

Kill on Command

Since President Obama ordered the assassination of Anwar al-Awlaki without a trial, it behooves us to examine exactly what crimes he is accused of committing.

by Joe Wolverton II, J.D.

In April 2010, President Barack Obama ordered the CIA to carry out a hit against Anwar al-Awlaki. Awlaki, the first American citizen we know of placed on the infamous “kill or capture” list, was deemed a threat to the security of the United States by the administration, and on September 30, 2011, that threat was neutralized.

As a convoy carrying Awlaki and another American — Samir Khan — was traveling through southern Yemen, CIA-controlled Predator drones fired Hellfire missiles, killing the two Americans and two others traveling with them.

According to published reports, the CIA directed the assassination using the deadly resources of the Joint Special Operations Command (JSOC), which carried out the kill command.

As the Predators flew out of sight of the burning wreckage containing the corpses of two American citizens killed by fiat of the American President, the purported danger posed by them died with them. Given the ultimate sentence passed on these two men, it is crucial to understand the seriousness of the threat they were to the safety of the citizens of our Republic.

The Obama administration does not refute that the primary target of the joint JSOC-CIA attack was Anwar al-Awlaki. As evidenced by President Obama’s decision to authorize the American intelligence community to find and kill him, Awlaki had lived for a while dodging in and out of the crosshairs of America’s military might. Despite being born and educated in the United States, Awlaki transferred his base of operations to Yemen — his parents’ home country.

Awlaki was born April 22, 1971 in New Mexico during the time his father, Nasser al-Awlaki, was working on a master’s degree in agricultural economics at New Mexico State University. When the younger Awlaki was seven, his family returned to Yemen. At age 20, however, Anwar al-Awlaki followed in his father’s footsteps and received his post-secondary and graduate education in the land of his nativity, studying at Colorado State University, San Diego State University, and George Washington University.

While working on his bachelor’s degree in civil engineering at Colorado State University, Awlaki was the president of the Muslim Student Association. Seemingly,



Anwar al-Awlaki is an American citizen who was targeted and killed by the Obama administration for allegedly conspiring with al-Qaeda. Despite being executed by the order of the government, Awlaki was never charged with any crime or tried before an impartial court.

the Obama administration points to this as the beginning of the future cleric’s “radicalization.”

Despite a lack of any demonstrable training with, or indoctrination by, the chorus of violent voices popular in Muslim leadership, Awlaki gained a reputation as a powerful voice for the radical branch of Islam. Curiously, those active in that group and those familiar with the inside workings of Islamic extremism have refuted that pedigree and have described Awlaki as nothing more than a “nut case.”

There would be few who would disagree with that assessment. As thoroughly chronicled in *THE NEW AMERICAN*, Anwar al-Awlaki habitually used the Internet to pronounce and publish vile and vituperative invective against the United States (calling Americans a “party of devils”), as well as praising the murderous rampage at Ft. Hood carried out by Major Nidal Hasan (calling Hasan a “hero”). Furthermore, the Nigerian suspected of attempting to bring down Northwest Flight 253 over Detroit on Christmas Day 2009 reportedly met with the expatriate imam, although neither the content nor the tone of the alleged conversation has ever been disclosed and Awlaki himself has denied any encouragement of Umar Abdulmutallab’s terroristic plot.



CONSTITUTION CORNER



AP Images

In April 2010, President Barack Obama gave permission to the CIA to kill or capture the controversial cleric Anwar al-Awlaki. This was the first known example of an American President ordering the death of an American citizen in violation of applicable federal law and constitutional proscriptions against such acts.

Accepting, in arguendo, that all of the foregoing associations actually exist, that is all they are — associations. No one in the government of the United States, including the President and the intelligence community, could make a case sufficient even to convince a judge of the existence of reasonable doubt as to Awlaki's criminal participation in any attack on America, American citizens, or American interests abroad.

Judge, Jury, and Executioner

Lucky for President Obama, all such judicial oversight has been eliminated. In the case of the conviction of Anwar al-Awlaki of crimes heinous enough to warrant his summary execution by agents of the government of the United States, the arbiter of the legality thereof was Barack Obama alone.

In fairness, President Obama's decision to assassinate Awlaki was supported by a secret memorandum on the issue prepared by the Department of Justice. This administration's commitment to ignoring the Constitution and a thousand years of Anglo-Saxon jurisprudence and criminal procedure was demonstrated earlier than this memo, however.

In the case filed by Anwar al-Awlaki's father to enjoin the President from killing his son, the lawyers for the President insisted in a brief filed in the case that the order authorizing the murder of an American citizen — one neither accused nor convicted of any crime — is a political one and not one to which the judiciary could ably apply itself. The administration's brief claims:

Specific decisions regarding the use of force frequently must be made in the midst of crisis situations that can arise at any

time, and that involve the delicate balancing of short- and long-term security, foreign policy, and intelligence equities. The Judiciary is simply not equipped to manage the President and his national security advisors in their discharge of these most critical and sensitive executive functions.

There is an apt argument that could be made as to the role to be played by the judicial branch in overseeing foreign policy. There is no such argument, however, when it comes to the role for which the judiciary was created: judging the accused according to the laws of the land.

President Obama has relied on the legalistic contortions of administration attorneys to justify his killing of American citizens without trial. He is, it must now be admitted, above the law. As one such tyrant once proclaimed: "*L'etat c'est moi*" — "The State, it's me."

While the particulars of the Justice Department memo remain unknown (the Obama administration refuses to release it), the general sense of it was expressed in a statement made to the *Washington Post* by an anonymous member of the administration. The unnamed official said:

As a general matter, it would be entirely lawful for the United States to target high-level leaders of enemy forces, regardless of their nationality, who are plotting to kill Americans both under the authority provided by Congress in the use of military force in the armed conflict with al-Qaeda, the Taliban, and associated forces as well as established international law that recognizes our right of self-defense.

According to the descriptions published in the media by several people who have read the document, the memorandum states that Awlaki was to be killed only if it was deemed impossible to capture him alive.

Written last year, the memo is reportedly the result of months of wrangling by those within the administration opposed to the action, as well as those who favored it. While neither the identities of those participating in the deliberations nor the pros and cons espoused by them are known, what is clear is that whatever is written in the final iteration of the product of that pow-wow provided the rationale the President to pull the trigger in defiance of an executive order outlawing assassination and an act of Congress banning murder, as well as the Due Process clause of the Fifth Amendment to the Constitution.

Simply put, the President ignored the law and ordered the death of an American citizen based solely on the affirmative nod of a shadowy cadre of counselors and the still-secret 50-page memo they provided their boss, rubber stamping his royal decree.

President Obama has unashamedly placed himself above the law and has united into his own hands all executive, legislative, and judicial power, thus becoming the very definition of a tyrant.

Our Founding Fathers understood this and warned against it. In



The Federalist, No. 51, James Madison rightly reasoned that the key to maintaining liberty under the Constitution is that the three principal powers of government must be kept separate.

Our Constitution, says Madison, was designed

to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty.... In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

In a later letter in that series, Alexander Hamilton added his testimony to that of Madison. Quoting Montesquieu, Hamilton wrote: "For I agree, that 'there is no liberty, if the power of judging be not separated from the legislative and executive powers.'"

In his book entitled *The Spirit of the Laws*, a book read, referenced, and well-regarded by our Founding Fathers, the Baron Montesquieu, wrote, "There is no liberty, if the judiciary power be not separated from the legislative and executive.... Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

Now that President Obama has completely set at naught this timeless principle of liberty, what of the rest of the Constitution? Does the founding charter of the United States not set forth certain processes that must be followed before a man accused of even the most notorious crimes (murdering a citizen of the United States, for example) may be killed under the imprimatur of the state?

Indeed, weren't these processes followed in the case of American terrorist Tim McVeigh, who was brought to trial for the Oklahoma City bombing, found guilty, and given the death penalty? When these processes are skipped, and the executive branch can exercise a license to kill simply by declaring someone a threat,

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what guarantee is there that innocent Americans will not be murdered by their own government?

The Fifth Amendment to the Constitution clearly mandates: "No person shall be ... deprived of life, liberty, or property without due process of law."

In the United States, the so-called Due Process Clause of the Fifth Amendment has been interpreted to include various procedural steps that must be taken in order to maintain the supremacy of the law.

Simply speaking, according to the limits on power placed by the Constitution of the United States, no one accused of any crime may be held accountable for that crime without first being afforded adequate notice of the charges being made against him, followed by a fair hearing on the merits of those charges before an impartial judge.

Not a single one of the constitutionally obligatory procedures was followed by President Obama. In the case of Anwar al-Awlaki, the only process that was deemed due in his case was whatever is written in the Department of Justice memo that gave the President the green light to call out the jets and drones that tracked and killed him.

A Sound Solution?

The family of the other, less-publicized victim of the CIA-supervised hit — Samir Khan, publisher of a magazine for al-Qaeda in the Arabian Peninsula denouncing the American invasion of Afghanistan and Iraq — made this argument after learning of the death of their son. The Khan family issued a statement asking

On September 30, 2011, an unmanned Predator drone under the control of the CIA tracked, targeted, and fired a Hellfire missile at a convoy of vehicles traveling along the border of Yemen and Saudi Arabia. Two American citizens were killed in the attack.





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U.S. Constitution: By issuing the order that resulted in the assassination of Anwar al-Awlaki, President Barack Obama violated the Fifth Amendment mandate that “no person shall be ... deprived of life, liberty, or property without due process of law.”

why the government of the United States found it necessary to have “assassinated two of its citizens.”

“Was this style of execution the only solution?” the Khan family asked in its statement. “Why couldn’t there have been a capture and trial?”

It is a question the President will not answer. Of great interest, given the administration’s own published opinion that the killing of Awlaki would only be legal if he could not be taken alive, is whether or not the capture of Awlaki was even attempted.

If Awlaki was, as has been said by pro-Obama pundits, “the bin Laden of the Internet,” could his capture not have been at least as feasible as a face-to-face execution of Osama bin Laden himself? Did American commandos not plan and execute an attack on the home where former Public Enemy Number One and the very face of “the global war on terror” was holed up? Did this attack not come off without the loss of a single American casualty? If such considerations were on the mind of those keen on killing Awlaki, would the death of bin Laden at the hands of American special forces not belie the notion that the capture of Awlaki was absolutely unfeasible?

Apparently, the memorandum’s branding of this action as a “targeted killing” of an “enemy combatant” trumps such considerations and trumps the Constitution.

Besides, the President knew that the political leadership of Yemen would not stand in his way, as a diplomatic cable obtained by WikiLeaks makes it clear that the President of Yemen gave a priori permission to his American counterpart to shoot to kill if Awlaki was located within the sovereign territory of Yemen.

Perhaps the most frightening aspect of the targeted killing of an American citizen at the command of the American President is the placement of names on the list of those who will be so targeted in the future.

Chillingly, the deliberations of the panel of government of-

ficials tasked with populating the CIA kill list are as secret as the DOJ memo that instantly legalized the Awlaki assassination. It is believed that the panel is a “subset of the White House’s National Security Council.” This “death panel” is reported to have added the name of Anwar al-Awlaki, as well as other as-yet unpublished persons to the roll of enemies of the state.

A few details about the process that led to Awlaki’s historic addition to the list were revealed by Congressman Dutch Ruppersberger, a Democratic member of the House Intelligence Committee. According to a statement made by Ruppersberger, the trail to being targeted involves

going through the National Security Council, then it eventually goes to the president, but the National Security Council does the investigation, they have lawyers, they review, they look at the situation, you have input from the military, and also, we make sure that we follow international law.

Should Americans be comforted to know that our own Constitution and the protections of civil liberties placed therein have been displaced by a modern-day Star Chamber,* murky memos, and lawyers beholden to upholding “international law”?

In the final analysis, there is no defense made by the Obama administration regarding the absolute disregard for the Fifth Amendment. Lawyers for the President declared Anwar al-Awlaki to be an “imminent threat” to the United States, to be affiliated with a group known to be a “clear and present danger” to the national security of the United States, and to have purposefully inspired the actions of the Ft. Hood shooter and the Detroit underwear bomber.

The relevant questions that must be shouted from the rooftops are: What are the crimes of which Awlaki is charged? Why was every effort not made to capture him despite the obvious earlier success in coming face to face with Osama bin Laden, who had eluded American special forces for over a decade? Why were Awlaki and Khan deprived of life without even the slightest due process? In the future, what will prevent Americans from being added to the kill list?

If answers to these questions are not demanded of the current President, then there is little doubt that the next occupant of the Oval Office is just as likely to freely and without fear of reprisal, deploy the armed forces of the United States to silence forever the voices of those foolish enough to question the policies of the President. ■

* The Star Chamber was an English court whose sessions were held in secret, where no formal pronouncement of charges was presented to the accused, where the accused had no right to appeal the court’s decision, where no jury was ever impaneled to weigh the government’s evidence, and where no witnesses were permitted to testify in defense of the accused. In a 1990 decision, the Supreme Court described the secretive and abusive usurpations of the Star Chamber as a primary motivation for the inclusion of protections of the individual in our Fifth Amendment.