

US Attorney General Holder: President Can Order Assassination of Americans On U.S. Soil

By [Washington's Blog](#)

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Region: [USA](#)

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Because America Is a Battlefield In The Eyes of the Government Attorney general Eric Holder [wrote the following](#) to Senator Rand Paul yesterday:

On February 20, 2013, you wrote to John Brennan requesting additional information concerning the Administration's views about whether "the President has the power to authorize lethal force, such as drone strike, against a U.S. citizen on U.S. soil, and without trial."

As members of this administration have previously indicated, the US government has not carried out drone strikes in the United States and has no intention of doing so. As a policy matter moreover, we reject the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat. We have a long history of using the criminal justice system to incapacitate individuals located in our country who pose a threat to the United States and its interests abroad. Hundreds of individuals have been arrested and convicted of terrorism-related offenses in our federal courts.

The question you have posed is therefore entirely hypothetical, unlikely to occur, and one we hope no president will ever have to confront. **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.** For example, the president could conceivably have no choice but to authorize the military to use such force if necessary to protect the homeland in the circumstances like a catastrophic attack like the ones suffered on December 7, 1941, and September 11, 2001.

Were such an emergency to arise, I would examine the particular facts and circumstances before advising the President on the scope of his authority.



Image by [William Banzai](#)

There's more to the following statement than appears at first blush:

As a policy matter moreover, we reject the use of military force where well-established law enforcement authorities in this country provide the best means for incapacitating a terrorist threat.

Specifically, Holder did not say “we are legally constrained by the Constitution from depriving people of life, liberty or property without due process of law, and from using military force on U.S. soil”. Instead, he said that the Obama administration was *so far* abstaining from using a power it already has as a *current “policy” decision*.

John Glaser [notes](#):

The concluding legal opinion represents a radical betrayal of constitutional limits imposed on the state for depriving citizens of life, liberty and property. Officially now, Obama's [kingly authority](#) to play [Judge, Jury, and Executioner](#) and deprive Americans of their life without due process of law applies not only to Americans abroad but to citizens that are inside the United States.

“The US Attorney General’s refusal to rule out the possibility of drone strikes on American citizens and on American soil is more than frightening - it is an affront the Constitutional due process rights of all Americans,” [Sen. Paul said in](#)

[a statement](#).

Holder, along with the Obama administration, is making it seem as if the President's use of lethal force, as in the drone war, would only be used in circumstances like another impending 9/11 attack or something. Only when an attack is imminent.

But that categorical limitation on the President's authority to kill depends upon their definition of "imminence," which we learned from [a leaked Justice Department white paper last month](#), is extremely broad.

The memo refers to what it calls a "broader concept of imminence" than what has traditionally been required, like actual intelligence of an ongoing plot against the US.

"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," the memo states, contradicting conventional international law.

Instead, so long as an "informed, high-level" US official claims the targeted American has been "recently" involved in "activities" that pose a threat and "there is no evidence suggesting that he has renounced or abandoned such activities," then the President can order his assassination. The memo does not define "recently" or "activities."

Holder also insists that in the case of such "extraordinary circumstances," like another impending 9/11, he "would examine the particular facts and circumstances before advising the president of the scope of his authority."

Boy, do I feel comforted.

This is not entirely surprising. As we noted in December 2011, a [top constitutional expert confirmed](#) that Obama was claiming the authority to assassinate Americans on U.S. soil. We [reported](#) that month:

For more than a year and a half, the Obama administration has said it [could target American citizens for assassination without any trial or due process](#).

But now, as shown by the debates surrounding indefinite detention, [the government is saying that America itself is a battlefield](#).

AP [notes](#) today:

U.S. citizens are legitimate military targets when they take up arms with al-Qaida, top national security lawyers in the Obama administration said Thursday.

The government lawyers, CIA counsel Stephen Preston and Pentagon counsel Jeh Johnson ... said U.S. citizens do not have immunity when they are at war with the United States.

Johnson said only the executive branch, not the courts, is equipped to make military battlefield targeting decisions about

who qualifies as an enemy.

The courts in habeas cases, such as those involving whether a detainee should be released from the Guantanamo Bay detention facility in Cuba, make the determination of who can be considered an enemy combatant.

We pointed out a year ago, [the director of the FBI said he'd have to "check"](#) to see if the president had the authority to assassinate Americans on U.S. soil. We reported last October that former Department of Justice lawyer John Yoo - the guy who wrote the memo justifying torture, even of children, which was used to justify torture of [innocent people, including children](#) - said that [the president has the power to assassinate Americans on U.S. soil in times of war](#).

And Mother Jones [notes](#):

In a Google+ Hangout last month, President Obama refused to say directly if he had the authority to use lethal force against US citizens. As [Mother Jones reported](#) at the time, the reason the president was being so coy is that the answer was likely yes. Now we know that's exactly what was happening.

It is not very reassuring that the [same unaccountable agency which decides who should be killed by drones also spies on all Americans](#).

[Indeed](#):

You might assume - in a vacuum - that this might be okay (even though it trashes the Constitution, the separation of military and police actions, and the division between internal and external affairs).

But it is dangerous in a climate where you can be labeled as or suspected of being a terrorist simply for [questioning war, protesting anything, asking questions about pollution or about Wall Street shenanigans, supporting Ron Paul, being a libertarian, holding gold, or stocking up on more than 7 days of food](#). And see [this](#).

And it is problematic in a period in which [FBI agents and CIA intelligence officials, constitutional law expert professor Jonathan Turley, Time Magazine, Keith Olbermann and the Washington Post](#) have all said that U.S. government officials "were trying to create an atmosphere of fear in which the American people would give them more power", and even former Secretary of Homeland Security - Tom Ridge - [admits](#) that he was pressured to raise terror alerts to help Bush win reelection.

And it is counter-productive in an age when the government - [instead of doing the things which could actually make us safer](#) - are [doing things which increase the risk of terrorism](#).

And it is insane in a time of perpetual war. See [this](#), [this](#), [this](#) and [this](#).

And when the "War on Terror" [in the Middle East and North Africa](#) which is being used to justify the attack on Americans was planned long [before 9/11](#).

And when Jimmy Carter's National Security Adviser told the Senate in 2007 that [the war on terror is "a mythical historical narrative"](#). And [9/11 was entirely](#)

[foreseeable](#), but wasn't stopped. Indeed, [no one in Washington even wants to hear how 9/11 happened, even though that is necessary to stop future terrorist attacks](#). And the military has bombed a bunch of oil-rich countries [when it could have instead taken out Bin Laden years ago](#).

As I [noted](#) in [an analogous context]:

The government's indefinite detention policy – stripped of its 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?

And – given that [U.S. soldiers admit that if they accidentally kill innocent Iraqis and Afghanis, they then “drop” automatic weapons near their body so they can pretend they were militants](#) – it is unlikely that the government would ever admit that an American citizen it assassinated was an innocent civilian who has nothing at all to do with terrorism.

[Read this](#) if you have any doubt as to how much liberty Americans have lost.

Senator Paul [told](#) MSNBC:

The response by Holder could lead to a situation where “an Arab-American in Dearborn (Mich.) is walking down the street emailing with a friend in the Mideast and all of a sudden we drop a drone” on him. He said it was “really shocking” that President Barack Obama, a former constitutional law professor, would leave the door open to such a possibility.

True ... but you [don't have to be Arab-American to get in trouble](#).

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