

OBAMA AND JSOC TARGETING PEOPLE NOT INCLUDED UNDER AUMF

The WaPo has an important story today—apparently following up on the NYT's JUnc-WTF story from last week—describing the way Obama has expanded the scope of the use of special operations forces. Some key details are:

- Obama has deployed JSOC in 15 new countries since taking over as President, for a total of 75
- JSOC has about 4,000 people in countries besides Iraq and Afghanistan
- JSOC has 100 people in Pakistan but would like to triple that
- Obama has changed the reporting structure in some good ways (reading Ambassadors into operations and reporting through regional commands) but has apparently increased direct conversations with JSOC (though remember that JSOC was supposed to be doing operations reporting directly to Cheney before)
- JSOC is whining about needing civilian approval for targeting people in countries against which we are not at war, like Somalia

and Yemen

But the most disturbing part of the story is something that parallels something in the Gitmo Review Task Force Report: Obama is claiming the right to target people not included under the Authorization to Use Military Force passed in response to 9/11.

Former Bush officials, still smarting from accusations that their administration overextended the president's authority to conduct lethal activities around the world at will, have asked similar questions. "While they seem to be expanding their operations both in terms of extraterritoriality and aggressiveness, they are contracting the legal authority upon which those expanding actions are based," said John B. Bellinger III, a senior legal adviser in both of Bush's administrations.

The Obama administration has rejected the constitutional executive authority claimed by Bush and has based its lethal operations on the authority Congress gave the president in 2001 to use "all necessary and appropriate force against those nations, organizations, or persons" he determines "planned, authorized, committed, or aided" the Sept. 11 attacks.

Many of those currently being targeted, Bellinger said, "particularly in places outside Afghanistan," had nothing to do with the 2001 attacks.

If Obama is purportedly relying on the AUMF to authorize JSOC missions, then his authority **should** be limited to those who "planned, authorized, committed, or aided" the 9/11 attacks. But, at least according to John Bellinger, these operations are targeting people who had nothing to do with the

attacks—presumably, people whose ties to al Qaeda are so attenuated that they couldn't be claimed to have had a role in 9/11.

As I noted last week, the Task Force on determining what to do with Gitmo detainees included the following among four possible reasons to indefinitely detain people who couldn't be tried:

Significant organizational role within al-Qaida, the Taliban, or associated forces. In contrast to the majority of detainees held at Guantanamo, many of the detainees held a leadership or other specialized role within al-Qaida, the Taliban, or associated forces. Some provided operational, logistical, financial, or fundraising support for al-Qaida. Others were al-Qaida members who were selected to serve as bodyguards for Usama bin Laden based on their loyalty to the organization. Others were Taliban military commanders or senior officials, or played significant roles in insurgent groups in Afghanistan allied with the Taliban, such as Hezb-e-Islami Gulbuddin.

[snip]

History of associations with extremist activity. Some of the detainees approved for detention have a history of engaging in extremist activities or particularly strong ties (either directly or through family members) to extremist organizations.

The first of these reasons is already arguably overbroad: I'm not sure the US can prove that members of Hezb-e-Islami Gulbuddin were actively tied to 9/11. But in addition to that first reason—which after all includes the multitudes who were alleged bodyguards to Osama bin Laden and therefore set the bar for significant involvement very low—the government has another

category of people (along with categories covering those with advanced training and/or an expressed intent to return to the fight), it claims it can detain indefinitely detain those who have “a history of associations with extremist activity” **even if that history is not personal, but is instead traced through family members**. Since these are presumably **not** people with a significant role in al Qaeda (because otherwise you wouldn’t need a second category), they may well be people with ties to some other organization, one that doesn’t qualify as an “associated force” that the first reason would cover.

Which **should** mean that they wouldn’t be included in the AUMF’s definition of targets. Which should mean that Obama’s claimed authority to hold these people (indefinitely) doesn’t hold. The Report does claim that everyone being held indefinitely is being held legally—meaning they should fit that AUMF definition of some tie to 9/11. But this “association with extremist activity” appears to include far more.

Which is why Bellinger’s comment is so troubling. Mind you, I have no illusions about the many obscure ways our government has used special operations for years, even in countries where we shouldn’t be deployed. But this just seems like a very dangerous morphing of the war on terror in a way that could include extremists of all sorts.