GlobalResearch
Center for Research on Globalization

Memo on Drone Killings of US Citizens Makes Case for Presidential Dictatorship

By Barry Grey
Global Research, June 24, 2014
World Socialist Web Site

Region: USA
Theme: Law and Justice, Police State & Civil Rights

The US Court of Appeals for the Second Circuit on Monday released a redacted version of the hitherto secret Obama administration memo arguing for the legality of presidential assassinations, without charges or trial, of US citizens. The 47-page memo, dating from July 2010, was drafted and signed by then head of the Justice Department's Office of Legal Counsel, David Barron, and addressed to Attorney General Eric Holder.

The memo constitutes prima facie evidence of crimes against international law, the US Constitution, and the democratic rights of the American people. It could serve as a key exhibit in impeachment proceedings and criminal prosecutions against high-level American officials, beginning with President Barack Obama, Attorney General Holder, US intelligence and military leaders and the author of the memo, Barron.

The document is a travesty of legal and constitutional analysis. It begins with the desired aim—to justify the negation of the Bill of Rights' guarantee of "due process" and sanction the arrogation of quasidictatorial powers by the executive branch—and employs a grab bag of sophistic and cynical arguments to arrive at the desired conclusion.

The memo was written specifically to provide legal cover for the state murder of Anwar al-Awlaki, a New Mexico-born US citizen and Muslim cleric. He was branded an "operational leader" of Al Qaeda in the Arabian Peninsula and assassinated by a drone-fired missile in Yemen on September 30, 2011. Three others were killed in the attack, including a second US citizen, Samir Khan.

One month later, another drone strike in Yemen ordered by Obama and his military/intelligence accomplices killed Awlaki's 16-year-old son, Abdulrahman al-Awlaki, along with six other people. The US government has acknowledged terminating a fourth US citizen in its campaign of drone killings, which have killed many thousands in Afghanistan, Pakistan, Yemen, Somalia and other countries.

The context in which the memo was released underscores the wholesale repudiation of the US Constitution and democratic rights by the political establishment. The New York-based Second Circuit ruled in April in support of a lawsuit filed by the *New York Times* and the American Civil Liberties Union (ACLU) under Freedom of Information laws demanding the publication of the Barron memo, which the administration had refused to provide.

In the meantime, Obama had nominated Barron to become a judge on the First Circuit Court of Appeals in Boston. Senate Democrats who have postured as opponents of National Security Agency spying and drone assassinations of Americans demanded the release of the

Awlaki memo as a condition for voting to confirm Barron. In a cynical quid pro quo, the administration agreed not to appeal the appeals court ruling on the memo, and the court agreed to give the administration several months to purge the document of any content it wanted to conceal.

Last month, the Senate confirmed the promotion of Barron to the First Circuit, with all but two Democrats voting in favor, including supposed NSA critics Mark Udall, Martin Heinrich and Ron Wyden.

It is notable that the document deals only cursorily with the Fifth Amendment to the US Constitution, which states: [N]or shall any person…be deprived of life, liberty, or property, without due process of law." (These words are not cited in the memo). It is also striking that most of the redactions in the released document occur in the section dealing with the constitutional rights of US citizens.

Instead, the memo restates the now standard pseudolegal argument that in prosecuting the "war on terror" against Al Qaeda and "associated forces," the president and his unelected military/intelligence aides have virtually unlimited powers, including the power to wage war and carry out killings, kidnappings and indefinite detention anywhere in the world, including within the US itself. It ignores the fact that the so-called "war on terror" was never declared by Congress and has no geographical or temporal limit.

The memo repeatedly cites the congressional Authorization for Use of Military Force, passed three days after the 9/11 attacks, as legal support for any and all actions taken in the name of fighting terrorists, including the assassination of US citizens and other repressive measures against Americans. At the time it was passed, the AUMF was presented as a narrowly defined sanction for retaliation against those responsible for the attacks.

It also cites the 2004 Supreme Court ruling in *Hamdi vs. Rumsfeld*, even though the court ruled 8 to 1 against the Bush administration's asserted right to detain people without trial or due process.

Barron accepts uncritically all of the assertions of the government about Awlaki, his role as an "operational leader" of Al Qaeda and involvement in previous terror plots against the US, the "imminent" threat to Americans he supposedly represents, the "infeasibility" of capturing him, etc. in order to declare that the government can kill him without any independent trial of the facts or any opportunity for the victim to defend himself in a court of law. The presumption of innocence is a dead letter.

On this basis, the memo concludes: "[W]e do not believe that al-Aulaqi's US citizenship imposes constitutional limitations that would preclude the contemplated lethal action under the facts represented to us by DoD [Department of Defense], the CIA and the Intelligence Community."

The document is carefully worded so as not to limit the president's asserted power to order the murder of Americans to the specific circumstances surrounding Awlaki. It states, for example, that the use of lethal forces is acceptable *"at least"* where government officials have determined capture is not feasible.

And it defines "imminent" in such as way as to render the term meaningless, declaring that the government does not need to know "precisely when such attacks will occur."

Since the murder of Awlaki, the Obama administration has expanded the scope of its asserted power to act as judge, jury and executioner. Attorney General Holder has put forward the novel and unconstitutional theory that there is a difference between "due process," which is guaranteed under the Constitution, and "judicial process," which is not. According to Holder, discussions between Obama and his top military and intelligence aides over whether or not a particular citizen should be eliminated constitutes "due process."

Following the February 2013 leaking of a "white paper" from Holder to Congress putting forward the administration's legal justifications for extrajudicial assassinations of US citizens abroad, Holder asserted that the president has the right to order the killing of citizens within the borders of the United States. He did so in a letter to Republican Senator Rand Paul, and reiterated the position in subsequent testimony before the Senate Judiciary Committee.

And in testimony last month before the Senate Foreign Relations Committee, Defense Department and State Department lawyers argued that the president has unlimited war powers and does not require even the fig leaf of congressional authorization. The lawyers declared that the White House had the power to authorize the invasions of Afghanistan and Iraq, the air war against Libya, indefinite detention, drone assassinations and all of the other illegal actions of the Bush and Obama administrations without reference to the Authorization for Use of Military Force, which up to now has served as the catch-all pseudolegal basis for such policies.

"The US has the authority to target individuals, *including Americans*, who pose an imminent threat to attack our country," State Department Deputy Legal Adviser Mary McLeod told the committee. [Emphasis added].

The Barron memo has been released within the context of discussions within the political establishment over whether to amend or simply terminate the Authorization for Use of Military Force in order to more firmly institutionalize the quasidictatorial war powers of the president. There are those who want to put it aside in order to establish more firmly the right of the executive to wage war without any legal restraint.

The confirmation of Barron to a top federal court and the line-up of both parties behind presidential assassinations and unilateral military actions underscore the absence of any significant support for democratic rights within the ruling class.

The arguments put forward in the memo released Monday—justifying the abrogation of basic rights, state murder of citizens and dictatorial powers on the grounds of national security and the requirements of war—are identical to those put forward by every military and fascist regime, from Pinochet to Hitler.

The preparations for dictatorship can be halted only by the independent political mobilization of the American and international working class against militarism, social inequality and the assault on democratic rights.

Become a Member of Global Research

Articles by: Barry Grey