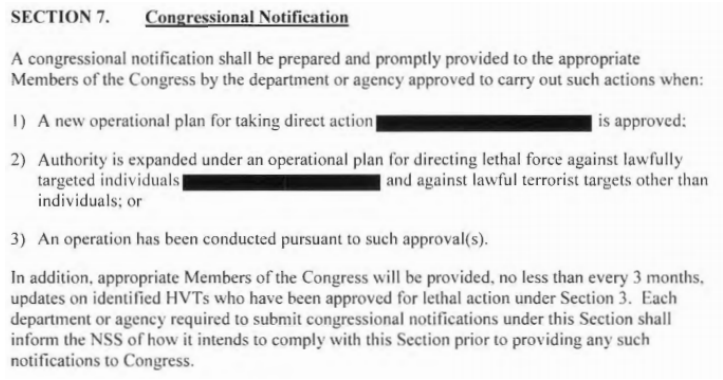
THE CLASSIFIED APPENDIX FIFTH BULLET ON "CERTAIN COUNTERTERRORISM MATTERS"

I want to make a really minor point about one of the documents produced to ACLU with the Drone Rule Book — which the White House calls a Presidential Policy Guidance — last week (here's my working thread on the Rule Book). The Rule Book itself has a section that "requires" Congressional notification (but may be more important for the requirement that the White House must learn about information sharing before it happens, which might end up in less notification).



SECTION 7. Congressional Notification

A congressional notification shall be prepared and promptly provided to the appropriate Members of the Congress by the department or agency approved to carry out such actions when:

1) A new operational plan for taking direct action [redacted] is approved;

2) Authority is expanded under an operational plan for directing lethal force against lawfully targeted individuals [redacted] and against lawful terrorist targets other than individuals; or

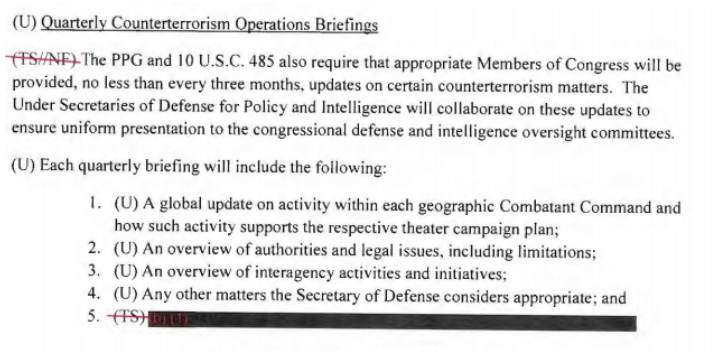
3) An operation has been conducted pursuant to such approval(s).

In addition, appropriate Members of the Congress will be provided, no less than every 3 months, updates on identified HVTs who have been approved for lethal action under Section 3. Each department or agency required to submit congressional notifications under this Section shall inform the NSS of how it intends to comply with this Section prior to providing any such notifications to Congress.

As part of its implementation of the Rule Book, DOD released a Report on Congressional Notification of Sensitive Military Operations and Counterterrorism Operational Briefings (DOD released several related documents; CIA released nothing). Throughout the short document, it says the 2014 Defense Authorization (which was introduced after the Rule Book was signed but before DOD issued its Drone Rule Book implementation procedures and signed into law on December 23, 2013) and the PPG require Congress be informed of sensitive military operations. That's the Executive Branch's way of saying, "Congress has required we tell it what we're doing but so has the President" as if they

came up with the idea to do that additional reporting in the first place.

Its last section looks like this:



(U) Quarterly Counterterrorism Operations Briefings

~~(TS//NF)~~ The PPG and 10 U.S.C. 485 also require that appropriate Members of Congress will be provided, no less than every three months, updates on certain counterterrorism matters. The Under Secretaries of Defense for Policy and Intelligence will collaborate on these updates to ensure uniform presentation to the congressional defense and intelligence oversight committees.

(U) Each quarterly briefing will include the following:

1. (U) A global update on activity within each geographic Combatant Command and how such activity supports the respective theater campaign plan;
2. (U) An overview of authorities and legal issues, including limitations;
3. (U) An overview of interagency activities and initiatives;
4. (U) Any other matters the Secretary of Defense considers appropriate; and
5. ~~(TS)~~ [redacted]

Those bullets don't come from the Rule Book (its notice requirement is far less detailed than that). Rather, they come from this section of the Defense Authorization.

"§ 485. Quarterly counterterrorism operations briefings

"(a) BRIEFINGS REQUIRED.—The Secretary of Defense shall provide to the congressional defense committees quarterly briefings outlining Department of Defense counterterrorism operations and related activities.

"(b) ELEMENTS.—Each briefing under subsection (a) shall include each of the following:

"(1) A global update on activity within each geographic combatant command and how such activity supports the respective theater campaign plan.

"(2) An overview of authorities and legal issues, including limitations.

"(3) An overview of interagency activities and initiatives.

"(4) Any other matters the Secretary considers appropriate.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 484 the following new item:

"485. Quarterly counterterrorism operations briefings.".

(b) CONFORMING REPEAL.—Section 1031 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1570; 10 U.S.C. 167 note) is hereby repealed.

As you can see, that section mandates answers to bullets 1 through 4 (the unredacted ones), and then includes a conforming amendment that repeals this section from 2013's Defense Authorization.

SEC. 1031. COUNTERTERRORISM OPERATIONAL BRIEFING REQUIREMENT.

(a) BRIEFINGS REQUIRED.—Beginning not later than March 1, 2012, the Secretary of Defense shall provide to the congressional defense committees quarterly briefings outlining Department of Defense counterterrorism operations and related activities involving special operations forces.

(b) ELEMENTS.—Each briefing under subsection (a) shall include each of the following:

(1) A global update on activity within each geographic combatant command.

(2) An overview of authorities and legal issues including limitations.

(3) An outline of interagency activities and initiatives.
(4) Any other matters the Secretary considers appropriate.

The only difference in the *unclassified* portion of the 2014 Defense Authorization that replaced the 2013's version is the deletion of the phrase "involving special operations forces."

Of course, we can tell from the Report there's a fifth, Top Secret bullet. It may well be that's why they eliminated the prior year's requirement and added a new almost identical one: to provide an opportunity to put that fifth bullet into the Defense Authorization's classified appendix. That's a wildarse guess, of course, but also a logical explanation for that fifth bullet: at a time when the White House was releasing fluffy documents pretending to be more open and orderly, Congress was secretly mandating additional reporting they weren't getting.

There are a number of things that might be in that fifth bullet. Perhaps the least controversial of those would be a requirement that DOD tell Congress — actually just a tiny handful of members — which countries the US engages in lethal force in, and which groups we partner with to do it (this would be consistent with a number of items that are redacted in the Rule Book itself). You could imagine why, in 2013 and 2014, members of Congress might want to be told if the US was partnering with al Qaeda affiliates on lethal operations anywhere in the world, seeing as how we are ostensibly at war with al Qaeda.

As a reminder, Senate Intelligence Committee member Ron Wyden spent part of 2012 and 2013 unsuccessfully trying to get a list of all the places the government was engaging in lethal operations.

Second, as you may be aware, my staff and I have been asking for over a year for the complete list of countries in which the intelligence community has used its lethal counterterrorism authorities. To my surprise and dismay, the intelligence community has declined to provide me with the complete list. In my judgment, every member of the Senate Intelligence Committee should know (or be able to find out) all of the countries where United States intelligence agencies have killed or attempted to kill people. The fact that this request was denied reflects poorly on the Obama Administration's commitment to cooperation with congressional oversight. So, please ensure that the full list of countries is provided to me, along with the other members of the Senate Intelligence Committee and our cleared staff.

As I said, this is a fairly minor point. But it also suggests that even while the Executive was leaking wildly to get good press about this Drone Rule book, Congress was at the same time mandating specifically some of the things the Rule Book only nodded to in theory.