen away from a battlefield.”

The ACLU said that there are as many as seven

“targeted killing” memos that have not been released to the full US Senate.

White House spokesman Eric Schultz said that the administration is confident Barron will be confirmed and that he will “bring outstanding credentials, legal expertise, and dedication to the rule of law to the federal bench.”

Barron served in the Justice Department’s Office of Legal Counsel in 2009-2010. At the time, the Obama administration was in the process of expanding and institutionalizing the drone assassination program, which has come to replace the practice of arresting, indefinitely detaining and torturing targets in the “war on terror.”

Barron’s memoranda justifying targeted killing provided the legal cover for this tactical shift, in much the same way as the memoranda of Jay Bybee and John Yoo provided a legal fig leaf for torture. Bybee has since become a federal judge.

In 2013, the Obama administration acknowledged that drone strikes have killed four US citizens, including one 16-year old boy, al-Awlaki’s son. In February of this year, the *New York Times* reported that the administration is considering killing another, thought to be in Pakistan. Drone strikes have killed as many as 4,700 people as part of Obama’s “disposition matrix,” the official name of the extrajudicial assassination program.

In April, the United States Court of Appeals for the Second Circuit ordered the Obama administration to release a redacted version of at least one of the OLC memoranda signed by Barron. As of the time of this writing, the administration has not released it and is considering an appeal to the Supreme Court. The plaintiffs in the case—the ACLU, the *New York Times* and two *Times* journalists—sued the administration

under the Freedom of Information Act.

Senator Rand Paul (R-Kentucky) threatened to delay Barron's confirmation process until the administration provided the requested memos. Paul, a right-wing libertarian, filibustered the confirmation hearing of CIA director Paul Brennan last year, ostensibly in opposition to the Obama administration's claim that it could legally kill US citizens without any trial.

Tuesday's assurances from the White House are tailored to diffuse criticism from Paul and a handful of Democratic senators who voiced concern over Barron's memos. These include Mark Udall of Colorado and Ron Wyden of Oregon.

Wyden, who has postured as a critic of the Obama administration's drone program, issued a tepid statement declaring that the drone memo "would not be something I would have written. The question is: Is it disqualifying ... It needs to be addressed before a vote." In fact, Wyden and the other critics in the Senate have no fundamental problem with Barron's appointment for authorizing what is in fact an impeachable offense.

The Obama administration's appointment of Barron to a top appellate court underscores the collapse of democratic rights in the United States. It comes on the heels of the revelation earlier this year that the CIA spied on members of the Senate in an effort to cover-up for the agencies torture program.



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