



Written by [Joe Wolverton, II, J.D.](#) on October 5, 2011

Herman Cain Flip Flops on Killing of Awlaki

After the May 5 GOP presidential debate in South Carolina, Bob Powell of AboveTopSecret.com asked Cain if he would consider it legal for President Obama to issue a kill order for Awlaki. Cain [responded](#), "In his case, no, because he's an American citizen."

Cain continued: "If he's an American citizen, which is the big difference, then he should be charged, and he should be arrested and brought to justice."

Cain also stated in the same interview, "He [Awlaki] should be charged. And since he's an American citizen, he should be tried in our courts."



Here is a clip from the May 5 interview quoted above that was recently put on YouTube:

Weeks after that post-debate interview, Cain [spoke](#) with Conor Friedersdorf of *The Atlantic* and claimed not to have heard of Anwar al-Awlaki or the notion that our own government was planning to track him down and kill him. When asked what he thought of that proposition theoretically, Cain reiterated his previous opposition:

I don't believe that the president of the United States should order the assassination of citizens of the United States. That's why we have our court system, and that's why we have our laws.

Herman Cain was correct when he made this observation. We are a nation of laws. In matters of the power of the President, Article II of the Constitution is controlling. There is, it should go without saying, no provision in that article granting the executive branch either the power to declare "enemies of the state" or to execute those so branded.

Furthermore, apart from the negative constitutional constraint against such deplorable behavior, there is a positive prohibition found therein, as well. The [Fifth Amendment](#) to the Constitution specifically forbids the federal government from depriving anyone of life or liberty without the "due process of law." It reads:

No person shall be ... deprived of life, liberty, or property, without due process of law.

Apparently, in the case of Anwar al-Awlaki, the Fifth Amendment's due process requirement was fulfilled by President Obama deciding he [Awlaki] was a threat to the security of our homeland and then phoning in the kill order to a hit man at the CIA.

A story in the *Washington Post* [reported](#), in fact, that "the Justice Department wrote a secret memorandum authorizing the lethal targeting of Anwar al-Aulaqi [an alternate spelling]." What sort of due process was followed before that fatal memo was issued? The *Post* explains:

The document was produced following a review of the legal issues raised by striking a U.S. citizen and involved senior lawyers from across the administration. There was no dissent about the



legality of killing Aulaqi.

Thus, the legal reasoning, the arguments for and against the unprecedented murder of an American citizen by a fiat of the executive branch of the federal government, is secret and beyond all analysis and exposure. Our government now orders the assassination of Americans (albeit notorious ones) in secret and then executes those orders in the dark by remote control. There is now no oversight, no restraint, and no remorse — either for the death of Awlaki or for that of the Constitution of the United States and the rule of law.

As has been well reported, on September 30 American forces, in the form of a joint CIA-military drone strike, assassinated Anwar al-Awlaki and another American citizen, Samir Khan. Of crucial importance to this story is the irrefutable fact that neither man was arrested, tried, or convicted of any crime. Awlaki has been accused by the White House of taking the lead in “planning and directing efforts to murder innocent Americans.”

This American-born, Yemeni-based cleric may or may not be guilty of those charges. That question is the one faced by all those accused of committing crimes. Until September 30, that question was answered in our Republic in a court of law by a jury of one’s peers, not by one man, even if that man fancies himself the arbiter of guilt and innocence and has the deadly force to immediately enact his will.

In the aftermath of the assassination of Anwar al-Awlaki, the question of the legality of that act was again put to Herman Cain. According to a [story](#) published by the blog Hot Air, after a Tea Party-sponsored event in Chicago, Cain spoke favorably of the President’s decision.

In a brief Q&A with our panel after his speech, Cain told the crowd that he fully supported Barack Obama’s decision to strike Anwar al-Awlaki.

Why the waffle? How could Herman Cain go from an accurate summation of the legal process required in our Republic before a life may be taken in May to commending the very illegal act he once denounced?

The *Weekly Standard* posed that very question to the presidential hopeful during a telephone interview conducted on October 4. Cain’s [response](#):

I never said that [President Obama] should not have ordered [the killing]. I don’t recall saying that. I think you’ve got some misinformation. Keep in mind that there are a lot of people out there trying to make me sound as if I am indecisive.

I don’t know all of the compelling evidence that the intelligence agencies and the military had. I’m convinced — I’m convinced that they have enough intelligence information that said he’s a threat to the United States of America. You don’t try to prosecute or capture him simply because he’s a United States citizen.

Again, Cain is correct, albeit unintentionally — the government doesn’t try to prosecute or capture Awlaki (or anyone accused of any crime) “simply because he’s a United States citizen.” In point of fact, the government must not only *try* to do so, it *must* do so. Our government may not carry out any such punishment against a citizen or against any one without prosecution. Remember, prosecution is just another name for part of the process due the accused under the mandates of the Fifth Amendment.

Herman Cain’s disregard for constitutional constraints is disturbing. This is a man offering himself to fill the office of the President. Given his recent response to the assassination of Anwar al-Awlaki, it seems apparent that, as President, Herman Cain would not be dissuaded by the Constitution were he to



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decide that someone was “a threat to the United States of America.”

Is this the level of fidelity to the presidential oath of office that we could expect from a President Herman Cain? Would his administration perpetuate (perhaps even expand) the current policy of assassinating Americans suspected of possibly inspiring others to commit crimes?

It would be wise for all committed constitutionalists to find answers to these vital questions prior to pulling a lever for Herman Cain or any candidate with a demonstrable disregard for human life, the rule of law, and the Constitution.

Photo of Herman Cain: AP Images



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