

# Bloomberg

## Obama Faces Bipartisan Pressure on Drone Big Brother Fear

By Julie Hirschfeld Davis, Laura Litvan & Greg Stohr – March 8, 2013

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The struggle between President Barack Obama and Congress over the administration's secretive drone program has focused growing bipartisan concern on the reach of government power both at home and abroad.

Obama's administration bowed to bipartisan pressure yesterday from critics of his drone strike policy, issuing a terse statement saying the president doesn't have power to carry out such a killing on "an American not engaged in combat on American soil."

The letter from Attorney General Eric Holder to Republican Senator Rand Paul, who staged a 13-hour filibuster this week over the issue, left many questions unanswered about the legal parameters of drone use at a time when a growing number of U.S. law enforcement officials are asking to employ the unmanned aircraft to fight domestic crime.

"Rand Paul managed to unite some disparate parts of the American populace that are concerned about government abuse of various kinds," said Ilya Shapiro, a Cato Institute constitutional studies fellow. "The administration has done a very poor job of explaining itself on this, and that raises a lot of suspicion on the right and the left."

It's an example of how members of both parties are demanding more accountability from Obama on national security following his re-election. The execution of drone strikes killing alleged enemy combatants from Pakistan to Yemen has been central to a borderless U.S. war against terrorism.

*Both Flanks*

"The president is facing more political pressure on the war on terror in his second term, and it's coming from the flanks -- the left flank and human rights community and from the right," said Peter Feaver, who advised former President George W. Bush on national security and now teaches politics at Duke University in Durham, North Carolina. The questions have sharpened amid public fears about "persistent ubiquitous surveillance," Feaver added, "something that resonates especially strongly on the libertarian right that would say, 'I don't want Big Brother to be watching me,' but also on the left, with people saying, 'Do I want the FBI to be reading my e-mail?'"

Paul, a first-term senator from Kentucky, cheered his letter from Holder and claimed credit for having elicited a rare unambiguous answer from Obama's team on drone policy. To Paul's question about the president's authority to kill an American not engaged in combat on American soil, the attorney general wrote: "The answer to that question is no."

*'Under Duress'*

"Hooray!" Paul said on Fox News, calling the missive "a result and a victory" from his filibuster delaying the Senate confirmation of John Brennan for CIA director --

ultimately approved. “Under duress, and under public humiliation, the White House will respond and do the right thing.”

Senator Ron Wyden of Oregon, the only Democrat to join Paul and other Republicans in the talk-a-thon, said it’s clear that a turning point occurred in the debate over drone policy in the last week -- not solely because of the filibuster.

“You’re going to start to see the emergence of a checks- and-balances caucus, and that there will be a lot of Democrats in it,” Wyden said.

Earlier in the week, he and others on the Senate intelligence committee forced the administration to allow panel members to review legal opinions underpinning its drone policy. That was after he and a handful of others withheld support for Brennan’s nomination until they saw the opinions.

### *Transparency*

Wyden said Obama has told him he intends to engage more in a debate with Congress on drone policy, and to provide more non- classified information that can help the public understand the administration’s position.

The president “feels there is going to be a need to engage the country in a more extensive way in a debate on these issues,” Wyden said, adding that Obama recognizes there is a difference between “secret operations and secret law.”

At the same time, some civil liberties groups and legal experts said the Obama administration still had not done what is necessary to answer pressing questions about drone use.

“No one should be satisfied with where the debate about lethal force stands now,” Zeke Johnson of Amnesty International USA said in a statement yesterday, calling on Obama to publicly disclose memos on the drone program and commit to following international human rights and armed conflict laws in using them. “The Obama administration’s basis for claiming the right to kill remains shrouded in secrecy.”

### *Public Support*

Obama pledged in his Feb. 12 State of the Union address to engage with Congress and the public about how his administration was targeting, detaining and prosecuting terrorists, saying: “I recognize that in our democracy, no one should just take my word that we’re doing things the right way.”

He may feel little public pressure to bow to demands for greater transparency on drones, given that polls indicate Americans are largely supportive of the program. A Fox News poll conducted Feb. 25-27 found that 74 percent approved of the U.S. using drones to kill suspected terrorists overseas, and 60 percent supported it even if the suspect was a U.S. citizen. A smaller majority of 56 percent approved of a drone strike on a foreign terrorism suspect on U.S. soil.

Still, Americans had a different view when asked about the scenario for which Paul demanded answers: using drones on U.S. soil against an American suspected of being a terrorist. Fifty percent were opposed, while 45 percent were supportive.

That helps explain why Obama, facing a social media-fueled outcry sparked by Paul's filibuster -- the senator inspired a #StandWithRand hashtag that quickly trended on Twitter -- decided to fill in one of the many blanks in his drone policy.

"The president has not and would not use drone strikes against American citizens on American soil," spokesman Jay Carney told reporters at the White House yesterday.

#### *Holder's Letter*

That statement went beyond what the attorney general had told lawmakers March 6, when he testified on Capitol Hill that it would be unconstitutional to use a drone in the U.S. against an American suspected of being a terrorist who didn't pose an imminent threat.

Yet Holder's letter didn't amount to a concession, said William C. Banks, a professor at Syracuse University College of Law and director of its Institute for National Security and Counterterrorism. He said the law is clear that officials can use lethal force only when other steps aren't feasible.

In the case of someone who isn't engaged in combat, Banks said, "they're not an imminent threat to Americans or others on U.S. soil, so you continue surveillance or you attempt a law-enforcement arrest."

#### *Which Weapons*

Holder's mistake may have been getting drawn into a discussion about which weapons the U.S. might use if lethal force were necessary, says Charles Dunlap, a retired Air Force major general who teaches law at Duke.

"It is completely consistent with U.S. and international law to use force against an imminent threat," Dunlap said. "What is unfortunate is that the controversy about drones is being used to obfuscate that legal principle."

U.S. lawmakers and human rights groups have been raising questions about the use of drones in the aftermath of the 2011 killing in Yemen of the radical cleric Anwar al-Awlaki, a U.S. citizen, and his 16-year-old Denver-born son, Abdulrahman.

The issue has taken on greater urgency in recent months, as local law enforcement agencies across the United States have expressed interest in using the unmanned aerial vehicles for surveillance and other uses.

The Federal Aviation Administration estimates there may be about 10,000 active commercial drones in five years, and released a list last month of 81 U.S. organizations that have applied for permission to fly them, including more than a dozen police departments around the country.

"As drone use becomes more and more common, it is crucial that the government's use of these spying machines be transparent and accountable to the American people," Naomi Gilens of the American Civil Liberties Union wrote in a web posting last week. "We should not have to guess whether our government is using these eyes in the sky to spy on us."