



## Will Obama's Brennan Pick Shed Some Much Needed Light on Drones?

By: Benjamin H. Friedman – January 11<sup>th</sup>, 2013

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**Question:** Which of following imperils your chances of being confirmed by the U.S. Senate for a top national security post?

- A.** Stated belief in the existence of a pro-Israel lobby and in a distinction between U.S. and Israeli interests.
- B.** Alleged past support for coercive interrogation methods, like waterboarding, which can reasonably be called torture.
- C.** Sharp criticism of the conduct of the recent U.S. wars in Iraq and Afghanistan and a preference to avoid starting another with Iran.
- D.** Leadership role in a global drone assassination program justified by what appears to be a claim of an unchecked presidential power to kill or detain any American in the name of counterterrorism.

Anyone likely to be nominated knows that the answer is A and C, that B is problematic but probably OK by now, and D is a feather in your cap. The comparative treatment of former senator Chuck Hagel and John Brennan, nominated Monday by the president for secretary of defense and director of the CIA, respectively, make this point, as Greg Sargent [notes](#).

Brennan, the former CIA officer who is now the White House's chief counterterrorism adviser, was apparently up for the same nomination at the start of the Obama administration but reportedly withdrew because of trouble over his [support](#), which he [denies](#), for coercive interrogation. At the moment, he seems likely to cruise to nomination in the Senate, though Republicans may [slow](#) the vote to extract more information from the administration about its handling of the attack on the U.S. consulate in Benghazi last September. Hagel, of course, [faces](#) much more trouble because of his positions on Israel, gays, military spending, Iraq, and Iran.

The Senate probably considers the torture issue water under the bridge. Senators seem even less likely to question Brennan's [murky role](#) in past government programs that were offensive to constitutional and statutory law, including the National Security Agency's domestic surveillance program, [authorized](#) by George W. Bush's White House. Congress, after all, more or less [legalized](#) the program, [immunized](#) telecommunications companies for their role in it (with Brennan's [support](#)), and recently [reauthorized](#) the new statute.

Still, with drone warfare becoming more controversial of late, the new Congress may rouse itself to provide some oversight, or even assert its power to limit it. If so, Brennan's nomination is a good place to start.

Brennan is a key architect of the review process that the Obama administration undertakes to decide who to kill via airstrike from unmanned aerial vehicles (drones)—in Pakistan, Yemen, Somalia, and beyond. The White House assures us that they conduct such strikes only after solemn debate. But they show no interest in establishing any checks and balances to control strikes. The administration won't release documents explaining its legal position on the matter, so it's hard to characterize their views exactly. That said, their position seems to be that because Congress in 2001 authorized a war against the organizers of the 9/11 terrorist attack and those who aided them, the president can kill (or detain) anyone, anywhere, even U.S. citizens.

In one sense, that is narrower than the Bush administration's take, which was that president's did not even need congressional authorization to kill and detain people. In another sense, Obama's take is more dangerous. Attorney General Eric Holder argues that executive branch deliberations can satisfy Americans' due process rights—that the judicial need not play a role. That's odd, because in a war, U.S. citizens on the enemy side are treated as combatants, so no constitutional rights protect them. The due process argument seems to take us out of the realm of war powers and imply that the president can simply decree that we should be jailed or executed. As the American Civil Liberties Union notes:

Few things are as dangerous to American liberty as the proposition that the government should be able to kill citizens anywhere in the world on the basis of legal standards and evidence that are never submitted to a court, either before or after the fact.

Senators could hold Brennan's nomination until the White House makes it legal rationale for drone strikes public. Senators might ask Brennan to explain his discredited 2011 claim that drone strikes in Pakistan caused no civilian deaths over the course of a year (we have since learned the administration categorizes all military-age men killed as combatants).

The Senate could use nomination to show that it means to reassert its war powers. If Congress is for bombing people in Yemen and Somalia, it should publicly debate and authorize action in those countries. The 2001 Authorization of Military Force should not be a warrant for presidents doing whatever they want in the name of counterterrorism.

The reason for using these powers is not just because the constitution grants them. Checks and balances both protect liberties and produce better policy. The president—or any one person—and his subordinates acting alone are likely to produce worse security policies than two branches that have to debate and compromise.