

# Unmanned Drone Attacks

The Obama Administration's use of unmanned drones for targeted killing overseas is well-documented and controversial. In the fall of 2011, two U.S. drone strikes killed three American citizens in Yemen, including a 16-year-old. In February 2013, NBC News released a Department of Justice memo that purports to defend the president's unilateral power to kill U.S. citizens without judicial process.<sup>7</sup> According to the memo:

... where the following three conditions are met, a U.S. operation using lethal force in a foreign country against a U.S. Citizen who is a senior operational leader of al-Qa'ida or an associated force would be lawful: (1) an informed high-level official of the US. Government has determined that the targeted individual poses an imminent threat of violent attack against the United States; (2) capture is infeasible; and (3) the operation would be conducted in a manner consistent with applicable law of war principles.

The memo argues that when a high-level government official decides that a citizen poses such a threat, the U.S. may legally kill that citizen without any trial or public scrutiny. Some have commented that the memo seems to contradict the Fifth and Sixth Amendments which established the right to due process and public trial by jury, respectively. This worry is compounded, according to opponents of the memo, given that there is some evidence that the main target of the first Yemen strike wasn't "an imminent threat of violent attack" – at least as these terms are ordinarily understood.<sup>8</sup>

Others worry that the language of the memo is so vague that it would allow the president to kill pretty much whomever he or she pleases. Professor Kevin Jon Heller, for instance, argues that the permission for the government to kill "a senior operational leader of al-Qa'ida or an associated force" (emphasis added) is already wide enough as to conflict with international law.<sup>9</sup> Furthermore, the memo explains that an "imminent" threat "doesn't require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." Based on previous rulings, the memo argues that the national right to self-defense would extend to killing a person who poses such an "imminent threat" *wherever* that person happened to be. This, the memo seems to allow for the targeted killing of Americans even on American soil without judicial review.

Proponents of the policy say that there *are* U.S. citizens who pose a legitimate threat to our national security. Capture may very well be infeasible, and some situations may be so dire that killing for the sake of national security could be justified. Some argue that the president should have the power to kill without breaking the law even if the memo itself isn't a very well-written defense of that power. Attorney General Eric Holder, for example, argued that "'due process' and 'judicial process' are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process."<sup>10</sup> Holder's defense is that the due process required by the Constitution would be satisfied when an informed high-level official of the US. Government has determined that the targeted individual poses an imminent threat of violent attack against the United States.

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7 [http://msnbcmedia.msn.com/i/msnbc/sections/news/020413\\_DOJ\\_White\\_Paper.pdf](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf)  
8 <http://www.nytimes.com/2010/11/20/opinion/20johnsen.html>  
9 <http://opiniojuris.org/2013/02/05/the-doj-white-papers-fatal-international-law-flaw/>  
10 <http://www.theatlanticwire.com/national/2012/03/holder-due-process-doesnt-necessarily-mean-courtroom/49509/>

