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Obama argues his assassination program is a "state secret"

By Glenn Greenwald

At this point, I didn't believe it was possible, but the Obama administration has just reached an all-new low in its abysmal civil liberties record. In response to the lawsuit filed by Anwar Awlaki's father asking a court to enjoin the President from assassinating his son, a U.S. citizen, without any due process, the administration late last night, according to The Washington Post, filed a brief asking the court to dismiss the lawsuit without hearing the merits of the claims. That's not surprising: both the Bush and Obama administrations have repeatedly insisted that their secret conduct is legal but nonetheless urge courts not to even rule on its legality. But what's most notable here is that one of the arguments the Obama DOJ raises to demand dismissal of this lawsuit is "state secrets": in other words, not only does the President have the right to sentence Americans to death with no due process or charges of any kind, but his decisions as to who will be killed and why he wants them dead are "state secrets," and thus no court may adjudicate their legality.

A very intense case of food poisoning in New York on Thursday, combined with my traveling home all night last night, prevents me from writing much about this until tomorrow (and it's what rendered the blog uncharacteristically silent for the last two days). But I would hope that nobody needs me or anyone else to explain why this assertion of power is so pernicious -- at least as pernicious as any power asserted during the Bush/Cheney years. If the President has the power to order American citizens killed with no due process, and to do so in such complete secrecy that no courts can even review his decisions, then what doesn't he have the power to do? Just for the moment, I'll note that The New York Times' Charlie Savage, two weeks ago, wrote about the possibility that Obama might raise this argument, and quoted the far-right, Bush-supporting, executive-power-revering lawyer David Rivkin as follows:

The government's increasing use of the state secrets doctrine to shield its actions from judicial review has been contentious. Some officials have argued that invoking it in the Awlaki matter, about which so much is already public, would risk a backlash. David Rivkin, a lawyer in the White House of President George H. W. Bush, echoed that concern.

"I'm a huge fan of executive power, but if someone came up to you and said the government wants to target you and you can't even talk about it in court to try to stop it, that's too harsh even for me," he said.

Having debated him before, I genuinely didn't think it was possible for any President to concoct an assertion of executive power and secrecy that would be excessive and alarming to David Rivkin, but Barack Obama managed to do that, too. Obama's now asserting a power so radical -- the right to kill American citizens and do so in total secrecy, beyond even the reach of the courts -- that it's "too harsh even for" one of the most far-right War on Terror cheerleading-lawyers in the nation. But that power is certainly not "too harsh" for the kind-hearted Constitutional Scholar we elected as President, nor for his hordes of all-justifying supporters soon to place themselves to the right of David Rivkin as they explain why this is all perfectly justified. One other thing, as always: vote Democrat, because the Republicans are scary!

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The same Post article quotes a DOJ spokesman as saying that Awlaki "should surrender to American authorities and return to the United States, where he will be held accountable for his actions." But he's not been charged with any crimes, let alone indicted for any. The President has been trying to kill him for the entire year without any of that due process. And now the President refuses even to account to an American court for those efforts to kill this American citizen on the ground that the President's unilateral imposition of the death penalty is a "state secret." And, indeed, American courts -- at Obama's urging -- have been upholding that sort of a "state secrecy" claim even when it comes to war crimes such as torture and rendition. Does that sound like a political system to which any sane, rational person would "surrender"?


Marcy Wheeler has more on other aspects of the DOJ's arguments, and I'll have more tomorrow as well.

UPDATE: As a reminder: Obama supporters who are dutifully insisting that the President not only has the right to order American citizens killed without due process, but to do so in total secrecy, on the ground that Awlaki is a Terrorist and Traitor, are embracing those accusations without having the slightest idea whether they're actually true. All they know is that Obama has issued these accusations, which is good enough for them. That's the authoritarian mind, by definition: if the Leader accuses a fellow citizen of something, then it's true -- no trial or any due process at all is needed and there is no need even for judicial review before the decreed sentence is meted out, even when the sentence is death.

For those reciting the "Awlaki-is-a-traitor" mantra, there's also the apparently irrelevant matter that Article III, Section 3 of the Constitution (the document which these same Obama supporters pretended to care about during the Bush years) provides that "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." Treason is a crime that the Constitution specifically requires be proven with due process in court, not by unilateral presidential decree. And that's to say nothing of the fact that the same document -- the Constitution -- expressly forbids the deprivation of life "without due process of law." This one sentence from the Post article nicely summarizes the state of Obama's civil liberties record:

The Obama administration has cited the state-secrets argument in at least three cases since taking office - in defense of Bush-era warrantless wiretapping, surveillance of an Islamic charity, and the torture and rendition of CIA prisoners.

And now, in this case, Obama uses this secrecy and immunity weapon not to shield Bush lawlessness from judicial review, but his own.

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