

Justice Department attorney tells appeals court the government can kill US citizens without judicial review

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On Monday, an attorney with the Justice Department asserted in federal appeals court in Washington D.C. that the government can kill US citizens without judicial review on the basis of the “state secrets” privilege.

Attorney Bradley Hinshelwood was arguing before the US Court of Appeals for the D.C. Circuit in a case brought by Bilal Abdul Kareem, a US citizen, and Ahmad Muaffaq Zaidan, a Pakistani-Syrian. The two journalists are challenging their placement on the US “kill list,” compiled by the government at least since the early years of the Obama administration, to carry out extrajudicial political assassinations.

Kareem claims he was targeted for death by the US government while he was in Syria reporting on the civil war there. He says that his interviews with Al Qaeda-linked militants resulted in his being placed on the “kill list.” In June and August of 2016, he maintains, the US targeted him five times, including a drone strike involving a US-made Hellfire missile.

The government has refused to release any information regarding the two journalists on grounds of national security and the “state secrets” privilege in relation to alleged national security questions.

In 2019, the FBI denied a Freedom of Information Act request from WSWs International Editorial Board Chairman David North on similar state secrets grounds. The FBI declared that acknowledging whether it had records on North would threaten national security and foreign intelligence. The FBI also refused to admit or deny whether it had placed North on any lists.

During the hearing, Attorney Bradley Hinshelwood declared that the government had the power to target and kill alleged national security

threats, including US citizens, and that planning or committing such acts was not reviewable by the courts.

The bald assertion of the government’s unlimited “right” to murder its own citizens evidently stunned Circuit Judge Patricia Millett, part of a three-judge panel hearing the case. She asked Hinshelwood, “Do you appreciate how extraordinary that proposition is?” She went on to paraphrase his claim as giving the government the power to “unilaterally decide to kill US citizens.”

Kareem says that soon after the assassination attempts, a Turkish source told him he had been placed on a US target list at the Incirlik Air Base in Turkey, where American drones are launched.

In August, Kareem and a British citizen, Tauqir Sharif, were seized by the radical Islamist group Hay’at Tahrir al-Sham (HTS) in Syria’s Idlib Province. He remains in HTS custody.

Kareem’s case was dismissed last year by US District Court Judge Rosemary M. Collyer, who sided with the Trump administration’s invocation of the “state secrets” privilege to withhold information from Kareem on national security grounds.

Trump administration lawyers argued that disclosing whether Abdul Kareem was on the “kill list” could allow him to evade capture, and risked revealing “the existence and operational details of alleged military and intelligence activities directed at combating the terrorist threat to the United States.”

In response to that ruling, Kareem’s counsel, Tara J. Plochocki, explained, “For the first time ever, a United States federal court ruled that the government may kill one of its citizens without providing him the information necessary to prove that he is being wrongly

targeted and does not deserve to die. The US government could have provided this information but chose not to, and the court found that the government's assertion of national security trumps his right not to be killed."

In Monday's hearing before the appeals court, Plochocki said, "Whether it's in a parking lot in the United States or abroad in Syria, the government has claimed—for the first time ever in this case—that it has the unfettered and unreviewable discretion to kill US citizens at will."

Hinshelwood dismissed Plochocki's statement as speculation, citing the intense fighting that was taking place in Syria in 2016. He said, "In all of these circumstances, he [Kareem] is not even the only person present, much less is there anything to suggest that he's actually the target of any of those specific attacks."

A second judge on the panel, Karen Henderson, a George W. Bush appointee, appeared to side with the government, calling Kareem's claims of being targeted for assassination "a spectacular delusion of grandeur."

The Trump administration's despotic assertion of the right to kill people, including US citizens, without any judicial review is a continuation and extension of powers asserted and acted upon by the Obama administration. In 2011, the US assassinated Anwar al-Awlaki and another US citizen, Samir Khan, in a drone strike in Yemen. Two others were also killed in that strike. Two weeks later, al-Awlaki's 16-year-old son, also a US citizen, was assassinated in another drone strike while eating dinner at an outdoor restaurant in Yemen.

In 2017, the Trump administration killed al-Awlaki's eight-year-old daughter as part of a murderous military raid in Yemen that left at least eight women and seven children between the ages of 3 and 13 dead.

Two lawsuits filed by al-Awlaki's father, one challenging his son's placement on the Obama administration's "kill list" before he was assassinated and another challenging the government's right to kill US citizens without due process, were dismissed by federal courts on the basis that the courts cannot interfere with the executive branch in the exercise of "wartime" powers, or where "national security" concerns are raised.

In rubberstamping the "right" of the president to kill US citizens, the courts have abandoned the basic

constitutional framework of the separation of powers, under which the courts are supposed to act as a check on the executive branch.

In March of 2013, Obama's attorney general, Eric Holder, defended the assassination of Awlaki in testimony before Congress and refused to rule out targeted assassinations of American citizens on US soil.

A year earlier, Holder made a mockery of the Fifth Amendment to the US Constitution, which declares that no person shall be "deprived of life, liberty, or property without due process of law," when he stated, "'Due process' and 'judicial process' are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process."

Holder's arguments, as the *World Socialist Web Site* explained at the time, had fascist implications:

Holder's pseudo-legal arguments in favor of military tribunals and assassinations bear more than a passing similarity to Nazi jurisprudence. Under legal doctrines developed by Nazi jurist Carl Schmitt, whose ideas enjoy growing interest and influence in America's legal academia, national security and military urgency can justify a "state of exception," under which basic democratic rights can be abrogated, the rule of law suspended, and the executive branch granted exceptional powers.

The Trump administration, in keeping with its fascist politics, is asserting in more categorical terms the authoritarian logic of the policies adopted by previous administrations and supported by both parties of American imperialism.



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