

Historic Law Suit Against Barack Obama: White House Argues that Funding The War against Syria and Iraq Makes War Legal

"How could I honor my oath when I am fighting a war, even a good war, that the Constitution does not allow, or Congress has not approved?"

By [Nika Knight](#)

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Region: [Middle East & North Africa, USA](#)

Theme: [Crimes against Humanity, Law and Justice, US NATO War Agenda](#)

In-depth Report: [IRAQ REPORT, SYRIA](#)

Global Research Editor's Note:

Read this important article by Nika Knight, Common Dreams.

Let us take this case to the Supreme Court. War is an illegal and criminal undertaking. Obama is a war criminal. Obama's counterterrorism operation directed against Syria is in violation of international law.

The evidence amply confirms that Washington is supporting the terrorists. The US Congress has endorsed a criminal undertaking.

Let us support Captain Nathan Michael Smith in his endeavor. (M.Ch. GR Editor)

* * *

A lawsuit filed earlier this year charging President Barack Obama with waging an illegal war against the Islamic State (or ISIS) was met on Tuesday with a motion from the Obama administration asking the court to dismiss it.

In its [motion to dismiss](#) (pdf), the administration argues that Congressional funding for the war amounts to Congressional approval for it.

The [lawsuit](#) (pdf) was [filed](#) in U.S. district court by Capt. Nathan Michael Smith, an intelligence official stationed in Kuwait, in May. Smith has been assigned to work for "Operation Inherent Resolve," the administration's name for the nebulous conflict against the terrorist group ISIS.

To read the [complete lawsuit \(pdf\) click screenshot below](#)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
NATHAN MICHAEL SMITH,)
Captain, United States Army,)
ISIS Operation Inherent Resolve,)
Camp Arifjan, Kuwait)
)
Plaintiff,)
)
v.)
)
BARACK H. OBAMA,)
President of the United States)
The White House)
1600 Pennsylvania Avenue, N.W.)
Washington, D.C. 20500)
)
Defendant.)
_____)

Civil Action No.

**COMPLAINT FOR
DECLARATORY RELIEF**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
NATHAN MICHAEL SMITH,)
)
Plaintiff,)
)
v.) Civ. No. 16-843 (CKK)
)
BARACK H. OBAMA,)
)
Defendant.)
_____)

DEFENDANT'S MOTION TO DISMISS

Defendant hereby moves to dismiss Plaintiff's Complaint in this case under Rule 12(b)(1) of the Federal Rules of Civil Procedure. As set forth in the accompanying memorandum of law, the Court lacks jurisdiction over Plaintiff's claims because (1) they raise non-justiciable political questions, (2) Plaintiff lacks standing to assert them, (3) there is no waiver of sovereign immunity that permits the claims to proceed, and (4) Plaintiff cannot obtain equitable relief against the President. For these reasons, this Court should grant Defendant's motion to dismiss.

Dated: July 11, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ANTHONY J. COPPOLINO
Deputy Branch Director
Civil Division

/s/ Samuel M. Singer
SAMUEL M SINGER (D.C. Bar 1014022)
Trial Attorney
United States Department of Justice

“How could I honor my oath when I am fighting a war, even a good war, that the Constitution does not allow, or Congress has not approved?” Smith wrote.

“To honor my oath, I am asking the court to tell the president that he must get proper authority from Congress, under the War Powers Resolution, to wage the war against ISIS in Iraq and Syria.”

The President did not get Congress's approval for his war against ISIS in Iraq or Syria within the sixty days, but he also did not terminate the war. The war is therefore illegal. The Court should issue a declaration that the War Powers Resolution requires the President to obtain a declaration of war or specific authorization from Congress within sixty days of the judgment, and that his failure to do so will require the disengagement, within thirty days, of all United States armed forces from the war against ISIS in Iraq and Syria.

Excerpt of Captain Smith's lawsuit

According to the 1973 [War Powers Resolution](#), "when the President introduces United States armed forces into hostilities, or into situations where hostilities are imminent," Smith's lawsuit reads, "he must either get approval from Congress within sixty days to continue the operation, in the form of a declaration of war or specific statutory authorization, or he must terminate the operation within the thirty days after the sixty-day period has expired."

The Obama administration has justified the legality of the war on ISIS by relying on the Authorization for the Use Military Force (AUMF) resolution, passed by Congress in the immediate aftermath of September 11, 2001.

The single sentence, consisting of only 60 words, has now been relied upon by first President George W. Bush and now Obama to [justify the unending wars](#) waged by the U.S. in the 21st century.

The AUMF reads in full:

That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

Those 60 words gave Bush far-reaching powers to combat forces associated with Al-Qaeda, once his administration determined the terrorist organization was responsible for the September 11 attacks.

But ISIS is an enemy group of Al-Qaeda, and it remains therefore unclear to many legal observers whether the AUMF technically applies to the U.S. combat operations against that group. That has not prevented the Obama administration from pursuing and [ramping up](#) U.S. involvement in the conflict, however.

As *Buzzfeed's* Gregory Johnson [reported](#) back in 2014, "Several of the lawyers I talked to, officials from both the Bush and Obama administrations, spoke eloquently and at great length about the limits of the AUMF and being constrained by the law[...] But none of them were able to point to a case in which the U.S. knew of a terrorist but couldn't target him because it lacked the legal authority. Each time the president wanted to kill someone, his

lawyers found the authority embedded somewhere in those 60 words.”

It is this authority that Smith’s lawsuit is challenging.

And in fact, Obama appears to have recognized—at least somewhat—the lack of clear legal authorization for the conflict, as he has requested several times that Congress issue an official declaration of war against ISIS and issue a [new AUMF](#).

“There appears to be no real opposition to the war effort on Capitol Hill,” *The Atlantic’s* Garret Epps [notes](#), “But Congress has not held hearings or a vote of any kind.”

Yet the White House has also [argued](#) that Congressional approval for the war is unnecessary, because the 2001 AUMF provides legal cover for it. Attempts to [repeal](#) the AUMF have failed.

On Tuesday, the administration argued that the case should be dismissed because,

The President has determined that he has the authority to take military action against ISIL, and Congress has ratified that determination by appropriating billions of dollars in support of the military operation. Congress has made these funds available over the course of two budget cycles, in connection with close oversight of the operation’s progress, and with knowledge of the authority under which the operation is being conducted. The political branches have exercised their respective constitutional roles, and their joint effort in support of Operation Inherent Resolve is precisely the kind of mutual participation that courts have looked to in dismissing war powers challenges under the political question doctrine.

The *New York Times* [observed](#) that this justification for the war on ISIS amounts to the “most extensive public explanation yet of [the Obama administration’s] war powers theory.”

Yet as Epps [wrote](#) last month, “The relief Smith and other soldiers are actually seeking—and one they richly deserve—would be a decision by their political leaders to treat the Constitution, the nation’s commitment to military force, and the lives of American personnel as a serious matters, worthy of sustained attention.”

And as Earth Institute director Jeffrey D. Sachs [argued](#) in his remembrance of peace activist Father Daniel Berrigan, “America is quick to ask other countries to repent their sins and to remember their evil deeds. It is quick to haul other leaders to the International Criminal Court. But it is chronically incapable of looking inward.”

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