

National Commission on Intelligence Misuse to Justify War  
722 12<sup>th</sup> Street, N.W., 4<sup>th</sup> Floor  
Washington, D.C. 20005  
[bruce@intelcommission.org](mailto:bruce@intelcommission.org)  
Phone: 703-963-4968

May 13, 2013

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

**Re: By What Authority?**

Dear Mr. President:

As a former lecturer in constitutional law at the University of Chicago Law School, you know that the federal government, including the Office of the President, does not enjoy limitless powers. As President, your powers are limited to those conferred either by the Constitution or federal statutes. Supreme Court Associate Justice Hugo Black elaborated in *Reid v. Covert*, 354 U.S. 1 (1957): “The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution.”

One of your illustrious predecessors, Thomas Jefferson, instructed in the Kentucky Resolution of 1798: “In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.” As regards the Alien Act’s empowering the President to deport any alien he unilaterally decreed was “dangerous to the peace and safety of the United States,” Mr. Jefferson maintained “that transferring the power of judging any person, who is under the protection of the laws from the courts, to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides that ‘the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior.’”

With regard to your actions—especially those taken in the name of national security—you are obliged by your constitutional oath to explain by what authority you are acting, and to answer serious criticism of your legal theories. Among other issues, you are obliged to elaborate by what authority you are empowered to commence war without congressional authorization or appropriations; to initiate war without the justification of self-defense, which is contrary to the Nuremberg precedents condemning crimes against peace; to play prosecutor, judge, jury, and executioner to kill American citizens and non-citizens based on your secret assertion that the targets posed a danger—however remote and conjectural—to national security interests; to imprison persons indefinitely at Guantanamo Bay without accusation or trial; to intercept the emails and phone conversations of millions of American citizens without a judicial warrant; to invoke a state secrets privilege to block judicial redress for torture or extra-judicial killings; to resort to executive agreements, in lieu of treaties or federal statutes, to justify deploying the United States armed forces abroad; and, to engage in extraordinary rendition.

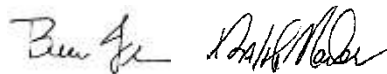
In light of your obligation to explain “by what authority,” we were dismayed that you refused to send a witness to testify on April 23, 2013, regarding the legality of your predator drone targeted and signature killing programs before Senator Richard Durbin’s Judiciary Subcommittee on the Constitution. That disdain for the rule of law and congressional oversight contrasts unfavorably with President Gerald Ford’s willingness to testify personally before a House Judiciary Subcommittee on his pardon of former President Richard Nixon.

Most significant constitutional questions concerning national security escape judicial review because of technical barriers such as standing, ripeness, political question, or state secrets. That means they are decided in the court of public opinion, which must be educated about the matters by you and members of the media if the Constitution is to be adhered to and not vandalized. Public opinion repudiated the so-called “rationale” for torture concocted by the administration of President George W. Bush after you exposed the relevant legal memoranda to public scrutiny.

**We urge you to explain to reporters and the American people “by what authority” you or your administration is acting regarding the aforementioned matters or comparable major actions so as to restore the rule of law as the crown jewel of the Constitution.** We urge you to consider the timeless wisdom of the United States Supreme Court in *Ex parte Milligan* (1866):

“The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false, for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.”

Sincerely,

Handwritten signatures of Bruce Fein and Ralph Nader. The signature on the left is 'Bruce Fein' and the signature on the right is 'Ralph Nader'.

Bruce Fein      Ralph Nader