Rescinding Non-military Operated Drone Strike Reporting Requirement (Executive Order 13862)

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The Policy

Synopsis
On March 11, 2019, the President signed Executive Order 13862 revoking stipulations of an Obama-era 2016 executive order (EO 13732) requiring the Director of National Intelligence, or a similarly situated office of the Executive Branch (e.g., the Office of the President) to annually publish an unclassified summary of US drone strikes including non-military, (e.g., Central Intelligence Agency).
strikes outside of combat zones. The presumed reasoning of this change, provided in section one of the Order, is the stipulated requirement within sections 1057 [14] and 1062 [15] of the previous two National Defense Authorization Acts (NDAA) which require the Department of Defense [16] to publish a civilian casualty report of military drone strikes for the previous year. While many elements of the initial Executive Order’s reporting requirements are duplicated in the NDAAAs, neither section of the NDAAAs require the disclosure of drone strikes operated by entities outside of the Department of Defense.

Context

According to the Bureau of Investigative Journalism and as of the date of this brief’s publishing, the US has conducted at least 6,786 drone strikes since 2004. According to the Bureau’s findings [17], these strikes have resulted in at least 8,459 deaths with upward projections of over 12,000. Of the minimum number of confirmed deaths, at least 769 were identified as civilians with at least 253 of that number being identified as children. It is estimated that a majority of these killings took place under the Obama presidency when the number of strikes expanded ten-fold [18] from the previous administration.

While the Bureau describes its methodology as constituting a number of on-location sources, it along with other reporting agencies have also relied on published reports from the Executive Office to establish its findings.

Other attempts to disclose information regarding the US’ use of drone strikes outside of combat zones have been stopped in the courts. For instance, the American Civil Liberties Union [19] had sued and lost to the Department of Justice [20] in 2016 (ACLU v. United States DOJ, 844 F.3d 126 (2d. Cir. 2016) [21]) after the Union's Freedom on Information Act request of documents related to the extrajudicial killings of Americans Anwar Al-Awlaki, Samir Khan, and 16-year-old Abdulrahman Al-Awlaki [22] in Yemen in 2011. The Court's ruling, itself heavily redacted, supported the Government’s withholding key documents describing the strikes and similar future strikes (SciPol brief available) [23].

Justification for the government’s increased discretion may stem from the nature of its agreements with local governments to allow the drone strikes. For instance, a Brookings report [24] of the US practice of drone strikes explains, Officials in both Pakistan and Yemen may approve of US drone strikes within their country as many of the US’ targets are common enemies of these countries. A 2008 memo [25] released by WikiLeaks [26] had shown that a Pakistani army chief had privately asked U.S. military leaders for “continuous Predator coverage” over antigovernment militants. Further, Pakistani Prime Minister Yousaf Raza Gilani told the U.S. ambassador [27] at the time that, “We’ll protest [against the drone program] in the National Assembly and then ignore it.” Still, Pakistan and the US may be reluctant to make these agreements public for several reasons. For one, though there are overlaps in the US and Pakistan’s enemies, the US has flown strikes against what it saw as hostile groups, such as the Haqqani network and the Taliban, which Pakistan has supported. Further, reports [28] of the Pakistani public have shown it to be opposed to U.S. drone strikes.
Policy History

In the initial 2016 order requiring the disclosure of non-combat zone drone strikes and civilian casualties caused by US drone strikes, the President (then Barack Obama) had reasoned that such disclosures were consistent with the US' interest in upholding international law of armed conflict. Further, the order also stipulated that such disclosures would be consulted in periodic consolations with relevant security and intelligence offices to help mitigate future risks of civilian casualties.

Under the current Executive Order, such disclosures will be required via provisions of the 2018 and 2019 National Defense Authorization Acts (NDAA).

- Per section 1057 of the 2018 NDAA, the Department of Defense is to publish an annual report for the next five years on civilian causalities to the House [29] and Senate [30] defense committees. Such reports will include the date, identification of the location and whether it was within a combat zone or not, the type of operation, and an assessment of the number and kind of casualties. Each report would also include a description of the manner in which each event was assessed and recorded for the report.
- In section 1062 of the current NDAA, the 2018 requirement described immediately above is amended. These changes include the requirement of the report further specifying a differentiation of causalities between deaths and murders; whether payments were made to families of killed-civilians, and whether there have been any updates to any items of the report of the previous year.

Further, as we have reported elsewhere on this site, there have been several attempts to limit the ability of non-military agencies to perform drone strikes. For instance, HR 487 [31], proposed in the 115th Congress, was a concise bill that would bar the Central Intelligence Agency from using unmanned aerial vehicles (UAVs [32], or drones) in “deliberately lethal” actions, such as weapons strikes (SciPol brief available [33]). The bill did not pass. During the later part of Obama's presidency, limitations were enacted [34] on the CIA's ability to conduct lethal drone strikes, though those limitations have since been rescinded [35] by the current President.

The Science

Science Synopsis

Unmanned aerial vehicles [32], commonly known as drones, are aircraft that are remotely controlled by one or more operators who fly the aircraft, control sensors and/or weapons, and coordinate the mission as necessary. UAVs are unmanned only in the sense that humans are not physically on-board the aircraft. Most United States government drones are used for surveillance (i.e., maintaining close observation of a subject) and are equipped with sensors capable of observing at a distance, such as high-resolution cameras. Not all drones carry weapons. Those that do carry weapons, however, generally receive specific instructions based on detailed intelligence before striking with precision guided munitions [36] or “smart” bombs, which are highly accurate missiles that use guidance systems (i.e., directions from satellites or other aircraft) that can adjust their paths during flight.
Signature Strikes

A main strategy dictating the US' use of armed drones is performing what are called "signature strikes". The name of this strategy comes from the targeting of potential threats by the US' analysis of certain terrorist-prone signatures, or observed behavior. A definition provided by ProPublica defines signature strikes as, "A strike against someone believed to be a militant whose identity isn't necessarily known. Such strikes are reportedly based on a "pattern of life" analysis – intelligence on their behavior suggesting that an individual is a militant."

In a Brookings report that investigates the US' practice of signature drone strikes, it explains that according to the Obama and Trump administrations, the use of signature strikes have eliminated not only low-level insurgent targets but also higher-level officials. As the Brookings report continues to explain, "The rise of unconventional warfare, however, has made this usual strategy [of signature drone strikes] more difficult because the battlefield is no longer clearly defined and enemies no longer wear identifiable uniforms, making combatants harder to distinguish from civilians." Particularly because drone strikes remove the presence of soldiers and intelligence officers from potential targets, there is limited capabilities available to drone operators to distinguish the accuracy of these strikes. The typical remoteness of drone strike targets and the tendency for local militias and officials to cordon the strike area also make it difficult to confirm the accuracy of strike assessments. Further, limited disclosure of the policies surrounding the use and decision-making surrounding signature strikes also rises significant concerns about their efficacy and legality.

Drone Models

In the past, the CIA has used the MQ-1 Predator and MQ-9 Reaper drone models. The MQ-1 Predator can carry two laser-guided AGM-114 Hellfire missiles. It also utilizes a Multi-Spectral Targeting System (MTS), which combines multiple tools for surveillance, target acquisition and tracking, rangefinding, and laser designation for missile strikes. The MTS includes:

- Infrared sensors that detect thermal energy or specific light wavelengths on the infrared spectrum, allowing them to recognize humans or other targets from long distances;
- Color daylight and near infrared TV cameras that record high definition video data;
- Laser designators that can identify targets in day or nighttime conditions, estimate range, and calculate a target’s location using GPS capabilities; and
- Laser illuminators, which are large, focused military lights that illuminate an area of interest with a laser beam.

The MQ-9 Reaper utilizes the same Multi-Spectral Targeting System as the Predator, but also features a maritime surveillance radar. It can carry four Hellfire missiles, Paveway II Laser-Guided Bombs (LGB), or Joint Direct Attack Munitions (JDAM).

The Debate

Endorsements & Opposition
Endorsements:

As of this brief’s publishing, there have been no explicit endorsements of this policy.

Opposition:

- **Ned Price**, [45] National Security Council member under Obama, "This [rescinded requirement] was about more than transparency...It allowed, for the first time, the US to counter disinformation from terrorist groups with facts about the effectiveness and precision of our operations. It was an important tool that we're again without."
- **Rita Sieimon** [46] of Human Rights First, [47] "'The Trump administration's action is an unnecessary and dangerous step backwards on transparency and accountability for the use of lethal force, and the civilian casualties they cause.'"

Recommended Citation


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