

ERIC HOLDER INVOKES ARTICLE II IN SUGGESTING CONGRESS CAN'T LEGISLATE LETHAL FORCE

As I lay out in this Salon post, Eric Holder told Chuck Grassley that Article II of the Constitution would make probably any attempt to limit the use of lethal force in the US unconstitutional.

Chuck Grassley, R-Iowa, asked Holder whether Congress could prohibit the targeted killing of Americans in America. "Do you believe Congress can pass a law prohibiting POTUS to use lethal force on U.S. soil?" he bluntly asked, explaining he meant the prohibition would apply only where a person did not present an imminent threat.

"I'm not sure that such a bill would be constitutional," the attorney general responded. "It might run contrary to the Article II powers that the president has." Article II is the section of the Constitution that lays out the president's authority as commander in chief of the military.

Holder went on to embrace a view of the AUMF (as he has before) that ignores Congress' refusal in 2001 to authorize the use of military force in the US.

Holder embraced a view of the 2001 Authorization to Use Military Force that completely ignores the legislative history of the law that authorized the war against al-Qaida. "We didn't exempt the homeland in the AUMF did we?"

Lindsey Graham, R-S.C., asked the attorney general, in a question setting up his support for presidential use of lethal force in the U.S. “No,” Holder replied, “I don’t think we did.”

The attorney general may believe Congress authorized the use of lethal force in the U.S. with the AUMF, but former Senate Majority Leader Tom Daschle has made it clear that Congress refused to authorize military force in the U.S. “Literally minutes before the Senate cast its vote,” Daschle revealed in a 2005 Op-Ed that described the legislative process behind the AUMF, “the [George Bush] administration sought to add the words ‘in the United States’” into the authorization. Such a change, Daschle continued, “would have given the president broad authority to exercise expansive powers not just overseas – where we all understood he wanted authority to act – but right here in the United States, potentially against American citizens.”

Back in 2001, Congress very specifically refused to authorize lethal force against Americans.

It has long been clear that the Administration believed – as John Yoo did – that nothing can limit their authority in the war against terror. But these were rather more blunt admission than normal.