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## Obama uses Bush plan for terror war

*Includes tactics he had criticized*

By [Eli Lake](#)

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As the ninth anniversary of the 9/11 attacks approaches, much of President Obama's counterterrorism policies and his understanding of executive power closely hew to the last administration, which he criticized as a candidate for the White House.

On issues ranging from the government's detention authority to a program to kill al Qaeda terrorist suspects, even if they are American citizens, Mr. Obama has consolidated much of the power President George W. Bush asserted after Sept. 11 in the waging of the U.S. war against terror.

The continuities between the two administrations were evident this week, when the U.S. Court of Appeals for the 9th Circuit dismissed a lawsuit that five former U.S. detainees brought against a subsidiary of Boeing Co. known as Jeppesen Dataplan.

The former detainees alleged that Jeppesen Dataplan facilitated their transport to U.S. and foreign prisons, where they were tortured. The Obama Justice Department, like the Bush Justice Department before it, urged the court to dismiss the case on grounds that state secrets would be disclosed in litigation.

In a 6-5 decision, the court ruled in favor of the federal government.

"It can fairly be said that the Bush administration made torture the law of the land and the Obama administration is making impunity for torture the law of the land," said Ben Wizner, the American Civil Liberties Union (ACLU) attorney who represented the plaintiffs in the case.

To be sure, Mr. Obama has made some changes to Mr. Bush's counterterrorism policies. On his first day in office, Mr. Obama signed an executive order that shuttered the CIA's enhanced interrogation program, which critics say practiced torture against senior al Qaeda suspects.

In an executive order, Mr. Obama also closed the secret "black site prisons," though he kept open temporary

facilities where suspects could be taken before being sent elsewhere. Mr. Obama also pledged to close the Guantanamo Bay, Cuba, prison by the end of his first year in office, but that facility remains open.

For now, U.S. policy is not to send any Yemeni prisoners back to Yemen, where high-profile jail breaks have resulted in the freeing of senior members of al Qaeda. More than half of the 180 prisoners at Guantanamo Bay are from Yemen.

"Obama has defined this as a war, just like George Bush did. He gets great marks for the macro statement, but some of the other rhetoric confuses that fact as well," Michael Hayden, Mr. Bush's last CIA director, said in an interview Thursday.

Mr. Hayden cited as an example the Justice Department reading Miranda rights to Umar Farouk Abdulmutallab, the Nigerian national who is accused of trying to blow up a flight from Amsterdam to Detroit on Christmas Day.

Overall, Mr. Hayden said, there is more continuity than divergence between the Bush and Obama administrations' approaches to the war on terror.

"You've got state secrets, targeted killings, indefinite detention, renditions, the opposition to extending the right of habeas corpus to prisoners at Bagram [in Afghanistan]," Mr. Hayden said, listing the continuities. "And although it is slightly different, Obama has been as aggressive as President Bush in defending prerogatives about who he has to inform in Congress for executive covert action."

The White House declined to comment for this report.

However, the Obama administration has specifically said it differs from the Bush administration in that Mr. Obama has rejected the view that the executive branch has inherent wartime authorities that allow it to overrule laws passed by Congress.

Nonetheless, the Obama administration has asserted that a congressional resolution authorizing force against al Qaeda gives the president the right to detain, kill and abduct suspected terrorists all over the world.

In addition, Mr. Obama threatened to veto an amendment to the Intelligence Authorization bill for 2011 if it contained a provision that requires the full intelligence committee, instead of its chairman and ranking member, to be informed about covert action.

Sen. Christopher S. Bond, Missouri Republican and vice chairman of the Senate intelligence committee, said Mr. Obama has hampered the CIA in some areas by delegating more counterterrorism authority to the Justice Department.

But Mr. Bond also acknowledged similarities with the Bush administration.

"I appreciate his administration supporting the state secrets doctrine in court proceedings," he said. "It is important that people not be allowed to get military and intelligence secrets through a lawsuit. That is important. There are other policies which he has continued, some of them I cannot speak officially about, but they have been effective in taking out terrorists in the Pakistani areas."

Fran Townsend, a former homeland security adviser to Mr. Bush, said: "On counterterrorism policy, they found they agree with much of what we did, but that fact is politically inconvenient to acknowledge."

It's not just former Bush officials who see continuity on counterterrorism in the Obama administration.

An ACLU report issued in July found: "On a range of issues including accountability for torture, detention of terrorism suspects, and use of lethal force against civilians, there is a very real danger that the Obama administration will enshrine permanently within the law policies and practices that were widely considered extreme and unlawful

during the Bush administration."

The continuities also extend to homeland security.

"From a homeland security point of view, the points of continuity are striking and the points of departure are minor," said Stewart Baker, a former policy chief for the Department of Homeland Security and author of "Skating on Stilts," a legal defense of much of the new policies in the global war on terror.

"The Obama administration is, if anything, even more enthusiastic about using travel information to identify potentially risky travelers," he said. "They are actually more aggressive about the use of the 'no-fly' list than the last administration, after the Christmas Day bombing incident."

In one of the most significant areas of continuity, the Obama administration also has largely based much of its war authorities on the Sept. 14, 2001, congressional resolution authorizing the use of military force against the individuals and groups responsible for the Sept. 11 attacks: the Authorization for Use of Military Force, known as the AUMF.

Obama administration lawyers have argued the AUMF gives the government the authority to detain terrorism suspects indefinitely and conduct targeted killings in countries where the United States has not declared war.

Jack Goldsmith, a former head of the Justice Department's office of legal counsel who rolled back some of the legal justifications for Bush-era enhanced interrogation, said: "The AUMF is the main font of authority for both detentive and targeting activities in Afghanistan and for Somalia and Yemen. That was also the main font of authority for the Bush administration."

The continuity also extends to the federal government's surveillance powers.

"There is no better example of Obama's continuity with Bush than last year's Patriot Act reauthorization debate," said Julian Sanchez, a scholar at the Cato Institute who specializes in privacy issues. "The administration had to launder its amendments through Republicans ... to kill his own party's proposed checks on surveillance power."

As a candidate, Mr. Obama at first opposed changes to the Foreign Intelligence Surveillance Act (FISA), but then voted for the amendments. Those amendments in some ways codified surveillance programs Mr. Bush ordered after Sept. 11 that drew intense criticism from Democrats, including Mr. Obama, when they were first disclosed in the New York Times in 2005.

"The FISA amendments act gave National Security Agency on balance far more authority than George Bush ever gave it," a retired senior U.S. intelligence official told The Washington Times.

Mr. Bond said: "I congratulate [Mr. Obama] on following the law passed on a bipartisan basis. I am pleased he is continuing to use the authorities provided in the FISA legislation. If the people who don't want us to listen in on terrorist communications are unhappy, that shows he is on the right path."

Mr. Obama's government also continues, according to some advocates, to overclassify government information, despite the high-profile release last year of some Justice Department memos justifying water-boarding and sleep deprivation and a 2004 CIA inspector general report analyzing the agency's enhanced interrogation program.

"The continuities are far more prominent than the departures. One could make the same point incidentally not just with respect to 9/11 policies, but with respect to the whole Cold War security apparatus," said Steven Aftergood, director of the project on government secrecy at the Federation of American Scientists. "National security classification policy continues to follow the pattern established by Truman and Eisenhower."

Mr. Aftergood added: "Fundamentally, we are persisting on a security path that was charted in radically different circumstances more than half a century ago."

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