

Editorial from [The New York Times](#) | Original Article

On one level, there were not too many surprises in [the newly disclosed “white paper” offering a legal reasoning](#) behind the claim that President Obama has the power to order the killing of American citizens who are believed to be part of Al Qaeda. We knew Mr. Obama and his lawyers believed he has that power under the Constitution and federal law. We also knew that he utterly rejects the idea that Congress or the courts have any right to review such a decision in advance, or even after the fact.

Still, it was disturbing to see the twisted logic of the administration’s lawyers laid out in black and white. It had the air of a legal justification written after the fact for a policy decision that had already been made, and it brought back unwelcome memories of memos written for President George W. Bush to justify illegal wiretapping, indefinite detention, kidnapping, abuse and torture.

The document, [obtained and made public by NBC News](#), was written by the Justice Department and coyly describes another, classified document ([which has been described in The Times](#)) that actually provided the legal justification for ordering the killing of American citizens.

That document still has not been provided to Congress, despite repeated demands from lawmakers. The white paper was sent to Capitol Hill seven months after the military carried out President Obama’s orders to kill Anwar al-Awlaki, an American who moved to Yemen and became an advocate of jihad against the United States.

In private, administration officials say Mr. Awlaki was a commander of an Al Qaeda affiliate and actively involved in planning attacks on the United States. Publicly, it has refused even to acknowledge that Mr. Obama ordered Mr. Awlaki killed or back up its claim that he was an active terrorist. The White House has vigorously fought holding any court hearing over [the killing of Mr. Awlaki](#) or his 16-year-old son, who was killed in a subsequent attack.

The American Civil Liberties Union is suing to have the operational memo on those killings released, arguing that an American citizen has constitutional rights that a judge must make sure are being respected. We agree.

According to the white paper, the Constitution and the Congressional authorization for the use of force after the attacks of Sept. 11, 2001, gave Mr. Obama the right to kill any American citizen that an “informed, high-level official” decides is a “senior operational leader of Al Qaeda or an associated force” and presents an “imminent threat of violent attack.”

It never tries to define what an “informed, high-level official” might be, and the authors of the memo seem to have redefined the word “imminent” in a way that diverges sharply from its customary meaning. It talks about “due process” and the need to balance a person’s life “against the United States’ interest in forestalling the threat of violence and death to other Americans.”

But it takes the position that the only “oversight” needed for such a decision resides within the executive branch, and there is no need to explain the judgment to Congress, the courts or the public — or, indeed, to even acknowledge that the killing took place.

The paper argues that judges and Congress don’t have the right to rule on or interfere with decisions made in the heat of combat. Some officials also draw a parallel to police officers who use violence to protect the innocent. Even in wartime, there are many ways to review commanders’ and soldiers’ decisions, and while courts-martial are internal to the military, their verdicts are subject to appeal to a civilian judge. When a police officer so much as discharges his weapon, it triggers a great deal of review, based on rules that are known to everyone.

The white paper “is a confusing blend of self-defense and law of war concepts and doesn’t clearly explain whether there is a different standard for killing a senior Al Qaeda leader depending on whether he is a citizen,” said Kate Martin, director of the Center for National Security Studies. “Its due process analysis is especially weak.”

The memo could and should have been released months ago. The administration could and should have provided a select number of lawmakers with the specifics on the killing of Mr. Awlaki and his son. The president could and should have acknowledged that decision and

explained it.

Going forward, he should submit decisions like this one to review by Congress and the courts. If necessary, Congress could create a special court to handle this sort of sensitive discussion, like the one it created to review wiretapping. This dispute goes to the fundamental nature of our democracy, to the relationship among the branches of government and to their responsibility to the public.