



Written by [Jack Kenny](#) on February 25, 2013

Ex-White House Press Chief Recalls Gag Order on Drones

Robert Gibbs (pictured), former press secretary for President Obama, [said](#) Sunday he was under orders during his White House years not to discuss or even acknowledge the existence of a “drone program,” involving the use of remote-controlled, unmanned bombers, in the war on terror. The drones have become the subject of controversy, mainly because of their use in targeted killings of suspected terrorists, including American citizens.



Gibbs, who was the president’s press secretary from January 2009 to February 2011, discussed the gag order on MSNBC’s *Up* program after host Chris Hayes played a video clip showing Gibbs and current White House press secretary Jay Carney dodging reporters’ questions about the drones. Whenever he heard such questions, he said, “I realized I’m not supposed to talk about it,” describing each incident as a *Wizard of Oz* moment.

“Here’s what’s inherently crazy about that proposition,” he said. “You’re being asked a question based on reporting of a program that exists. So you’re the official government spokesperson acting as if the entire program — pay no attention to the man behind the curtain.”

Gibbs’s revelation was not the first time the Obama administration’s efforts at keeping the drone program a secret have been described in terms of a children’s story. On January 2, Judge Colleen McMahon of the U.S. District Court for the Southern District of New York issued a summary judgment in favor of the U.S. Department of Justice, denying Freedom of Information requests by the *New York Times* and the American Civil Liberties Union for documents related to the government’s use of drones for targeted killings. A year and a half after the *Times* had filed its request with the Justice Department’s Office of Legal Counsel, the OLC denied it, saying in a letter: “The very fact of the existence or nonexistence of such documents is itself classified.” In her summary judgment, Judge McMahon [wrote](#):

The Alice-in-Wonderland nature of this pronouncement is not lost on me; but after careful and extensive consideration, I find myself stuck in a paradoxical situation in which I cannot solve a problem because of contradictory constraints and rules — a veritable Catch-22. I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for their conclusion a secret.

Sen. Rand Paul (R-Ky.) on Friday repeated his determination to delay the confirmation of White House counterterrorism advisor John Brennan as head of the CIA until Brennan answers questions regarding the drone program and whether it may be used to target American citizens within the United States. Brennan [refused](#) to answer that question during a confirmation hearing by the Senate Intelligence Committee.

“The idea that you get a trial before a jury and a judge if you’re accused of a crime is something that we’ve had in our history through English history and US history for 800 years,” Paul said in



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an [interview](#) on the Fox News *Happening Now* program. “It is a very important part of the Bill of Rights due process. So what we’re talking about is not killing someone with a grenade launcher on their shoulder. We’re talking about someone eating at a cafe in Boston, or in New York, and a Hellfire missile comes raining in on them.”

“There should be an easy answer from the administration on this,” Paul insisted. “They should say, ‘Absolutely no, we will not kill Americans in America without an accusation, a trial and a jury.’”

The targeting of American citizens became a hot issue after it was learned that Anwar-al-Awlaki was targeted and killed by a drone strike in Yemen in September 2011. The American-born al-Awlaki was an American citizen who U.S. officials described as an “operational leader of al Qaeda.” Soon after, another drone strike killed al-Awlaki’s 16-year-old son, also in Yemen. On March 5 last year, Attorney General Eric Holder [defended](#) the use of drones for targeted killings as a necessary measure in the war against terrorists.

“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,” Holder said in a speech at Northwestern University Law School in Chicago. The attorney general said a U.S. citizen who is a “senior operational leader of al Qaeda or associated forces” may be targeted under “three legal principles.”

First, the U.S. government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against the United States; second, capture is not feasible; and third, the operation would be conducted in a manner consistent with applicable law of war principles.

In the same speech Holder denied that an American citizen not engaged in combat against his country is entitled to be brought before a magistrate for trial. He implied that a review of the individual’s case by the president or others in the executive branch meets the Fifth Amendment requirement of “due process of law.”

“The Constitution guarantees due process, not judicial process,” Holder said. While the attorney general spoke of circumstances “sufficient under the Constitution for the United States to use lethal force against a U.S. citizen abroad,” FBI Director Robert Mueller, appearing before a congressional panel two days later, said he did not know if Holder’s rationale might also be used to justify targeted killings of Americans in the United States.

“I have to go back,” Mueller [said](#) when the question was put to him by Rep. Tom Graves (R-Ga.) “I’m not certain whether that was addressed or not.”

While members of Congress have been pressing the administration for some sort of accountability regarding the president’s “kill list,” lawmakers could resort to “the power of the purse strings” to legislate a ban on the use of funds for extra-judicial killings at home or abroad. The Congress could also make its own determination of whether deliberate targeted killing of individuals not personally engaged in combat falls within what Holder called “law of war principles.” In recent decades, however, the commander in chief has been given free rein to wage war whenever, however, and with whomever he pleases with minimal accountability to, much less interference from, the Congress of the United States.



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