

WHITE HOUSE STRUGGLING TO DENY STEPHEN MILLER MURDERED BOATS OF FISHERMEN

There's a telling part of the Guardian story reporting that Stephen Miller was in charge of the decision to blow some Venezuelan fishing boats up. The article starts by describing previously undisclosed bureaucratic maneuvers via which Miller created his own little National Security Council.

Stephen Miller, the White House deputy chief of staff, has played a leading role in directing US strikes against suspected Venezuelan drug boats, according to three people familiar with the situation. At times, his role has superseded that of Marco Rubio, the secretary of state and national security adviser.

The strikes on the Venezuelan boats allegedly carrying narcotics, which the administration has claimed were necessary because interdiction did not work, have been orchestrated through the homeland security council (HSC), which Miller leads as the homeland security adviser.

Miller empowered the HSC earlier this year to become its own entity in Donald Trump's second term, a notable departure from previous administrations where it was considered part of the national security council and ultimately reported to the national security adviser.

As a result, the HSC has taken the lead on engaging the Venezuelan boats, the

people said, a situation evidenced by his top deputy, Tony Salisbury, and others being the gatekeepers to details about what boat to strike until they are about to occur.

That was the case for instance with the second Venezuelan boat hit with hellfire missiles on 15 September. While the White House was informed the Pentagon had identified the boat as a viable target more than four days before, many top White House officials only learned of the impending strike hours before it happened.

Then it provides the White House comment saying, oh yeah, that means the President did it.

A White House spokesperson said in a statement the strikes were directed by Trump, saying he oversaw all elements of foreign policy. "The entire administration is working together to execute the president's directive with clear success," the statement said.

This thing already had all the trappings of "Trump's" Alien Enemies Act declaration, starting with the transparently false claims of intelligence. In that case, Trump said he's not the one who signed it.

That also extends to the legal justification.

John Yoo (even John Yoo) publicly explained that you can't just blow up people you claim are drug traffickers.

[T]he U.S. cannot wage war against any source of harm to Americans. Americans have died in car wrecks at an annual rate of about 40,000 in recent years; the nation does not wage war on auto companies. American law instead relies upon the criminal justice or civil tort systems to respond to broad, persistent

social harms. In war, nations use extraordinary powers against other nations to prevent future attacks on their citizens and territory. Our military and intelligence agents seek to prevent foreign attacks that might happen in the future, not to punish past conduct. To perform that anticipatory and protective function, we accept that our military and intelligence forces must act on probabilities, not certainties, to prevent threats that might never be realized.

Law enforcement, by contrast, punishes perpetrators for crimes that have already occurred. The U.S. has long considered drug trafficking a matter for the criminal justice system. The difference in purpose dictates different tools. The FBI and the Drug Enforcement Administration – not the U.S. armed forces – have prime responsibility for interdicting drug smuggling (although the military can play a supporting role). The FBI and DEA seek to disrupt the operations of drug cartels with the traditional tools of law enforcement: collecting evidence, arresting suspects and imprisoning the guilty only after a trial. Deadly force may be used only if necessary to defend the law enforcement agent, or another person, against an imminent threat to life.

As an official in the Justice Department's Office of Legal Counsel, I was at my desk on Sept. 11, 2001. I advised that the U.S. could wage war against al-Qaeda without blurring the distinction between crime and war. After 9/11, the U.S. declared that it would wage war for the first time against an organization, rather than a nation. But the drug cartels alone do not present a similar challenge that rises to the level of war.

Crime is generally committed for personal gain or profit rather than a political goal. Drug cartels employ murder, kidnapping, robbery and destruction to create a distribution network, grab turf from other gangs, intimidate rivals or customers, and even retaliate against law enforcement. National security threats, such as terrorist groups, might resemble organized crime in some respects, but the Mafia and drug cartels are unconcerned with ideology and are primarily out to satisfy their greed.

Yoo effectively suggested (or rather, suggested, as ineffectively as he is wont) that if the Administration could just tie the trafficking to the Maduro regime, *then* blowing up fishing boats would be cool.

The use of military force against the cartels may plunge the U.S. into a war against Venezuela. But a conflict focused against the Maduro regime is not a broad, amorphous military campaign against the illegal drug trade, which would violate American law and the Constitution.

The White House has yet to provide compelling evidence in court or to Congress that drug cartels have become arms of the Venezuelan government. That showing is needed to justify not only the deportations (which were just overturned by the conservative U.S. Court of Appeals for the 5th Circuit) but also the naval attacks in the South American seas.

If the administration does meet the high standards for war, it would open the door to another set of difficult problems: Every member, not just of the Venezuelan armed forces but also of the drug cartels, would become a legitimate

military target; the U.S. could attack and even occupy Venezuelan territory; and all Venezuelans here would become enemy aliens.

But recognizing a state of armed conflict against Venezuela would prevent the misuse of the tools of war to fight the eternal social problem of crime.

That Yoo piece was September 23.

About a week later, DOD's General Counsel attempted to explain this all to the Senate Armed Services Committee.

Senators on both sides of the aisle pressed the Pentagon's top lawyer in a closed-door meeting to provide a better legal explanation for striking alleged Latin American drug boats in the Caribbean, according to people with knowledge of the matter.

In a classified Senate Armed Services Committee briefing Wednesday, the Pentagon general counsel, Earl Matthews, detailed the legal basis for the military's attacks ordered by President Trump.

Matthews repeatedly referred to Trump's designation of certain Latin American drug cartels as foreign terrorist organizations, which he said granted the Defense Department unilateral authority to use military force against them, some of the people said. Matthews refused to provide a written justification for the strikes, which legal experts say is necessary for transparency and accountability.

Just a day after the closed-door briefing, Trump declared in a confidential notice to Congress that the U.S. is in a "non-international armed conflict" with the cartels. In the

document, which was sent Thursday to Congress and viewed by The Wall Street Journal, the administration dubbed the cartels as “designated terrorist organizations” and said it “determined that their actions constitute an armed attack against the United States.”

But it didn’t work. In the most US Congress move ever, the SASC *didn’t* tell DOD to stop blowing up fishing boats, but did instruct them to come up with some better legal excuse for doing so.

Some of the Republican and Democratic lawmakers who attended Wednesday’s Armed Services Committee briefing expressed concern about the administration’s rationale and urged officials to devise a stronger legal case, some of the people familiar with the discussion said.

And that may be what precipitated the “notice” to Congress that, like all else, Trump had usurped their authority to declare war, too.

President Trump has decided that the United States is engaged in a formal “armed conflict” with drug cartels his team has labeled terrorist organizations and that suspected smugglers for such groups are “unlawful combatants,” the administration said in a confidential notice to Congress this week.

The notice was sent to several congressional committees and obtained by The New York Times. It adds new detail to the administration’s thinly articulated legal rationale for why three U.S. military strikes the president ordered on boats in the Caribbean Sea last month, killing all 17 people aboard them, should be seen as lawful rather than murder.

Mr. Trump’s move to formally deem his

campaign against drug cartels as an active armed conflict means he is cementing his claim to extraordinary wartime powers, legal specialists said. In an armed conflict, as defined by international law, a country can lawfully kill enemy fighters even when they pose no threat, detain them indefinitely without trials and prosecute them in military courts.

[snip]

The Trump administration has called the strikes “self-defense” and asserted that the laws of war permitted it to kill, rather than arrest, the people on the boats because it said the targets were smuggling drugs for cartels it has designated as terrorists. The administration has also stressed that tens of thousands of Americans die annually from overdoses.

However, the focus of the administration’s attacks has been boats from Venezuela. The surge of overdose deaths in recent years has been driven by fentanyl, which drug trafficking experts say comes from Mexico, not South America.

Yeah, Miller wants to include Mexico in here (or at least including Mexico as a threat of invasion). But what’s to stop with Mexico, when you’ve already got an Executive Order claiming that China’s supply of fentanyl precursors is a national emergency.

This is an example of the kind of thing that’ll show in my upcoming post on Miller: He’s great at accruing bureaucratic power, simply usurping the National Security Council on his way to usurping most functions of Congress. But he’s really really bad about the details, about the actual facts, like making sure something is legal before you do it.

And thus far, the facts here say that Stephen Miller murdered a bunch of fishermen in callous blood.