

# SERIAL ABUSER OF EXECUTIVE BRANCH “FLEXIBILITY,” JOHN BRENNAN, MAKING VETO CASE ON DETAINEE PROVISIONS

I have already said I think Obama needs to veto the Defense Authorization because of the detainee provisions. And I have argued that the Administration needs to lay the groundwork for doing so right now, preferably by fear-mongering about how much less safe presumptive military detention would make us.

Obama claims he's still going to veto the Defense Authorization because of these detainee provisions. Good. I think he should. But if he really plans to do so, someone needs to be fear-mongering 24/7 about how much less safe these provisions will make us (and they will).

But I'm dismayed the Administration has chosen John Brennan, of all people, to do so. (h/t Ben Wittes)

The Administration has chosen someone who served as a top CIA executive during the period it developed its torture program to go out and argue the Executive Branch needs “flexibility” in detention to collect intelligence.

And so, what we've tried to do in this administration is to maintain as much flexibility as possible. And anything that restricts our flexibility in terms of how we want to detain them, question them, prosecute them is something that counterterrorism professionals and practitioners really are very concerned about.

[snip]

What we want to do is to extract the intelligence from them so that we can keep this country safe. We cannot hamper this effort. It's been successful to date and this legislation really puts that at risk. [my emphasis]

We let a President have that kind of unrestricted flexibility on how to detain suspected terrorists and he used it to order Brennan's agency to engage in torture.

But it's not just with torture that John Brennan has been party to the Executive Branch's abuse of this kind of unfettered "flexibility" in the past.

As I've pointed out, one of the problems (for the Administration) with the AUMF-affirming language in the Senate detainee provisions is that it may circumscribe the Administration's ability to claim that terrorists with no ties to al Qaeda are legitimate military targets. That broader interpretation, relying on the Iraq AUMF, was implemented in 2004 to authorize things that presumably were already being done with the illegal wiretap program. When that May 2004 opinion was written, John Brennan oversaw the targeting—relying on that expansive definition—for the illegal wiretap program.

And then there's the Administration's insistence that no court should be able to review their decisions about who is and is not an enemy under the AUMF and whether those enemies represent an imminent threat. They prevented such a review with Anwar al-Awlaki, in part, by invoking state secrets over the precise terms at issue in the detainee language. Yet after the Administration killed Awlaki, Administration officials spilled state secrets repeatedly, at times solely to boast about the kill. Brennan even provided details covered under state secrets declarations on the record. The Administration's badly hypocritical approach to secrecy in the case of

Awlaki, particularly its failure to prosecute John Brennan for leaking state secrets, makes it clear their state secrets invocation had nothing to do with national security, but instead had to do with remaining free from any oversight—with retaining the maximum “flexibility,” if you will—over precisely the issues at the core of the detainee provisions. And as with torture and illegal wiretapping, John Brennan was at the center of that gross abuse of executive power as well.

There are some superb reasons to veto the Defense Authorization because of the detainee provisions: largely because DOJ has proven best able to interrogate and prosecute terrorists in the last decade. And there are some horrible reasons to do so: to allow the Executive Branch to continue to wield expanded powers with almost no oversight.

John Brennan is, in this Administration at least, the personification of all the horrible reasons.

Update: The AP reports the Administration is conducting a “full court press” to get changes to the bill. But look at what they point to to justify their “flexibility:”

The administration insists that the military, law enforcement and intelligence agents need flexibility in prosecuting the war on terror. Obama points to his administration’s successes in eliminating Osama bin Laden and al-Qaida figure Anwar al-Awlaki. Republicans counter that their efforts are necessary to respond to an evolving, post-Sept. 11 threat, and that Obama has failed to produce a consistent policy on handling terror suspects. [my emphasis]

Frankly, they’d probably be able to assassinate Awlaki under the new bill. But it’s telling they point to it—based as it is on their ability to interpret the AUMF in secrecy and with no

oversight—as their justification for  
“flexibility.”