

IS ANWAR AL-AWLAKI THE UNNAMED “NATIONAL OF THE UNITED STATES” IN WARSAME INDICTMENT?

As Marcy noted Tuesday afternoon, and has been large in the news the last two days, there is a new terrorism prosecution announced by Eric Holder and the Obama DOJ. The case concerns Ahmed Abdulkadir Warsame, and is interesting in that Warsame is alleged to be a member/leader of al-Shabaab, and none of the allegations involve acts of plots against the US or its citizens directly.

In fact, the only significant nexus to the United States contained within the indictment unsealed against Warsame is that he:

...conspires with a national of the United States...

This is unusual as to the complete lack of description and details about the “national of the United States” and the complete absence of *any* information indicating the nature of conspiracy and/or contact with the “national of the United States. To be fair, a charging document is not legally required to be a “speaking indictment” that fully lays out every minute detail of the jurisdiction, venue and facts; although this one is one of the more silent ones I have seen in a long time from the DOJ.

But, what is really fascinating is this today from Charlie Savage at the New York Times:

Meanwhile, new details emerged about Mr. Warsame’s detention on a Navy ship after his capture in April aboard a fishing skiff between Yemen and Somalia, and

about internal administration deliberations on legal policy questions that could have implications for the evolving conflict against Al Qaeda and its affiliates.

A senior counterterrorism official said Wednesday that Mr. Warsame had recently met with Anwar al-Awlaki, the American-born radical cleric now hiding in Yemen. After his capture, he was taken to the Boxer, an amphibious assault ship that was steaming in the region and has a brig, a senior military official said.

While Mr. Warsame is accused of being a member of the Shabab, which is focused on a parochial insurgency in Somalia, the administration decided he could be lawfully detained as a wartime prisoner under Congress's authorization to use military force against the perpetrators of the Sept. 11, 2001, attacks, according to several officials who spoke on the condition of anonymity to discuss security matters. (emphasis added)

So, we have Warsame allegedly "conspiring" with a "national of the United States" in the indictment with the identity and circumstances being unusually and ridiculously guarded and vague; and now we have Warsame having had contact with Awlaki.

Gee, I wonder what the odds are they are one in the same person???

Because, as you may remember, Awlaki is so secret that the US government saw fit to declare state secrets rather than explain to Awlaki's parents why they feel justified to violently assassinate their son, a US citizen, without so much as a speck of due process. Now, I guess a guy that secret is someone the government might just be really vague about in an indictment of some tangential corollary person, say Warsame, for instance.

So, is it truly the case that Awlaki is indeed the unnamed "national of the United States" here in the Warsame indictment? I don't know for certain, but it sure as heck fits the facts as we know them and the depraved refusal of the American government to talk about or let the public know its basis for impunity in marking an American citizen for extrajudicial termination with prejudice.

Now, back to the Warsame indictment for one last thought. While I agree with Marcy, Ben Wizner of ACLU and Adam Serwer that the Obama Administration decision to bring Warsame in front of an Article III court for trial was a brave one in relation to establishing credibility of traditional terrorism prosecutions, I wonder if Warsame is really the right case to do that with?

In Warsame, all the overt acts, heck all the acts period, took place outside of the US, and none of them, none, were particularly directed at all, much less with malice, at the US or US citizens. al Shabaab is a nasty group of terrorists to be sure, but is this really the use we want to make of US Article III courts? Shouldn't the prosecutions the Administration uses to establish credibility have some, even minimal, overt act nexus to the United States and the Southern District of New York?