



Written by [Joe Wolverton, II, J.D.](#) on February 11, 2014

Obama Considers Killing American with Drone

President Obama and his national security advisers are weighing the legal issues associated with sending a drone to Pakistan to assassinate an American allegedly working with al-Qaeda.



As reported by multiple media organizations, the Obama administration has intelligence that an unidentified American has, according to unnamed government officials, “helped Al Qaeda militants plan attacks against U.S. troops in neighboring Afghanistan and is actively plotting future attacks.”

Although adding names to and then erasing them from a kill list is reportedly a weekly event at the White House, the press is reporting that this time the president is hesitating because of standards he laid out last May in a speech at the National Defense University.

As *The New American* reported at the time, the president’s guidelines for going forward with the drone war included an effort to only murder those individuals who posed “[a continuing, imminent threat to U.S. persons.](#)”

The president also reiterated his commitment to protecting the due process rights of any American who was nominated for assassination.

A curious element to the story was revealed in an Associated Press (AP) report. Citing the AP story, the [L.A. Times reported](#) “the suspect was well guarded and in a remote location, so any raid by U.S. troops to capture him would be risky and possibly even more politically sensitive than launching an airstrike or drone attack.”

Could any suspect have been more well-guarded and represented a riskier capture target than former al-Qaeda mastermind and public enemy number one Osama bin Laden?

Osama bin Laden was reportedly tracked and overtaken by a U.S. special operations team. Why could other less high-value targets not be similarly found by the military? Although bin Laden was reportedly killed in the raid, there is every reason to believe that a team skilled in this type of operation could have captured him alive if those had been the orders they were following.

Once in the custody of the United States, this American with alleged al-Qaeda association could be brought to stand trial for the crimes he’s accused of committing. This would preserve, protect, and defend the constitutional concept of due process, one of the pillars of liberty upon which our Republic is built.

The constitutional preeminence of due process is found in *The Federalist Papers*, where Alexander Hamilton warned against its violation in any form: “The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny.”



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Due process as a check on monarchical power was included in the Magna Carta of 1215. This list of grievances and demands codified the king's obligation to obey written laws or be punished by his subjects. Article 39 of the Magna Carta says "No freemen shall be taken or imprisoned or disseised [dispossessed] or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land."

Over the years, the Magna Carta was occasionally revised and amended. In 1354, the phrase "due process of law" appeared for the first time. The Magna Carta as amended in 1354 says, "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."

This fundamental restraint on the royal presumption of the power to lop off heads on command was incorporated by our Founders in the Bill of Rights, particularly in the Fifth Amendment that says in relevant part, "No person shall ... be deprived of life, liberty, or property, without due process of law."

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 fact that there is even a debate about how to justify killing this American suspected of al-Qaeda ties proves that the White House has assumed all power over life and death and created *ex nihilo* a new category of individual — one deprived of rights altogether.

Technically, though, the U.S. military is not permitted to operate inside Pakistan. In fact, the president reiterated that understanding just days ago by reportedly committing to [substantially reduce the use of drones in that country](#). The capture of bin Laden was considered by many in Islamabad to be a violation of Pakistani national sovereignty and under the law of nations it could be seen as little else.

This "red tape" has drawn the ire of some in Congress who regard due process as lowly as the rest of the Constitution, apparently. The *L.A. Times* reports:

Rep. Mike Rogers (R-Mich.), who chairs the House Intelligence Committee, apparently alluded to the case at a hearing on worldwide threats last week, saying the new rules "leave Americans' lives at risk" by limiting drone strikes.

"Individuals who would have been previously removed from the battlefield by U.S. counter-terrorism operations for attacking or plotting to attack against U.S. interests remain free because of self-imposed red tape," Rogers said.

This "red tape" is what constitutionalists call "due process" and it is self-imposed as a part of the Constitution and is designed to protect the most basic rights of life, liberty, and property from being taken by the government without compelling cause.

Regardless of the rhetoric and the reported hemming and hawing, the future for this anonymous



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American tagged as an al-Qaeda operative doesn't look bright. The fact is, the president has already killed at least three American citizens overseas in drone strikes. One of them was a teenager, killed along with several of his cousins while they sat at a roadside park eating lunch.

Abdulrahman al-Awlaki was killed in October 2011, and to date the Obama administration has never informed the country of any wrongdoing by this teenager, other than being related to a man (his father) who posted on the Internet anti-American videos that allegedly influenced others to commit crimes. A government-sanctioned assassination of such an individual is repugnant to all those who cherish life, liberty, and the due process that protects them.

An additional denial of due process came from the fact that no known attempt was ever made to capture this young man and take him into U.S. custody. Of course, that could be because he might actually have ended up in a court of law if he had been apprehended; and President Obama, a former lawyer, knows that trials can be long, messy, and unpredictable. It is much quicker and cleaner just to launch a missile and kill someone without going through the hassle of due process.

From the reports, it seems the president has narrowed the options in this latest case of a targeted American citizen down not to whether to capture or kill, but [whether to kill with Pentagon drone or CIA drone](#).

Photo of MQ-9 Reaper drone: AP Images

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