

## Government Kill Lists Target U.S. Citizens Far From Any Armed Conflict

*Al-Aulaqi v. Obama*

### What are the government's "kill lists" and why are they illegal?

The government has "kill lists" of individuals suspected of terrorism, including U.S. citizens, who are being targeted for death outside of zones of armed conflict, without charge, trial, or conviction. Individuals are added to the lists, which are maintained by the CIA and a covert unit of the U.S. military called the Joint Special Operations Command (JSOC), following executive determinations that secret criteria are satisfied, and left on the lists for months at a time.

Under the Constitution and international law, individuals must be afforded due process and convicted for a capital crime before they may be executed by the state. In extremely narrow circumstances, judicial process is not required if an individual poses an imminent threat of death or serious physical harm to others, and lethal force is a last resort to address the threat. A targeted killing policy in which names are added to kill lists after a bureaucratic process and remain on the lists for months is clearly not limited to addressing imminent threats or using lethal force as a last resort, and goes far beyond what the law permits. By substituting its own bureaucratic process for the due process required by the Constitution and international law, the executive is assuming the role of judge, jury, and executioner.

### Why are CCR and the ACLU bringing this lawsuit?

The targeted killings at issue in our lawsuit are specifically those being carried out by the United States outside of zones of armed conflict. Specifically, our client is the father of U.S. citizen Anwar Al-Aulaqi, who has been authorized for targeted killing by the government and is currently being pursued in Yemen, a country in which the United States is not engaged in armed conflict. The argument that the United States is engaged in a "global war" against Al Qaeda, permitting it to send missiles into Yemen or any country where it deems there to be a terrorist threat, not only distorts long-standing and internationally-accepted laws of war, but sets a dangerous precedent for rendering the entire world a potential battlefield.

The executive process for authorizing these killings also clearly violates the legal requirements for the use of lethal force by the state. Outside of armed conflict, where the Constitution and peace-time international law apply, the United States can only take an individual's life, no less the life of a U.S. citizen, after trial and conviction. The only exception to the rule is where the individual poses a grave threat of such imminence that judicial process is infeasible and lethal force is the only option that could reasonably address the threat. That individuals are added to kill lists after a bureaucratic process and left on the lists for months at a time flies in the face of the requirement that killing must be a last resort to address an imminent threat that leaves no time for process or deliberation.

The executive's sweeping assertion of power here not only violates domestic and international law and threatens the targeting of innocent people and civilian bystanders, but also undermines our collective safety by effectively creating a boundless war without end.

### What laws is the government violating?

Outside of a war zone, the Constitution and international law applicable to times of peace govern targeted killings by the United States. Specifically at issue are the Fifth Amendment to the Constitution, which provides that no person shall be deprived of life without due process of law, and the Fourth Amendment, which prohibits the excessive use of force by the state in effecting "seizures." International human rights law similarly protects against the arbitrary deprivation of life and generally prohibits killings by states without judicial process.

The Constitution and international law provide a similar standard for the use of lethal force by states: intentionally killing is generally prohibited without judicial process – charge, trial and conviction – unless an individual presents an imminent threat of death or serious physical harm and lethal force is a last resort. Due process under the Fifth Amendment also requires the government to provide notice of the criteria that render a person subject to intentional killing. A policy under which individuals are added to kill lists pursuant to an executive process based on secret criteria, and left on the lists for months at a time, is plainly not limited to the use of lethal force as a last resort to address imminent threats, and goes far beyond what the Constitution and international law permit. It also violates the right of U.S. citizens to know what conduct may subject them to killing at the hands of their own government.

Our client's son, U.S. citizen Anwar Al-Aulaqi, was placed on the CIA and JSOC kill lists in early 2010. Anwar Al-Aulaqi has not been charged with any crime, but reportedly has been the target of as many as a dozen missile strikes in Yemen already, where he is believed to be located. The United States is not engaged in war within or against Yemen, and its actions against Al-Aulaqi must be constrained by the Constitution and international law, as with any U.S. citizen.

### Who are the parties in this case?

Our lawsuit is brought on behalf of Nasser Al-Aulaqi, the father of U.S. citizen Anwar Al-Aulaqi, who has been authorized for targeted killing by the U.S. government and is being pursued in Yemen. Nasser Al-Aulaqi is asserting his son's constitutional rights because his son is in hiding under threat of death and cannot access counsel or the courts to assert his own rights without disclosing his whereabouts and exposing himself to possible attack by the U.S. Nasser Al-Aulaqi is also bringing a claim under international law in his own right to prevent the loss he would suffer if the government were to kill his son.

The case is being brought against three U.S. officials primarily responsible for authorizing the targeted killing of our client's son by the CIA and JSOC, and for targeted killings by the United States outside of armed conflict situations more broadly. They are Secretary of Defense Gates, who has ultimate authority over the U.S. armed forces worldwide, including JSOC; CIA Director Panetta, who is responsible for approving the addition of individuals to the CIA's kill list; and President Obama, who, as Chair of the National Security Council, provides the special authorization required when individuals targeted for killing are U.S. citizens.

### **What do we want from the Court?**

We are asking the Court to declare that the government is prohibited by both the Constitution and international law from carrying out the targeted killings of individuals, including our client's son, outside of armed conflict, except in circumstances in which they present concrete, specific, and imminent threats to life or physical safety, and there are no means other than lethal force that could reasonably be employed to address the threats. We are also asking the Court to block the specific killing of our client's son outside this narrow context, and to order the government to disclose the standards under which it determines whether a U.S. citizen can be targeted for death.

### **Why does this case matter?**

The stakes are enormous: the executive branch must not be allowed to claim the extraordinary power to secretly kill anyone it categorizes as a terrorist suspect, anywhere in the world, without any transparency or judicial oversight. In doing so, the U.S. government is asserting the authority to expand current wars by turning the whole world into a potential battlefield, with incalculable harm to people everywhere. Similarly, the U.S. practice of killing suspected terrorists in foreign countries will create a precedent for other countries to kill suspects all over the world, including here in the U.S.

Targeting Anwar Al-Aulaqi also harms the security of both Yemeni and American people. Targeting him in Yemen risks expanding and escalating U.S. led wars beyond Afghanistan and Iraq, increasing civilian casualties and resentment towards the United States. U.S. air strikes in Yemen have already caused significant civilian casualties—just one December 17, 2009 strike killed 41 civilians, mostly women and children—leading to popular protest. Thousands of people took to the streets of southern Yemen to denounce the military action and ensuing deaths of innocent civilians, for which there was no recognition or accountability in the United States. The lack of value placed on brown Muslim lives is not lost on Yemenis; the United States would not conduct air strikes over Paris to target a suspected militant there. The civilian deaths and damage to the city would be considered beyond the pale, but it is unfortunately not beyond the pale or hardly unfathomable to rain exactly that kind of destruction on a Yemeni city. Yemeni human rights activists also describe how a growing U.S.-Yemeni military partnership against terrorism has led to increasing human rights abuses in the name of national security. The victims of this violence are not only alleged militants and their families, but Yemeni dissidents and journalists critical of their government.

Furthermore, without oversight, we can have no assurance that the people the U.S. government targets to kill will be individuals who present an actual threat to the country. Indeed, over the last decade, our government has repeatedly labeled men terrorists only to find later – or to be told by a federal judge – that the evidence was overstated, wrong, or non-existent. If we invest the government with the unchecked authority to impose death sentences on people who have never been convicted or even charged with a crime, it is not just conceivable but inevitable that innocent people will be executed.

### **What is the status of this case?**

On December 7, 2010, U.S. District Court Judge Bates dismissed *Al-Aulaqi v. Obama* on procedural grounds, ruling that Nasser Al-Aulaqi did not have legal standing to challenge the targeting of his son, and that the case raised “political questions” not subject to court review. The court did not rule on the merits of the case. Judge Bates asked but did not answer the troubling question, “How is it that judicial approval is required when the United States decides to target a U.S. citizen overseas for electronic surveillance, but that, according to defendants, judicial scrutiny is prohibited when the United States decides to target a U.S. citizen overseas for death?”

On September 30, 2011, a U.S. drone strike killed Anwar Al-Aulaqi, along with at least three other people. Two weeks later, on October 14, U.S. drone strikes killed Anwar Al-Aulaqi's son, 16-year-old Abdulrahman Al-Aulaqi, as he was eating dinner with his teenage cousin at an open-air restaurant. At least seven other people were also killed in this strike, including another child. **We believe that these killings violated the U.S. Constitution and international law.**