

DOES OBAMA PLAN ON KILLING MORE AMERICANS ONCE HE HAS FISA DRONE (AND/OR TARGETING KILLING) COURT?

Micah Zenko argues that the language Obama used last night to describe targeted killing lowers the bar – from senior operational leaders to Al Qaeda to those who just present a grave threat.

In addition, Obama's declaration that the United States would go after "terrorists who pose the gravest threat to Americans" muddled the scope of who can be legitimately targeted. The Obama administration is careful to offer a range of adjectives to describe who can be lawfully targeted. Previous definitions include:

- *John Brennan: "Individuals who are a threat to the United States" (September 16, 2011)*
- *Department of Justice: "Senior operational leader of al-Qa'ida or an associated force" who "poses an imminent threat of violent attack against the United States" (November 8, 2011)*
- *Eric Holder: "Specific senior operational*

*leaders of al-Qaeda and associated forces”
(March 5, 2012)*

▪ *Harold Koh: “High-level al-Qaeda leaders who are planning attacks”
(March 25, 2012)*

▪ *Obama: “Our goal has been to focus on al-Qaeda and to focus narrowly on those who would pose an imminent threat to the United States of America”
(September 6, 2012)*

Obama’s “gravest threat to Americans” characterization is by far the most expansive definition for who can be killed by a U.S. official thus far. (The Oxford Dictionary defines grave as “giving cause for alarm or concern and solemn or serious.”) This does away with previous clarifying terms such as “senior” or “operational” leaders of al-Qaeda, any notion of attacks that are “imminent,” and the necessity to protect the U.S. homeland. This new and sweeping definition of who is “targetable” is troubling since it is open to interpretation by the executive branch interpretation, and was purposefully and deliberately included in a State of the Union address.

As Zenko’s citation of John Brennan’s September 16, 2011 speech makes clear though, at least one public statement in the past has lacked a tie to “senior operational leaders.” And that speech is all the more significant, given that it’s what the white paper points to as the public precedent for the definition of imminence they

used to kill Anwar al-Awlaki (and maybe Samir Khan).

Furthermore, as I noted, that word “grave” has already been used: in John Brennan’s response to Angus King’s suggestion of a FISA Court for Drones (and/or Targeted Killing).

But the actions that we take on the counterterrorism front, again, are to take actions against individuals where we believe that the intelligence base is so strong and the nature of the threat is so grave and serious, as well as imminent, that we have no recourse except to take this action that may involve a lethal strike.

That said, the use of the word in both Brennan’s presumably practiced answer and Obama’s scripted SOTU surely indicates adoption of this new term.

Just moments after Obama used the term, he made his ludicrous promise he would “continue” to engage with Congress and provide “even more” transparency to the public.

So, in the months ahead, I will continue to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world.

Given that Brennan’s use of the word “grave” came specifically in response to King’s FISA Court idea and Obama’s is somewhat tied to so-called checks and balances, I wonder whether this new standard will be one of the tradeoffs the Administration will demand for letting courts review their work: a lower standard for killing?