

HOLDER'S UNPROVEN CLAIMS ABOUT ANWAR AL-AWLAKI THE AQAP LEADER

Perhaps it's because of all the dubious reasons the Administration continues to keep its case against Anwar al-Awlaki secret, but Eric Holder gave the impression of not knowing precisely what evidence the government had shown against Awlaki.

Or, deliberately misrepresenting it.

Holder mentioned Awlaki just once—purportedly to summarize Abdulmutallab's case against Awlaki they released last month.

For example, in October, we secured a conviction against Umar Farouk Abdulmutallab for his role in the attempted bombing of an airplane traveling from Amsterdam to Detroit on Christmas Day 2009. He was sentenced last month to life in prison without the possibility of parole. While in custody, he provided significant intelligence during debriefing sessions with the FBI. He described in detail how he became inspired to carry out an act of jihad, and how he traveled to Yemen and made contact with Anwar al-Aulaqi, a U.S. citizen and a leader of al Qaeda in the Arabian Peninsula.

Abdulmutallab also detailed the training he received, as well as Aulaqi's specific instructions to wait until the airplane was over the United States before detonating his bomb. [my emphasis]

Note, this misrepresents what Abdulmutallab said, at least as shown by the summary released last month (setting aside the reasons DOJ chose

not to test those claims at trial). What the summary did say was that Awlaki gave Abdulmutallab specific instructions to ignite his bomb while over the US. It did not say Awlaki was “a leader of al Qaeda in the Arabian Peninsula.” That’s DOJ’s elaboration, a frankly dishonest one, given the construction (and one that was probably at least significantly challenged by the intelligence Jubeir al-Fayfi delivered ten months after Abdulmutallab gave his testimony).

But once Holder gets to his purportedly generic case for killing US citizens, he does not use what DOJ showed Abdulmutallab to have said—that Awlaki directed his attack—but instead uses the “AQAP leader” claim he has not presented evidence for. He uses six different formulations of the claim over the course of the speech.

But it does mean that the government must take into account all relevant constitutional considerations with respect to United States citizens – even those who are leading efforts to kill innocent Americans.

[snip]

Yet it is imperative for the government to counter threats posed by senior operational leaders of al Qaeda, and to protect the innocent people whose lives could be lost in their attacks.

[snip]

Let me be clear: an operation using lethal force in a foreign country, targeted against a U.S. citizen who is a senior operational leader of al Qaeda or associated forces, and who is actively engaged in planning to kill Americans, would be lawful at least in the following circumstances: 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.

[snip]

The evaluation of whether an individual presents an “imminent threat” incorporates considerations of the relevant window of opportunity to act, the possible harm that missing the window would cause to civilians, and the likelihood of heading off future disastrous attacks against the United States. As we learned on 9/11, al Qaeda has demonstrated the ability to strike with little or no notice – and to cause devastating casualties. Its leaders are continually planning attacks against the United States, and they do not behave like a traditional military – wearing uniforms, carrying arms openly, or massing forces in preparation for an attack. Given these facts, the Constitution does not require the President to delay action until some theoretical end-stage of planning – when the precise time, place, and manner of an attack become clear.

[snip]

Some have argued that the President is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of al Qaeda or associated forces.

[snip]

The Constitution’s guarantee of due process is ironclad, and it is essential – but, as a recent court decision makes clear, it does not require judicial approval before the President may use force abroad against a senior operational leader of a foreign

terrorist organization with which the United States is at war – even if that individual happens to be a U.S. citizen. [my emphasis]

Holder's sleight is all the more problematic given how much of his case relies on it. If the case that Awlaki was an imminent threat rests on his leadership role, but we don't really have any proof of that fact (or, worse, our double agent undermined it after OLC had already signed off on the killing), then the entire argument collapses.

Moreover, if DOJ doesn't have that evidence (they might, but they certainly haven't shown it), then consider how much more awful this argument is. It's bad enough that the Attorney General just argued that due process does not equal judicial due process. But he argued it by claiming that Awlaki was someone they haven't attempted to prove he was.

So Holder's position is that they can kill you by making unsubstantiated claims that you lead an organization with ties to al Qaeda and based on that declaring you an imminent threat not entitled to judicial review.

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