



Written by [Joe Wolverton, II, J.D.](#) on November 26, 2012

Obama Drafts Drone Rulebook to Codify Kill List Process

President Barack Obama prepared for a potential Election Night defeat by working on a death-by-drone rulebook, [reports the New York Times](#).

According to the article, the book would provide guidelines for the targeting of “terrorists” by the White House aimed at justifying the summary execution of those identified as threats to national security.

“There was concern that the levers might no longer be in our hands,” said one official, speaking on condition of anonymity and quoted in the *New York Times* story.

Although seemingly unconcerned about setting limits on the extraordinary power to order the death by remote control of anyone — an [unarmed American teenager](#), for example — when it is exercised by himself, President Obama didn’t want his would-be successor to inherit such boundless authority.

What was once an eleventh-hour electoral priority is now little more than a long-range goal that will be “finished at a more leisurely pace,” writes Scott Shane.

There have been earlier attempts to tie these deadly drone assaults — [at least 2,939 people have been killed by American drones since 2006](#) — to some sort of code of conduct that would provide legal cover fire to protect the program from attacks by human rights and civil liberties groups.

In March, for example, [Attorney General Eric Holder spoke at Northwestern Law School](#) regarding the source of the president’s authority to order the targeted killing of Americans living abroad whom he suspects of posing an extraordinary threat to the security of the homeland. Holder said:

Any decision to use lethal force against a United States citizen — even one intent on murdering Americans and who has become an operational leader of al-Qaeda in a foreign land — is among the gravest that government leaders can face. The American people can be — and deserve to be — assured that actions taken in their defense are consistent with their values and their laws.

It would seem, then, that President Obama does not consider due process a part of those values and laws, as these assassinations are carried out without affording those obliterated by drone-fired missiles even the lowest, most perfunctory level of due process protection.

In every case without exception, if the president or a designated member of his national security team determines that it’s time for someone’s name to be put on a kill list, then that person is assassinated by agents of the U.S. government without being charged with any crime, without being afforded an opportunity to answer those charges, and without a hearing on the legitimacy of those actions which are suspected of being dangerous to U.S. national security.

It is ironic, therefore, that Holder specifically cited the [Due Process Clause of the Fifth Amendment](#) as the constitutional authority for the killing of American citizens. He argued:

The Supreme Court has made clear that the Due Process Clause does not impose one-size-fits-all





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requirements, but instead mandates procedural safeguards that depend on specific circumstances. In cases arising under the Due Process Clause — including in a case involving a U.S. citizen captured in the conflict against al Qaeda — the Court has applied a balancing approach, weighing the private interest that will be affected against the interest the government is trying to protect, and the burdens the government would face in providing additional process. Where national security operations are at stake, due process takes into account the realities of combat.

The attorney general's reasoning presupposes the "right" of innocent Americans to be protected by their government from those of their fellow citizens who would commit lethal crimes against them. This position demands an answer to the question of whether those "suspected" of these heinous crimes should not be protected likewise from a government that would kill them without their being charged with any crime, without being permitted the opportunity to consult with counsel, and without the opportunity to appear in front of an impartial judge in order to provide an answer for those accusations.

Apart from Holder's effort to justify the unjustifiable killing of thousands by drone without hint of due process, it is shocking to the conscience that such a rulebook doesn't already exist. Have all of these drone strikes been carried out using ad hoc legal parameters, fluid enough to wash away all scrutiny and so ill-defined as to prevent opponents of the program from pointing to any violation of the rules of drone deployment?

"To say they are rewriting the rulebook implies that there isn't already a rulebook," [said Jameel Jaffer, the director of the American Civil Liberties Union's Center for Democracy](#). "But what they are already doing is rejecting a rulebook — of international law — that has been in place since [WWII]."

Jaffer also criticizes the *New York Times* piece for using "self-serving sources."

In fairness, however, the article was co-authored by the writer who first reported on the existence of the presidential kill list.

"Mr. Obama embraced a disputed method for counting civilian casualties...." wrote Shane and Jo Becker in [an article published May 29](#).

Recounting the scene at one of the regularly scheduled Tuesday intelligence briefings at the White House, Becker and Shane noted, "The mug shots and brief biographies resembled a high school yearbook layout. Several were Americans. Two were teenagers, including a girl who looked even younger than her 17 years."

It cannot be too soberly restated that these seemingly cold-blooded conferences are occurring every week in the Oval Office and are presided over by the president of the United States.

That last fact is essential if one is to understand the era into which our Republic has entered. The president of the United States, in this case Barack Obama, sits in a chair in the White House rifling through dossiers of suspected terrorists. After listening to the advice of his clique of counselors, it is the president himself who designates which of the lineup is to be killed. As the *New York Times* explains:

Mr. Obama has placed himself at the helm of a top secret "nominations" process to designate terrorists for kill or capture, of which the capture part has become largely theoretical. He had vowed to align the fight against Al Qaeda with American values; the chart, introducing people whose deaths he might soon be asked to order, underscored just what a moral and legal conundrum this could be.



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As a candidate, President Obama, a former adjunct professor of law, ran on a promise of ending foreign conflicts, bringing home the troops, and closing the prison at Guantanamo Bay. In just over three years, this professor of peace has become the decider of death. In a very real and irrefutable way, the American people have permitted the president of the United States (beginning with George W. Bush and the passage of the PATRIOT Act, the Authority for the Use of Military Force, and other similar legislation) to create a codified grant of the unalienable right over life and death. The most bloodthirsty of the Roman dictators would have much to envy in the power assumed by our last two executives.

Does the president feel compelled to make these decisions so as to relieve others of such a heavy burden? No.

When a rare opportunity for a drone strike at a top terrorist arises — but his family is with him — it is the president who has reserved to himself the final moral calculation.

“He is determined that he will make these decisions about how far and wide these operations will go,” said Thomas E. Donilon, his national security adviser. “His view is that he’s responsible for the position of the United States in the world.” He added, “He’s determined to keep the tether pretty short.”

Put another way, the president of the United States believes that he is solely responsible for the position of the United States in the world. By now, Americans are aware that the president’s view is the only view that matters. He is, as President Bush once proclaimed, “the decider,” and none shall oppose (unless they fancy being pursued by Hellfire missiles).

What is perhaps more frightening than the president’s usurpation of the right to decide who lives and who dies, is the apparent coldness he displays in the process of compiling the proscription list.

The *Times* story says that the president “approves lethal action without hand-wringing.” In fact, when it comes to ordering an airborne drone to deliver its deadly payload — whether the target is an American teenager eating dinner with his family or any other unidentified target — President Obama reportedly commented that the decision to pull the trigger is “an easy one.”

Currently, the [ACLU and the New York Times](#) are suing the White House for more information on the process for placing a target on someone’s back.

Photo of President Barack Obama: AP Images



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