

By Fred Burton and Ben West

U.S. President Barack Obama signed an executive order Feb. 1 approving the continued use of renditions by the CIA. The order seems to go against Obama's campaign promises to improve the image of the United States abroad, as renditions under the Bush administration had drawn criticism worldwide, especially from members of the European Union. The executive order does not necessarily mean that renditions and other tactics for dealing with terrorist suspects will proceed unchanged, however.

Obama came into office promising changes in the way the United States combats terrorism. One of these changes was a new emphasis on legal processes and a shift away from controversial methods of treating terrorist suspects, like rendition, harsh interrogation techniques and secret prisons. The Obama administration can and will roll back some of these tactics, as demonstrated by the president's Jan. 22 order to close the detention center at Guantanamo Bay. But some will continue.

Renditions and the legal process

Renditions are a powerful tool for counterterrorism operations. They involve agents moving into a foreign country to execute a warrant. Once the fugitive is located, agents track, seize and transport him out of the country for interrogations, or to stand trial, as in the cases of Lebanese hijacker Fawaz Younis, CIA shooter Mir Amal Kanzi, 1993 World Trade Center bombers Abdel Basit (aka Ramzi Yousef) and Mahmud Abouhalima, and even Ilich Ramirez Sanchez (aka Carlos the Jackal).

Some of the individuals targeted for renditions have warrants out for their arrest, but are taking refuge in countries that either lack the law enforcement capability to capture them or cannot arrest and extradite them for political reasons. By contrast, the renditions where there is no indictment or warrant and where the suspect is transported to a secret prison for interrogation and detention without a public trial are far more controversial. Renditions of either kind virtually always occur with the knowledge of the host country, and usually with the host government's express consent. (Few countries wish to shelter suspected terrorist masterminds).

Renditions thus involve legal questions as much as they do diplomatic questions. Before renditions can be carried out, the Washington bureaucracy kicks into full swing. The U.S. State Department must consider the diplomatic ramifications. The ambassador in the host country must consider his or her position and judge the response of his or her contacts in the host country government. The U.S. Justice Department must also sign on. Finally, the agency in charge of actually nabbing the suspect must be willing to work within any restrictions imposed by any one of the many individuals who must approve the operation.

Even when the government ultimately deems a rendition operation legal, numerous factors can still stymie the effort (not least of which is that by the time all the necessary approvals have been obtained, the window of opportunity to nab the suspect might have closed). So while Obama's executive order in theory permits renditions, it is only one part of the whole process; the appropriate members of Obama's administration must also be on board.

Many members of the Obama administration also served in the Clinton administration, which was widely seen as considering all legal ramifications of potential renditions before taking any action. As a former deputy attorney general in the Clinton administration, new Attorney General Eric Holder enjoyed a reputation for deliberating on renditions to the point of inaction - effectively vetoing such operations.

While an appearance of greater attention to the law might come as a relief to many, actors in the field do not have the luxury of endless deliberation and total consensus - they have a narrow window of opportunity in which to act on perishable intelligence. Assuming that Obama's administration acts with deliberation and pursues consensus building (as he himself has emphasized, and has demonstrated in the bipartisan nature of his Cabinet selections), the legality of renditions might become moot if they are not agreed upon in a timely manner. There is a fine line to walk between efficiency and legality in this field, with extremes on either side being detrimental to national security.

By their very nature, renditions are ad hoc and rarely fit into a nice, clean process, something that explains their controversial nature. They frequently occur in countries allied to the United States, meaning the practice falls outside the scope of war. And renditions resulting in suspects' standing trial are far less controversial than those involving secret prisons, harsh interrogation tactics and reliance on third countries to carry out interrogations - tactics disfavored by the Obama administration.

Alternatives to rendition

Apprehending suspects in foreign countries does not always involve controversial tactics. U.S. counterterrorism officials also use tactics abroad that are not forbidden under U.S. law, though they might be illegal if used within the United States (and could well be illegal in the country where U.S. agents employ them). In general, such tactics remain constant as administrations change. These tactics include surveillance of foreign targets, ruse operations and economic incentives and punishments to encourage cooperation in counterterrorism efforts.

Ruse operations, a less controversial way to apprehend fugitives than renditions, involve deception, obviating the need to jump through the bureaucratic hoops required for renditions. Ruse operations involve luring suspects to a location where U.S. agents can apprehend them legally. This involves persuading targets to venture into international waters, for example, or even to travel to the United States, where U.S. agents lie in wait.

While such tactics avoid the legal complexities surrounding renditions, they are extremely difficult to carry out. Suspects worth chasing around the world typically are not overly gullible, and know where it is safe to travel. So while there is no reason to believe that ruse operations

will cease anytime soon, successful ones are few and far between.

Sometimes killing a terrorist target is both more efficient and less legally complex than renditions or ruse operations. Tactical strikes, such as the unmanned aerial vehicle-launched missile strikes against suspected al Qaeda targets in Pakistan, both remove a suspected terrorist target and avoid drawn-out legal processes. Like its predecessor, the Obama administration apparently sees striking at al Qaeda targets along the Pakistani-Afghan border as acceptable within the scope of the ongoing war in Afghanistan, despite Pakistani protests. The latest such U.S. strike came Jan. 23, just three days after Obama took office. Given the administration's presumed hesitation based on legal reservations and an unwillingness to expand warfare beyond the Afghan theater, this tactic is unlikely to pop up in other areas of the world without a serious threat escalation.

Secret prisons and interrogation issues

Obama on Jan. 22 also ordered the CIA to close its secret prisons around the world that hold detainees without adhering to U.S. legal standards. Because fewer than 100 detainees were held in these prisons, however, this is a minor point.

A different executive order also issued Jan. 22 applied the interrogation guidelines outlined in the U.S. military field handbook and the Geneva Conventions to the CIA. Obama and Holder also have made it clear that the new administration views waterboarding as torture and thus illegal, settling the debate on the matter.

Still, it is only a matter of time before new techniques used by interrogators in the field will face questions of legality and morality. No national leader can micromanage at the field level. Even though the Justice Department and senior White House officials in the Bush administration signed secret findings authorizing the CIA to conduct waterboarding in specific cases, tactical, field-level topics do not stick around at the level of national policy for very long.

With secret prisons on the way out, more restrictions on how agents act in the field and an expected decline in renditions, a greater U.S. reliance on third countries to carry out rendition operations is possible. During the Clinton and Bush administrations, countries like Egypt and Jordan were known to cooperate with U.S. agencies in detaining and interrogating prisoners.

Critics claimed that relying on third countries exploited a loophole that allowed the United States to see that unsavory acts were committed without directly carrying them out. Obama's emphasis on using diplomacy to improve the U.S. image in the world suggests that his administration will turn to other countries for counterterrorism assistance instead of operating unilaterally. Obama already has asked for other countries to help out more in Afghanistan (specifically European countries). Obama might also tap third countries like Portugal, Switzerland or Germany to take in detainees leaving Guantanamo who are not sent back to home countries like Yemen and Saudi Arabia after the facility's closure. Working with these countries to ensure safe delivery of the detainees out of U.S. custody will remove a lightning rod for criticism of the United States in the Muslim world.

Delegating counterterrorism responsibilities to other countries allows the United States to avoid the legal complexities inherent in renditions, secret prisons and harsh interrogation. But ultimately, increased reliance on other countries with different interests can enhance the overall complexity of missions. It is also important to remember that the United States possesses one of the most capable counterterrorism forces in the world, and that other countries simply cannot carry out the same missions that the United States does. This is not to say that pursuing U.S. interests abroad does not call for diplomacy (which is one of the administration's main tools to fight terror), but that seeking international approval and establishing legal cover does reduce efficiency and restrain U.S. capabilities. Finding the balance between fighting terror efficiently and remaining within legal boundaries will be a key challenge for the Obama administration.

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