



Written by [Joe Wolverton, II, J.D.](#) on March 7, 2013

AG Holder Says “No”; Senator Paul Declares “Victory” for Civil Liberties

Following an inspiring nearly 13-hour filibuster, Senator Rand Paul (R-Ky.) [declared “victory”](#) in his quest to receive an answer to his question on the limits of the president’s presumed authority to use lethal force to kill Americans without due process.

In [a tersely worded, one-line letter](#), Attorney General Eric Holder (shown) provided Paul with the following answer:



It has come to my attention that you have now asked an additional question: “Does the President have the authority to use a weaponized drone to kill an American not engaged in combat on American soil?” The answer to that question is no.

In [an interview with CNN](#), Paul said he was satisfied by Holder’s response. “I’m disappointed it took a month and a half and a root canal to get it, but we did get the answer.”

In a press release following the publication of the letter, Paul elaborated: “This is a major victory for American civil liberties and ensures the protection of our basic Constitutional rights. We have Separation of Powers to protect our rights. That’s what government was organized to do and that’s what the Constitution was put in place to do,” Paul said. “I would like to congratulate my fellow colleagues in both the House and Senate and thank them for joining me in protecting the rights of due process.”

Although it is arguably a victory, it is a small one. In fact, it may be little more than Pyrrhic as the phrase that pays in the attorney general’s memo to the senator appears to be “not engaged in combat.” If the past is any precursor of the future, the president (whether it be Barack Obama or his successor) will likely find plenty of clever ways to interpret that standard so as to justify the targeting and killing of enemies of the state no matter where they are found — at home or abroad. The “not engaged in combat” modifier is the loophole the neocons need to fire a deadly missile at anyone whose name ends up on the kill lists.

As the recent [discussion regarding the “imminent threat” standard](#) shows, words that seemingly have well-understood meanings are defined in the most extraordinary ways by those anxious to justify the denial of due process to those considered by the Obama administration to be enemies.

It is to his credit, however, that Senator Paul’s filibuster elicited any response from the powers that be. In an earlier letter to Paul, the attorney general was not nearly so direct in his answer to the question of whether the president considers it legal to light up with a Hellfire missile an American citizen suspected of plotting against the security of the homeland: “It is possible, I suppose, to imagine an extraordinary



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circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States,” Holder [wrote in his first written response to Senator Paul](#).

This answer didn’t satisfy the senator, who said of the above response, “The U.S. Attorney General’s refusal to rule out the possibility of drone strikes on American citizens and on American soil is more than frightening — it is an affront the Constitutional due process rights of all Americans.”

Like the first letter, the content of Holder’s latest missive is too vague. It would be more comforting and constitutional were the president or the attorney general to declare that there is *no situation* where an American citizen would be denied their constitutionally guaranteed rights to due process.

Going further along that path, however, it would be more constitutionally (and morally) sound to say that “no person” would ever be denied their natural right to due process before being deprived of life, liberty, or property. The language of the [Fifth Amendment uses that standard](#), not the “no American citizen” standard typically set by those declaiming the president’s death-by-drone program.

Of course, Senator Paul is correct in claiming that Holder’s response on Thursday is an improvement over that given in his March 4 letter. That earlier letter introduced the “extraordinary circumstance” standard for killing Americans on the order of the president, without affording the target any opportunity to answer the charges or to have the merit of those charges decided by an impartial judge. “Were such an emergency to arise, I would examine the particular facts and circumstances before advising the President on the scope of this authority,” Holder added.

The scope of the president’s authority is [Article II of the Constitution](#). There is not a single syllable in that section that even hints that the president has the power to place an individual on a proscription list and mark him for eventual assassination.

In fact, not one of the delegates to the Constitutional Convention in 1787 would have remained in Philadelphia for a single session of that meeting had they foreseen that the office of president created by that document would have one day assumed all power over life and death.

President Obama’s nearly daily approval of drone-delivered assassinations is an effrontery to over 650 years of our Anglo-American law’s protection from autocratic decrees of death without due process of law. When any president usurps the power to place names on a kill list and then have those people summarily executed without due process, he places our Republic on a trajectory toward tyranny and government-sponsored terrorism.

Of course, it would be another matter if those targeted and executed by the president were armed enemy combatants — they were not. Were these suspected “militants” enemy soldiers captured during wartime they would be necessarily afforded certain rights granted to POWs. Those slated for assassination are not allowed any rights — neither the due process rights given to those accused of crimes nor the rights of fair treatment given to enemies captured on the battlefield. The White House has become a modern-day star chamber, carving out *ex nihilo* a new category of individual — one deprived of rights altogether.

Although Senator Paul has declared victory in the fight to protect Americans from the denial of due process and death by drone, there is still a long war ahead for those who would see our Republic return to the limited government of very few and enumerated powers established by our Founding Fathers. Senator Paul and other constitutionally minded lawmakers are taking small, important steps in that



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direction, but if the Constitution is to be saved, there is still a long row to hoe.

Photo of Attorney General Eric Holder: AP Images

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com.



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