



Written by [Thomas R. Eddlem](#) on September 30, 2010

Obama's Attorneys: President Can Legally Kill Any American

When the President orders American citizens killed without trial, Obama's attorneys bluntly argued in a September 25 brief before the U.S. District Court in the District of Columbia, these are not crimes but "non-justiciable political questions." In other words, the courts can't prevent or judge the right or wrong of Presidential assassination lists because these are questions under the political judgment of the President.



If one leader can order the death of any citizen without review by a court — or even releasing a reason or evidence — could there be a more perfect definition of the word "dictatorship"?

The case that brought Obama's lawyers out of the pro-assassination closet is *Nasser al Aulaqi v. Obama*, a case brought by the father of Anwar al-Aulaqi, an American citizen who has allegedly allied himself with al-Qaeda in the Arabian Peninsula (AQAP). Numerous news agencies have reported that the younger Aulaqi is at the top of a U.S. citizen "assassination list" created by the President.

The father, Obama's own lawyers admit, doesn't want to get the court to create a broad injunction against killing his son under any circumstances. Rather, he's seeking a much milder ruling banning the court from assassinating his son when he could just as easily be captured and returned to the United States for trial. As Obama's attorneys summarize in [their brief](#), Nasser al Aulaqi "does not seek to categorically stop the United States from using lethal force against his son under all circumstances. Rather, plaintiff seeks to enjoin the President of the United States, the Secretary of Defense, and the Director of the Central Intelligence Agency, from 'intentionally killing U.S. citizen Anwar Al-Aulaqi' outside an armed conflict 'unless he is found to present a concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threat.'"

That sounds like a reasonable enough request from a U.S. citizen, protected by the [Fifth Amendment's](#) restriction on the federal government that "No person shall be ... deprived of *life*, liberty, or property, without due process of law." Right?

Wrong, Obama's attorneys [argue](#):

The injunction plaintiff seeks would be unprecedented, improper, and extraordinarily dangerous, regardless of the truth of his allegations (which the United States does not and cannot confirm or deny). That requested injunction would necessarily and improperly inject the courts into decisions of the President and his advisors about how to protect the American people from the threat of armed attacks, including imminent threats, posed by a foreign organization against which the



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political branches have authorized the use of necessary and appropriate force.

Of course, what's "unprecedented, improper, and extraordinarily dangerous" is the creation of presidential assassination lists in direct conflict with the Fifth Amendment.

And Obama's attorneys have apparently learned at the feet of the masters of attacking the U.S. Constitution, taking a page from the Bush administration Justice Department. Like the Bush era, Obama's attorneys have attempted to get the court to dismiss the case on a technicality and prevent the court from deciding the case on its merits. Obama's attorneys [argue](#) that al-Aulaqi's father cannot bring a case on behalf of his son before the court as the legal "first friend" of his son: "Anwar al-Aulaqi can choose to present himself to the proper authorities, and thereby moot the threat his father claims he faces," the Obama attorneys argue. But of course, if al-Aulaqi is under threat of assassination by the U.S. President, as has been reported by the [Washington Post](#) and [other news outlets](#), then presenting himself to a court may be impossible without first suffering the threatened assassination. Obama's attorneys [stress](#) categorically that they have the right to order al-Aulaqi's execution: "It is sufficient to note that, consistent with the AUMF [Authorization of Use of Military Force after September 11, 2001], and other applicable law, including the inherent right to self-defense, the President is authorized to use necessary and appropriate force against AQAP operational leaders, in compliance with applicable domestic and international legal requirements, including the laws of war." The federal brief describes Anwar al-Aulaqi as "a leader" of al-Qaeda in the Arabian Peninsula (AQAP). And that's why al-Aulaqi's father has argued his son "cannot access legal assistance or a court without risking his life." Amazingly, the Obama lawyers charge that "this assertion is not supported by any evidence."

Obama's attorneys [try](#) to take the deliberate and unnecessary murder of a U.S. citizen — if it is done under orders by the White House — as an issue of political balancing and not a mere crime by these same officials:

Specific decisions regarding the use of force frequently must be made in the midst of crisis situations that can arise at any time, and that involve the delicate balancing of short- and long-term security, foreign policy, and intelligence equities. The Judiciary is simply not equipped to manage the President and his national security advisors in their discharge of these most critical and sensitive executive functions.

It's arguably a true statement that the judiciary is not equipped to judge foreign policy. However, what that judiciary is well "equipped" to do is to judge crimes. And the crime of assassinating American citizens would be one of the most heinous of that class. What Obama and his attorneys are essentially [arguing](#) is that the President is above the law, that when he acts as President he can do literally anything — even the murder of American citizens without revealing any evidence — and it will be legal:

Enforcing an injunction requiring military and intelligence judgments to conform to such general criteria, as plaintiff would have this court command, would necessarily limit and inhibit the President and his advisors from acting to protect the American people in a manner consistent with the Constitution and all other relevant laws, including the laws of war.

If there are no "general criteria" — i.e., if the President is not bound by law — then anything he does is merely political discretion. Civil libertarian Glenn Greenwald of Salon.com [noted](#) that many people are taking this as a political issue, rather than an issue of a heinous crime and constitutional usurpation by the President. "Obama supporters who are dutifully insisting that the President not only has the right to order American citizens killed without due process, but to do so in total secrecy, on the ground that



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Awlaki is a Terrorist and Traitor, are embracing those accusations without having the slightest idea whether they're actually true. All they know is that Obama has issued these accusations, which is good enough for them. That's the authoritarian mind, by definition: if the Leader accuses a fellow citizen of something, then it's true — no trial or any due process at all is needed and there is no need even for judicial review before the decreed sentence is meted out, even when the sentence is death."

Greenwald has a good point. If a President can infallibly know the guilt of all criminals, it's really a waste of time and money to have trials and courts at all. But our Founding Fathers created courts and a mandate for trials in the U.S. Constitution anyway, mostly because they realized from painful experience that executive branch officials are far less than infallible.

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