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Obama doesn't deserve deference on drone deaths

Senate clears the White House to continue hiding behind state secret privilege on drone strikes and their casualties

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by [Lauren Carasik](#) @LCarasik

On April 28, [Senate leaders quietly removed a provision](#) from a key U.S. intelligence bill that would have required President Barack Obama to disclose information about his administration's drone program. The bill, which passed the Senate Intelligence Committee in November, initially required the president to issue an annual report on the number of combatants and civilians killed or injured in drone strikes. But the administration protested, and in a [letter dated April 14](#), Director of National Intelligence James Clapper sought to reassure the committee that the administration is committed to upholding all applicable laws and will soon make public its own reporting mechanism.

The Senate's action is a major setback for advocates who have been seeking greater transparency and accountability for the drone program. The Obama administration's track record renders its trustworthiness suspect. Neither the Senate nor the judiciary should show such deference to the White House.

Killing American citizens and foreign nationals without procedural and substantive protection runs contrary to our bedrock legal and democratic principles. Worse, the justifications for doing so are shrouded in secrecy, and the intellectual authors of those policies are shielded from accountability. The executive branch has repeatedly proved it cannot be entrusted with unbridled power to secure the nation without violating human and constitutional rights.

'Political question'

The Senate's reversal follows a federal court decision last month to [dismiss a lawsuit](#) against former Defense Secretary and CIA Director Leon Panetta, former senior military commander and CIA chief David Petraeus and two other top military officials by relatives of three U.S. citizens killed in 2011. Like the Senate, the court deferred to executive branch prerogatives.

A drone strike in Yemen on Sept. 30, 2011, killed U.S.-born Muslim cleric Anwar al-Awlaki and Samir Khan, a Pakistani-American editor of the Al-Qaeda-linked [Inspire magazine](#). Awlaki's 16-year-old son Abdulrahman was killed in another strike two weeks later. Awlaki is linked to several terrorist attacks against Americans, including the 2009 Christmas Day attempt on Detroit-bound Northwest Flight 253 by "underwear bomber" Umar Abdulmutallab. The U.S. government admits Khan and Abdulrahman were killed unintentionally.

In July 2012, the American Civil Liberties Union and the Center for Constitutional Rights filed suit on behalf of Awlaki's father, Nasser, and Khan's mother, Sarah. In December 2012, the Justice Department notified the court of its intention to invoke state secret privilege, which allows the U.S. government to prevent the introduction of evidence at trial whose disclosure it claims would pose a threat to national security.

Nasser first filed suit against Obama, then—Defense Secretary Robert Gates and CIA Director Panetta in 2010 for placing his son on a "kill list" and targeting him for extrajudicial killing without charge or trial. In December 2010, U.S. District Court Judge John Bates [dismissed the case](#), holding that the court had no jurisdiction over the drone program, whose legality is a "political question" reserved for the executive and legislative branches. The judge added that Awlaki's father did not have standing to bring the suit on behalf of his son, who was then still alive. But even after Anwar's death, Nasser continued his quest for information and accountability, believing that the Obama administration should answer for intentionally killing his son and causing the death of his grandson and another U.S. citizen.

Officials argued that the latest suit raised a similar political question, rendering it unsuitable for judicial review. U.S. District Court Judge Rosemary Collyer rejected that claim in her decision on April 4, noting that the executive branch did not enjoy “carte blanche to deprive a U.S. citizen of his life without due process and without any judicial review.” But Collyer held that allowing the suit to progress would undermine the government’s ability “to act decisively and without hesitation” to protect U.S. interests in the future.

Collyer added that those suing in the names of Khan and Abdulrahman — who the government admitted were unintentional victims of the strikes — lacked grounds and that the Fourth Amendment prohibition against unreasonable seizures was inapplicable, because an unmanned drone does not seize but kill. “Defendants must be trusted and expected to act in accordance with the U.S. Constitution when they intentionally target a U.S. citizen abroad,” Collyer said of government officials in dismissing the case.

By stripping away the disclosure provisions, the Senate allowed the Obama administration to keep its killings hidden and continue to obscure the drone program’s human toll.

But the Obama administration’s representations about drone operations are highly suspect. Although it admits to few civilian deaths from drone strikes, the administration employs a disturbingly self-serving standard in its campaign: [Any adult male in the proximity of terrorists is presumed guilty](#) unless posthumously exonerated.

After more than a decade of judicial deference to unfettered executive power in the name of national security, the court’s latest dismissal was hardly surprising. In addition to enjoying impunity for extrajudicial killings, the U.S. has escaped liability for [indefinite detention](#), [extraordinary rendition](#) and torture under the so-called war on terror.

A [study by the Pew Research Center](#) last October showed that the drone program enjoys broad support within the U.S., even though supporters have

expressed concern about civilian casualties. The White House has declined to disclose the number of people killed through the use of unmanned aircraft. Last year, Amnesty International estimated that up to 900 civilians had been killed between 2004 and 2013 in Pakistan alone. Last year Sen. Lindsey Graham, R-S.C., estimated that [4,700 people](#) were killed in drone strikes over the past decade.

The U.S. government [insists](#) that the operation is being conducted in accordance with all applicable domestic and international laws, though the White House has diligently tried to shield the details of U.S. drone policy. But judicial protection for the lack of transparency is eroding. In March 2013, the administration disclosed a “white paper,” in response to journalist [Jason Leopold](#)’s request under [the Freedom of Information Act](#), outlining the legal framework for targeting a U.S. citizen abroad. It showed that targets must pose an imminent threat to U.S. interests, capture must not be feasible and the strike must comport with the “law of war principles.”

Meanwhile, the government continues to shield its more authoritative memo, which contains the legal justification and standards for targeting U.S. citizens and others in drone strikes. On April 21 a [federal appeals panel ordered the Obama administration to release](#) portions of that memo. The panel held that the administration’s selective disclosure of information on the drone program waived its right to keep the legal rationale secret. The ruling was an effective counterbalance to the administration’s efforts to manipulate public opinion by disclosing only the information that supports its position. The White House has not indicated whether it intends to appeal the ruling, nor the time frame for releasing the memo.

By stripping away the disclosure provisions, the Senate allowed the Obama administration to keep its killings hidden and continue to obscure the program’s human toll. It may be too late for the Awlaki and Khan families to seek redress for the targeted and unintentional deaths of their loved ones, but they, as well as the American people, deserve answers about why their family members were killed.

Given the inestimable societal costs of secrecy and impunity, full disclosure about the drone program and a vigorous and informed national debate are critical.

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The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.