



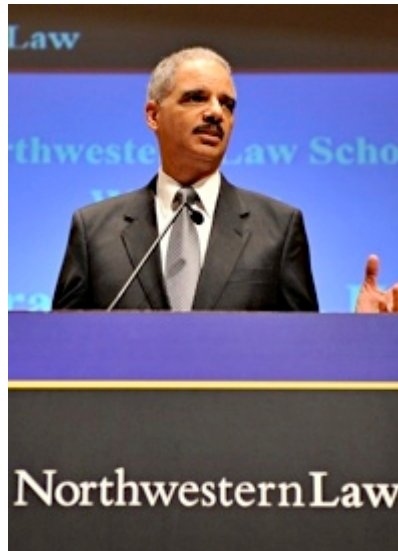
Written by [Joe Wolverton, II, J.D.](#) on March 6, 2012

Holder: Pres. May Order Killing of U.S. Citizens Abroad if Threat to “Homeland”

The President of the United States has the authority to order the targeted killing of Americans living abroad whom he suspects of posing an extraordinary threat to the security of the homeland. This was the opinion delivered by Attorney General Eric Holder in a speech Monday at Northwestern Law School in Chicago (photo at left).

In [his address](#), the Attorney General told the audience:

Any decision to use lethal force against a United States citizen — even one intent on murdering Americans and who has become an operational leader of al-Qaeda in a foreign land — is among the gravest that government leaders can face. The American people can be — and deserve to be — assured that actions taken in their defense are consistent with their values and their laws.



The values and laws do not include due process, as these assassinations are carried out without affording these citizens even a scintilla of due process. Basically, should the President or a designated member of his national security team determine that an American has qualified for inclusion on a kill list, then that person may be killed by agents of the U.S. government without being charged with any crime and without a hearing on the legitimacy of those actions which are suspected of being dangerous to Americans.

Ironically, it is the [Due Process Clause of the Fifth Amendment](#) that Holder cited as the constitutional authority for the killing of American citizens in the manner he outlined in his address. Below is an excerpt from the Attorney General’s remarks wherein he confronts the Due Process argument:

The Supreme Court has made clear that the Due Process Clause does not impose one-size-fits-all requirements, but instead mandates procedural safeguards that depend on specific circumstances. In cases arising under the Due Process Clause — including in a case involving a U.S. citizen captured in the conflict against al Qaeda — the Court has applied a balancing approach, weighing the private interest that will be affected against the interest the government is trying to protect, and the burdens the government would face in providing additional process. Where national security operations are at stake, due process takes into account the realities of combat.

The Attorney General’s reasoning presupposes the “right” of innocent Americans to be protected by



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their government from those of their fellow citizens who would commit lethal crimes against them. This positions demands an answer to the question of whether those “suspected” of these heinous crimes should not be protected likewise from a government that would kill them without being charged with any crime, without being permitted the opportunity to consult with counsel, and without the opportunity to appear in front of an impartial judge in order to provide an answer for those accusations.

It is nearly axiomatic to those who understand the timeless principles of liberty that informed our Founding Fathers and were distilled into the pragmatic provisions of our Constitution that individual liberty was the cornerstone of government established by a free people. The government, so created, would be void of any power not specifically granted to it by that sovereign whose natural right it was to rule (the people).

In the post-NDAA era into which the United States has now entered, the government has assumed all power over life and death and has passed law after law and innumerable volumes of regulations that legalize that usurpation. In this nation today, every man, woman, and child (including unborn children) are required by force of law to appeal to the ultimate arbiter of the right to life for their continuing existence. Should they fail to adequately demonstrate the requisite level of obsequiousness, then their life, liberty, and property may be confiscated without recourse and seemingly without remorse on the part of those carrying out the sentence.

It is with that attitude that Attorney General Holder pronounced his allegiance to the concept of situational civil liberties. In his speech — the first time the Obama administration has openly referred to any justification for the killing of American citizens [Anwar al-Awlaki](#), his son, and a companion — Holder defiantly refused to disclose any particulars as to precisely how he and his boss would go about qualifying an American to be the next victim of a drone-fired missile. Said Holder, “I cannot discuss or confirm any particular program or operation...”

With that sidestep in mind, read now the words used by Eric Holder to specify the set of circumstances that would lead the federal government to pull the trigger against a citizen. Please pay particular attention to the choice of words used by the Attorney General, as their vagueness may one day be just the hazy cover used by our own government to explain away the apparent exceptions to their own rules:

Let me be clear: an operation using lethal force in a foreign country, targeted against a U.S. citizen who is a senior operational leader of al Qaeda or associated forces, and who is actively engaged in planning to kill Americans, would be lawful at least in the following circumstances:

First, the U.S. government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against the United States;

second, capture is not feasible; and

third, the operation would be conducted in a manner consistent with applicable law of war principles.

A careful study of these words chosen by a man trained in the law reveals a frightening amount of wiggle room, a gap just large enough for a missile to squeeze through, perhaps.

First, the Attorney General does not say that the three prongs of this test must be met in order for a citizen to be killed by the government. He merely says that such a situation “at least” would make the killing lawful. Despite the fact that the erection of even this hurdle is completely unconstitutional, the Attorney General did not say that an authorized killing would be legal only under these circumstances.



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This is the sort of opaque double-speak that will someday be used as “proof” that Americans knew that other hits ordered by the President were contemplated prior to the actual assassination.

Finally, there is the notion of when capture is and is not feasible. One would suppose that as an attorney, the Attorney General would know that there are at least two key terms in this prong of the “lawful targeted killing test” that must be very precisely defined: “capture” and “feasible.” Tellingly, the lines around these life-and-death qualifications are not finely drawn. Speaking on this topic, Holder said:

Whether the capture of a U.S. citizen terrorist is feasible is a fact-specific, and potentially time-sensitive, question. It may depend on, among other things, whether capture can be accomplished in the window of time available to prevent an attack and without undue risk to civilians or to U.S. personnel. Given the nature of how terrorists act and where they tend to hide, it may not always be feasible to capture a United States citizen terrorist who presents an imminent threat of violent attack. In that case, our government has the clear authority to defend the United States with lethal force.

Remember, with very few exceptions, Congress and the President (including George W. Bush) have declared that it is an unquestionable verity that Osama bin Laden was the man responsible for the terrorist attacks of September 11, 2011. He was [Public Enemy Number One and \\$25 million was offered by the FBI](#) to the person who could provide the government with reliable intel as to his whereabouts. Finally, on May 2, 2011, Osama bin Laden was shot and killed by American armed forces working with agents of the CIA during a raid at his private residence in Abbottabad, Pakistan.

Osama bin Laden was not an American citizen. His capture was feasible, however, according to the Attorney General’s own analysis. He was killed and few there are that mourn his passing.

Anwar al-Awlaki was an American and so was his 16-year-old son. Neither of these men was charged with any crime. If Osama bin Laden — the ostensible leader of a worldwide network of terrorists so committed to his agenda that they were willing to strap bombs to themselves and detonate them in the name of the cause — could be captured, does it not follow that two lesser threats who did not benefit from the level of protection surrounding bin Laden could also have been feasibly captured and brought to justice for the actions for which they were assassinated at the command of the President?

They were not. On September 30, 2011, while Anwar al-Awlaki had stopped to eat breakfast, two unmanned Predator drones fired Hellfire missiles killing him. Two weeks later, [his son Abdulrahman was killed in similar manner](#). No charges. No trial. No due process.

And, the Attorney General says that’s the way it should be.

Photo: Attorney General Eric Holder speaks at the Northwestern University law school, Monday, March 5, 2012 in Chicago: AP Images



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