

EIGHT MONTHS AFTER PUTTING ANWAR AL- AWLAKI ON KILL LIST, DOJ CONSIDERS CHARGES

Back in January, Dana Priest first revealed that Anwar al-Awlaki was on a JSOC kill list and was being considered for a CIA kill list. Now, eight months later, DOJ is considering charging him.

The Obama administration is considering filing the first criminal charges against radical cleric Anwar al-Awlaki in case the CIA fails to kill him and he's is captured alive in Yemen.

[snip]

Such charges, however, would come with political and intelligence-gathering risks. Counterterrorism officials regard al-Awlaki as a terrorist operative, not just a preacher, but they have revealed few specifics. Charging al-Awlaki with having direct involvement in terrorism could require the U.S. to reveal evidence gleaned from foreign wiretaps or confidential informants.

Now, it appears DOJ sources are throwing some baloney in with this news. For example, the claim that criminal charges might require the US to reveal evidence collected using wiretaps doesn't sound all that awful, given that the contents of some of the wiretaps of al-Awlaki's communications with Nidal Hasan have already been published. The government didn't seem to have a problem leaking these intercepts earlier this year...

And the claim that they're charging al-Awlaki just in case they happen to capture him alive

rather than dead (oops!)? I'd suggest it probably has a lot more to do with the suit CCR and ACLU have taken against the government. I'm guessing that following shortly on formal charges, DOJ will tell the courts they can't litigate the al-Awlaki suit because it pertains to an ongoing criminal investigation. Voila! No discovery in the lawsuit!!

Particularly given this detail:

If the Justice Department decides to charge al-Awlaki, it's likely he would not be indicted. Rather, charges are more likely to take the form of an FBI complaint. That's because an indicted suspect automatically gets the right to an attorney if he is captured, making it harder for authorities to question him.

In other words, this doesn't appear to be an effort to finally use due process before targeting an American citizen with assassination. Rather, it seems to be more about closing off legal options to that American citizen.

Update: Here's the joint ACLU/CCR statement on this:

Our organizations have long stated that if the government has evidence that Anwar Al-Aulaqi is involved in terrorist activity, it should present that evidence to a court – not authorize his execution without charge or trial. Now, months after the government announced its intent to kill Al-Aulaqi, it may finally bring charges against him. This would be a step in the right direction. The constitutional guarantee of due process relies on the critical distinction between allegations and evidence. If the reports that charges may be brought against Al-Aulaqi are true, the fact that it has taken the government this long – months after

having announced his death sentence – suggests that, in this case, the government’s allegations were far ahead of its evidence.

While bringing charges against Al-Aulaqi based on credible evidence would be a step in the right direction, it would not mean that he could now be targeted for killing without trial. It is well established that the government cannot use extrajudicial killing to punish people for past acts, but only to prevent grave and imminent threats. A criminal charge for past crimes does not provide a license to kill.

We continue to believe that the courts must play a role in establishing legal standards for when the government can take the life of one of its own citizens without charge or trial. For that reason, we will continue with our litigation.”