

EXTRAJUDICIAL EXECUTION OF SAMIR KHAN ARGUABLY MORE SIGNIFICANT THAN AWLAKI

By this time in the day, the early morning report of the killing of Anwar Awlaki is old news. From ABC News:

Senior administration officials say that the U.S. has been targeting Awlaki for months, though in recent weeks officials were able to pin down his location.

"They were waiting for the right opportunity to get him away from any civilians," a senior administration official tells ABC News.

And today they got him. Awlaki was killed by a drone delivered Hellfire missile, via a joint CIA and JSOC operation, in the town of Kashef, in Yemen's Jawf province, approximately 140 kilometres east of Sanaa, Yemen's capital. But not only Awlaki was killed, at least three others, including yet another American citizen, Samir Khan, were killed in the strike.

That's right, not just one, *but two*, Americans were summarily and extrajudicially executed by their own government today, at the direct order of the President of the United States. No trial, no verdict, just off with their heads. Heck, there were not even charges filed against either Awlaki or Khan. And it is not that the government did not try either, there was a grand jury convened on Khan, but no charges. Awlaki too was investigated for charges at least twice by the DOJ, but none were found.

But at least Awlaki was on Barrack Obama's "Americans That Are Cool to Kill List". Not so

with Samir Khan. Not only is there no evidence whatsoever Khan is on the classified list for killing (actually two different lists) my survey of people knowledgeable in the field today revealed not one who believed Khan was on any such list, either by DOD or CIA.

So, the US has been tracking scrupulously Awlaki for an extended period and knew with certainty where he was and when, and knew with certainty immediately they had killed Awlaki and Khan. This means the US also knew, with certainty, they were going to execute Samir Khan.

How did the US then make the kill order knowing they were executing a US citizen, not only extrajudicially, but not even with the patina of being on the designated kill list (which would at least presuppose some consideration and Yoo-like pseudo-legal cover)?

Did Barack Obama magically auto-pixie dust Khan onto the list with a wave of his wand on the spot? Even under the various law of war theories, which are not particularly compelling justification to start with as we are not at war with Yemen and it is not a "battlefield", the taking of Khan would appear clearly prohibited under both American and International law. As Mary Ellen O'Connell, vice chairman of the American Society of International Law, relates, via Spencer Ackerman at Wired's Dangerroom:

"The United States is not involved in any armed conflict in Yemen," O'Connell tells Danger Room, "so to use military force to carry out these killings violates international law."

O'Connell's argument turns on the question of whether the U.S. is legally at war in Yemen. And for the administration, that's a dicey proposition. The Obama administration relies on the vague Authorization to Use Military Force, passed in the days after 9/11, to justify its Shadow Wars against terrorists. Under its broad definition,

the Authorization's writ makes Planet Earth a battlefield, legally speaking.

But the Authorization authorizes war against "nations, organizations, or persons [the president] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001." It's a stretch to apply that to al-Qaida's Yemen affiliate, which didn't exist on 9/11. But when House Republicans tried to re-up the Authorization to explicitly bless the new contours of the war against al-Qaida, the Obama administration balked, fearing the GOP was actually tying its hands on the separate question of terrorist detentions.

"It is only during the intense fighting of an armed conflict that international law permits the taking of human life on a basis other than the immediate need to save life," O'Connell continues. "In armed conflict, a privileged belligerent may use lethal force on the basis of reasonable necessity. Outside armed conflict, the relevant standard is absolute necessity."

So did al-Awlaki represent an "absolute" danger to the United States? President Obama, in acknowledging Awlaki's death on Friday morning, didn't present any evidence that he did.

And therein lies the reason the US killing of Samir Khan may be even more troubling than the already troubling killing of al-Awlaki. There is no satisfactory legal basis for either one, but as to Khan there was NO process whatsoever, even the joke "listing" process utilized for Awlaki. The US says it took care to not harm "civilians", apparently that would mean Yemeni civilians. American citizens are fair game for Mr. Obama, list or no list, crime or no crime, charges or no charges. Off with their

heads!

People should not just be evaluating today's fresh kills as to Awlaki, Samir Khan should be at the tip of the discussion spear too.