

Did the Department of Justice Say that the Government Would Not Assassinate Americans?

Holder's Letter Raises More Questions Than It Answers

By [Washington's Blog](#)

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After a 13-hour filibuster by Senator Paul [asking for a yes-or-no answer](#), on the question of whether the government could kill Americans on U.S. soil with drones, the Attorney General [responded](#):

Dear Senator Paul:

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.

Sincerely,

Eric Holder

But – as anyone who has worked in the legal or legislative field knows – statements which do not pin down all possibilities create loopholes large enough to drive trucks through.

Remember, Holder's letter to Paul can't be taken in a vacuum. The government [has said for many months](#) that it has the power to assassinate Americans on U.S. soil.

William Grigg [notes](#):

This brief message from Holder ... should be read in terms of the supposed authority claimed thereby. This means removing useless qualifiers in the interest of clarity.

What Holder is saying, in substantive terms, is that the President does have the supposed authority to use a drone to kill an American who is engaged in "combat," whether here or abroad. "Combat" can consist of expressing support for Muslims mounting armed resistance against U.S. military aggression, which was the supposed crime committed by Anwar al-Awlaki, or sharing the surname and DNA of a known enemy of the state, which was the offense committed by Awlaki's 16-year-old son, Abdel. Under the rules of engagement used by the Obama Regime in Pakistan, Yemen, and Afghanistan, [any "military-age" male found within a targeted "kill zone" is likewise designated a "combatant,"](#) albeit usually after the fact [update: [children too](#)]. This is a murderous application of the "[Texas Sharpshooter Fallacy](#)," and it will be used when — not if — Obama or a successor starts conducting domestic drone-killing operations.

Holder selected a carefully qualified question in order to justify a narrowly tailored answer that reserves an expansive claim of executive power to authorize summary executions by the president.

Indeed, the [Supreme Court](#) ruled in Hamdi that American citizens can be treated as enemy combatants.

But the determination of who is a “combatant” is made in secret and without judicial review. For example, AP [notes](#):

Pentagon counsel Jeh Johnson ... said only the executive branch, not the courts, is equipped to make military battlefield targeting decisions about who qualifies as an enemy.

Secretive, unaccountable agencies are making [life and death decisions](#) which effect our most basic rights. They provide “secret evidence” to courts which cannot be checked ... and often withhold any such “evidence” even from the judges. [For example](#):

“I find myself stuck in a paradoxical situation in which I cannot solve a problem because of contradictory constraints and rules — a veritable Catch-22,” the judge wrote. “I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for their conclusion a secret.”

The government uses “secret evidence” to [spy on Americans](#), prosecute [leaking](#) or [terrorism](#) charges (even against [U.S. soldiers](#)) and even [assassinate people](#).

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[Moreover](#):

The government’s indefinite detention policy – stripped of it’s spin – is literally insane, and based on circular reasoning. Stripped of p.r., this is the actual policy:

- If you are an enemy combatant or a threat to national security, we will detain you [indefinitely](#) until the war is over

- It is a [perpetual war](#), which will never be over

- [Neither you or your lawyers](#) have a right to see the evidence against you, nor to face your accusers

- But trust us, we know you are an enemy combatant and a threat to national security

- We may torture you (and [try to cover up the fact that you were tortured](#)), because you are an enemy combatant, and so basic rights of a prisoner guaranteed by the Geneva Convention don't apply to you

- Since you admitted that you're a bad guy (while trying to [tell us whatever you think we want to hear](#) to make the torture stop), it proves that we should hold you in indefinite detention

See how that works?

The government also wants to [expand its assassination program to cover "associates of associates" of Al Qaeda](#).

And – given that [political dissent is now considered terrorism, and protesters considered low-level terrorists](#) – does that mean that dissent or protest makes one a “combatant”?.

Karl Denninger also [points out](#) that Holder didn't say anything about other types of assassination:

Still can't be bothered to make a clear statement can you?



So in your opinion, Mr. Holder, it's perfectly ok if the President uses an M-16, a 9mm, a bomb constructed out of C-4 or burns the building you're in to the ground?

Therefore, Holder's letter raises more questions than it answers.

Update: One of the nation's top constitutional and military law experts – Professor Jonathan Turley – just [weighed in](#) on this issue:

We [previously discussed](#) how Attorney General Eric Holder wrote a letter confirming that the President would have authority to kill citizens on U.S. soil

without a charge or conviction. His answer triggered a principled filibuster by Sen. Rand Paul and another embarrassment to Democratic Senators who, again, chose personality over principle in staying silent. Now, Holder has issued a new statement. No, President Obama still claims the right to kill U.S. citizens on his sole authority. However, Holder now says that, if the citizen is “not engaged in combat on American soil,” the President cannot vaporize him. The answer leaves the constitutional claim of Obama even more confused and conflicted. Does this mean we have a third category now under the policy: citizen, citizen terrorist, and citizen non-combatant terrorist?

In his prior letter, Holder answered a question about whether the President was claiming the right to kill citizens on U.S. soil. This follows the [release of a memo](#) showing that Holder’s description of the policy at Northwestern University Law School was narrower than the actual policy described within the Administration. A memo leaked to the press shows that the Administration has adopted a virtual limitless definition of imminence: “The condition that an operational leader present an ‘imminent’ threat of violent attack against the United States does not 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.”

Last week, Holder said “It is possible I suppose to imagine an extraordinary 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.”

It is not clear what Holder means by “engaged in combat” since the Administration memo shows that the Administration is using an absurdly broad definition of “imminent” threat under the kill list policy. Since the Administration has continued to assert that terrorists are engaged in a war against the U.S., the terse reply of Holder seems designed to preserve later flexibility.

Moreover, there is nothing in the constitutional claim of the Administration that reflects such a limitation. Deciding on where to kill a citizen would be an discretionary policy under the sweeping presidential authority described by the Administration. As noted in earlier columns ([here](#) and [here](#) and [here](#)), it is astonishing how citizens, including so many liberals and civil libertarians, Obama is saying that his appointment of a non-binding committee satisfied due process and relieves any need for judicial review. Moreover, if the President has the inherent authority to kill a citizen in Canada, it is not clear why such inherent authority would not exist a few hundred yards away in Detroit. The Administration has said that it can use the unilateral power when it considers a capture to pose undue risk to its personnel.

What is particularly striking is that we have a president who is asserting the right to kill any citizen but the Administration has classified memos on that authority and the Attorney General will only give a Senator a terse two line conclusory statement on scope. The Administration appears to believe that there is little need to explain the details on killing citizens, such as how it defines “combat.” Obviously, if there is a war occurring in the United States, a president has the right to put down insurrection or attacks on the federal government. These strikes concern targeting terrorists. One can easily foresee this or a future president insisting that an alleged terrorism conspiracy is a form of combat.

It would seem an obvious thing to explain how they define combat and whether an alleged terrorist would fall into it. Does this mean that there will be

a category of non-combatant terrorists for domestic strikes? How is that defined? It seems like a hole big enough to fly a drone through. Since police can already use lethal force to stop an attack in progress, the answer leaves more questions than it answers in my view. For a citizen it would mean that he or she can be killed abroad on the basis of the Administration's wildly broad definition of "imminent" but domestically would fall under a different "combat" definition. Where is the line between an "imminent" threat and "combat" drawn? Does Holder mean there is a different meaning to imminence when someone steps over the border? We already have the definition of "imminent" and the Administration's new definition of "imminent." Is this yet a third option?

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