



Gene Healy

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# Gene Healy: Can Obama order executions of citizens abroad?

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Last April, the Obama administration let slip that it had targeted an American citizen living abroad for summary execution. When the target's father sought legal help, he learned it is now a crime even to file suit on behalf of a federally designated "global terrorist." Earlier this month, though, the administration relented, letting the challenge proceed.

Given what we know about the target, Anwar al-Awlaki, it's hard to get teary picturing him smeared across some Yemeni rocks by a Predator drone. The "bin Laden of the Internet" is linked to three 9/11 hijackers, has e-mailed the Fort Hood shooter, advised the "underwear bomber," and inspired the botched Times Square attack.

If there is a good argument against birthright citizenship, the New Mexico-born al-Awlaki is Exhibit A.

Al-Awlaki's repulsiveness aside, there is an important matter of principle at stake. Can the Obama administration really serve as judge, jury and executioner over any American it deems a security threat?

Yes we can, insists Ken Gude of the Obama-friendly Center for American Progress. Gude says the hit is justified under the 2001 Authorization for Use of Military Force (AUMF) passed after 9/11 to authorize the war in Afghanistan.

As the American Civil Liberties Union argues, though, even if the AUMF authorizes the arrest of U.S. terror suspects abroad, it's "a far more radical thing" to propose that it legalizes "the extrajudicial execution of those people." (Besides, is it remotely plausible that a Center for American Progress analyst circa 2007 would have endorsed a Bush-Cheney plan to rub out citizens it deemed dangerous?)

Much of the commentary so far has examined whether killing al-Awlaki violates the U.S. government's assassination ban. Our Cold War flirtation with such tactics was a sordid tragicomedy of errors, including attempts to kill Fidel Castro with "a contaminated diving suit," "exploding seashells" and Mafia thugs.

But as law professor Kevin Jon Heller points out, "assassination" isn't the issue here: "The foreign-murder statute has to be the starting point" for analysis. That law makes anyone -- including a CIA agent -- who kills a U.S. national abroad "presumptively a murderer."

Just as President George W. Bush insisted his Magic Scepter of Inherent Authority let him ignore federal laws against torture, the new administration seems to believe "that Obama has authority as commander in chief to ignore the foreign-murder statute."

Conservatives generally backed the Bush team's extravagant claims of uncheckable presidential power, and some have adopted a foolish consistency here as well. "Eliminating al-Awlaki: Great, but Only Part of the Solution," offers one pundit on National Review Online.

It's the much-maligned Glenn Beck who called this one correctly. On a recent show, the excitable Tea Party guru had "no problem" with killing American terrorist suspects on the battlefield: "But away from the battlefield? ... Call me a little nostalgic for the Constitution."

Further to Beck's right (really), there has been some paranoid talk about Obama planning "stateside assassinations" of anti-government dissenters. That's what Chuck Norris claims, sans evidence, in a recent column for Worldnetdaily.com. "No due process. No trial. Just a bullet," Chuck intones ominously. (I never would have guessed that the action hero of my youth, who dispatched the terrorists in "Invasion U.S.A." with a steely "time to die!" would go all civ-libber on us.)

But as Kevin Williamson writes at NRO, it's not so much "what this administration might do with such power, but what an administration 50 years down the road might do with it." In a seemingly endless war, the powers we cede now could be available to future presidents in perpetuity.

You don't need to wax conspiratorial to find that prospect disturbing.

Examiner Columnist Gene Healy is a vice president at the Cato Institute and the author of "The Cult of the Presidency."

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