

RON WYDEN: OBAMA KILLED ANWAR AL- AWLAKI WITH AUTHORITY GRANTED TO HIM

As part of a letter asking the Administration to provide more details on its drone and/or targeting killing program, Senators Wyden, Udall, and Heinrich have judged the killing of Anwar al-Awlaki to be “a legitimate use of the authority granted the President.” (Adam Serwer first reported on this letter here). That judgement – as well as the Senators’ further comments on Awlaki – may provide further hints about the killing. Here’s the full paragraph:

Having carefully reviewed the matter, we believe that the decision to use lethal force against Anwar al-Aulaqi was a legitimate use of the authority granted to the President. As the President noted in his May 2013 speech at the National Defense University, Mr. al-Aulaqi clearly made a conscious decision to join an organized fighting force that was (and is) engaged in planning and carrying out attacks against the United States, including the 2009 Christmas Day bombing and the 2010 cargo plane plot. By taking on a leadership role in this organization, involving himself in ongoing operational planning against the United States, and demonstrating the capacity and intent to carry out these operations, he made himself a legitimate target for military action. Additionally, while the US government did not publicly acknowledge that it was attempting to kill Mr. al-Aulaqi, this fact was nonetheless widely reported in US and international media. This disclosure served as the equivalent of a

wanted poster, and if Mr. al-Aulaqi had been a wrongly targeted innocent man he could have turned himself in and cleared his name. Additionally, alternative reasonable means to apprehend Mr. al-Aulaqi or otherwise deal with the threat that he posed do not appear to have been available. Finally, based on what we have been told, lethal force appears to have been used against Mr. al-Aulaqi in a manner consistent with applicable international law. [my emphasis]

Recall that for a full year, Ron Wyden kept asking whether, “the President’s authority to kill Americans [is] based on authorization from Congress or his own authority as Commander-in-Chief?” Once he saw the Awlaki memos in February, he stopped asking.

And while this paragraph doesn’t definitively answer that question, it does suggest an answer. This letter describes the President acting under authority “granted” to him, rather than inherent to the position. It describes Awlaki as having been the target of “military action.” And it concludes that, if everything they’ve been told is correct, the killing was “consistent with applicable international law.” All three of those details make it more likely the government operated under an AUMF justification than an Article II one. It also suggests that the military person pressed the actual button to kill Awlaki, given that there’s little way a CIA officer doing so would have been legal (and if that’s correct, then it means John Brennan has not made a single change to the drone program).

All that said, later in the letter, the Senators write,

We also believe the Executive Branch needs to clarify whether all lethal counterterrorism operations to date have been carried out pursuant to the 2001 Authorization to Use Military Force, or whether any have been based solely on

the President's own authorities.

So even while they suggest Awlaki's killing was authorized under the AUMF, they still profess ignorance about whether all targeted killings have been. Also note they're asking about "lethal counterterrorism operations," not drone killing.