



Written by [Joe Wolverton, II, J.D.](#) on October 11, 2012

Son of Drone Victim Sues Pakistani Gov't for Not Protecting its Citizens

Despite and perhaps in defiance of a march in Pakistan protesting the United States' drone war that is terrorizing that nation, news comes of a drone strike October 10 killing five people. Typically, no official word has been released revealing the target of the attack or the identities of the victims, but according to [a story by Agence France-Presse \(AFP\)](#) five "militants" were among the dead. "Several US drones flew into the area before dawn and fired four missiles on a compound, killing five militants," a security official told AFP after the strike in Hurmuz area, east of Miranshah, the capital of North Waziristan tribal region.



[Long War Journal reports](#) that "the remotely piloted Predators or the more advanced Reapers fired four missiles at a compound in an area that AFP describes as "a lawless region known as a stronghold of Taliban and al Qaeda militants."

This is the second drone attack in Pakistan in October. The first came on October 1.

In its story, AFP reports that "the attacks by unmanned US aircraft remain contentious, they are deeply unpopular in Pakistan, which says they violate its sovereignty and fan anti-US sentiment, but American officials are said to believe they are too important to give up."

Truly, the United States is unwavering in its commitment to the program of using remote control killing machines to kill those the White House or the CIA suspects of posing a potential threat to national security. No protest march and no appeal to the concept of sovereignty will dissuade the president from crossing names off his kill list. The near daily multiplying of victims of these assaults — whether militants or innocent mourners or a 15-year-old American — is not enough to derail the death-by-drone program that both President Obama and Republican challenger Mitt Romney promise to perpetuate after January.

There might be one way to influence U.S. policymakers to postpone the airborne assassinations, however.

Noor Khan has filed suit against the government of Pakistan for its cooperation with the governments of the United States and the United Kingdom on behalf of his father who was killed in a U.S. drone strike while he attended a tribal council meeting on March 17, 2011, in the northwest region of Pakistan.

[A story in *The Nation*](#) describes the awful scene:

On March 17, 2011, a government sanctioned jirga [a tribal assembly] was convened at Datta Khel, a small town in North Waziristan, attended by some 40 tribal elders, including 35 officially appointed maliks [village leaders]. The attendants gathered in an open space, located in the town



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centre. Their aim was to settle a dispute over a chromite mine. Around 10:45 am, an American drone circling above fired missiles into the congregation killing at least 42 people. According to an eyewitness, “everything was devastated. There were pieces — body pieces — lying around. There was lots of flesh and blood.” Afterward, the bereaved were informed that “none of the elders that attended survived, they were all destroyed, all finished!”

Among the dead, [according to a report in the *Global Post*](#), were four Pakistani Taliban members, but what about the other 38, or more, who were killed in that firestorm? Were they innocents? Were they merely acceptable human flotsam left scattered about the wreckage of war?

These unanswered questions form the core of the legal challenge mounted by Khan.

Khan filed the suit in the High Court of the Peshawar province seeking to judicially compel Islamabad to initiate its own criminal prosecution of those individuals and governments — both in Pakistan and overseas — responsible for the death of his father.

In the *Global Post* article, author Ladan Cher says that Khan is “arguing that the government failed in its legal duty to protect the life and liberty of its citizens, per Article 9 of the Pakistani Constitution.

[Article 9 of the Constitution of Pakistan](#) mandates that “no person shall be deprived of life or liberty save in accordance with law.”

The Constitution of the United States provides a similar protection. [The Fifth Amendment states](#) that “no person shall ... be deprived of life, liberty, or property, without due process of law.”

It is unlikely that the United States will heed the prohibitions against such killings included in the Constitution of Pakistan when it habitually and with such hubris disregards those protections in our own founding charter.

Currently, another hearing in Khan’s case is scheduled for October 23. The road to redress of his father’s unjustified murder by drone is difficult. As described by Ladan Cher, the difficulties are exacerbated by a “convoluted Pakistani legal system, a mix of British common law and Islamic law divided into five jurisdictions, with higher and lower courts in each jurisdiction.”

In addressing the complex yet fundamental legal questions posed by Khan’s lawsuit, Ladan Cher makes the following observation:

The lawfulness of predatory drone strikes dredges up a body of international legal questions. Drone strikes are state conduct, or at least “suspected” state conduct, and all state actors are bound by international law, which is comprised of customary practice and treaties. International law is rooted in both primary sources (i.e. principles of law rooted in treaties such as the UN Charter and the Geneva Convention) and customary international law (i.e. universally accepted practice).

While arguments are persuasive and the United States is, regrettably, a signatory to the charter of the United Nations, there is a more direct and deeply-rooted basis upon which to build the case against the American government’s relentless and reprehensible program of indiscriminate killing in Pakistan and elsewhere.

As stated above, the Constitution of the United States forbids the taking of life, liberty, or property without the due process of law.

President Barack Obama, despite the multiplicity and feigned sincerity of his denials, has set himself up as the judge, jury, and executioner of those he alone deems a threat to national security, and



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notwithstanding the Constitution, he does not believe he is obliged to provide any explanation to the American people or to the families of those murdered by attacks he ordered.

Furthermore, it would be very naïve to believe the assassination of innocents is an unfortunate miscalculation. When the judicial and executive powers of government are consolidated and restraints on the exercise of power are cast aside, it can be expected — based both on our knowledge of history and on the nature of man — that power will be abused and no one's rights or life will be safe from elimination by despots.

The presidential presumption of guilt by association followed by an autocratic order of a lethal drone strike rightly worries many friends of liberty in the United States and abroad. With regard to due process one asks why the alleged "terrorists" who are the purported targets of these attacks cannot be tried in our federal court system? For decades those accused of terroristic crimes have been formally charged with those crimes, had those charges heard before an impartial federal judge, and been permitted to mount a defense to those crimes.

Perhaps President Obama has created in his mind a place where the burden of killing so many people without due process is lifted by the fact that, as Ladan Cher says, "a soldier carries out the killing from a cubicle using a joystick to operate the predatory drone."

Regardless of such psychological speculation, the facts are that Noor Khan's father and countless (literally) others are dead and the United States killed them without charge, without trial, and without any official remorse.

President Obama's nearly daily approval of drone-delivered assassinations is an effrontery to over 650 years of our Anglo-American law's protection from autocratic decrees of death without due process of law. When any president usurps the power to place names on a kill list and then have those people summarily executed without due process, he places our Republic on a trajectory toward tyranny and government-sponsored terrorism.

Of course, it would be another matter if those targeted and executed by the president were armed enemy combatants — they were not. Were these suspected "militants" enemy soldiers captured during wartime they would be necessarily afforded certain rights granted to POWs. Those slated for assassination are not allowed any rights — neither the due process rights given to those accused of crimes nor the rights of fair treatment given to enemies captured on the battlefield.

The White House has assumed all power over life and death and created *ex nihilo* a new category of individual — one deprived of rights altogether.

Photo of Pakistanis protesting U.S. drone strikes in North Waziristan, Pakistan: AP Images



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