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Relatives Sue Officials Over U.S. Citizens Killed in Yemen

By [CHARLIE SAVAGE](#)

WASHINGTON — Relatives of three American citizens killed in drone strikes in [Yemen](#) last year filed a wrongful-death [lawsuit](#) against four senior national security officials on Wednesday. The suit, in the Federal District Court here, opened a new chapter in the legal wrangling over the Obama administration’s use of drones in pursuit of terrorism suspects away from traditional “hot” battlefields like Afghanistan.

The first strike, on Sept. 30, [killed a group of people including Anwar al-Awlaki](#), a radical Muslim cleric who was born in New Mexico, and Samir Khan, a naturalized American citizen who lived at times in Queens, Long Island, and North Carolina. The second, on Oct. 14, killed a group of people including Mr. Awlaki’s 16-year-old son, Abdulrahman al-Awlaki, who was born in Colorado.

Accused in the suit of authorizing and directing the strikes are Leon E. Panetta, the secretary of defense; David H. Petraeus, the director of the Central Intelligence Agency; and two senior commanders of the military’s Special Operations forces, Adm. William H. McRaven of the Navy and Lt. Gen. Joseph L. Votel of the Army.

“The killings violated fundamental rights afforded to all U.S. citizens, including the right not to be deprived of life without due process of law,” the complaint says.

Press officials with the C.I.A., the Pentagon, and the Justice Department declined to comment.

The lawsuit, which seeks unspecified damages, was filed by Nasser al-Awlaki, who was Anwar’s father and Abdulrahman’s grandfather, and Sarah Khan, Samir’s mother. Lawyers with the American Civil Liberties Union and the Center for Constitutional Rights are assisting them in the legal action.

In 2010, the two groups helped Nasser al-Awlaki in an effort to obtain a court injunction against government efforts to kill his son. A federal judge threw out the case, primarily on the ground that Nasser al-Awlaki [had no standing to sue](#) in place of his son. Now Nasser al-Awlaki and Ms. Khan represent the estates of their sons and his grandson.

But the new lawsuit may face other procedural impediments before it would reach any substantive ruling on whether the strikes violated the Constitution — or even a public acknowledgment that the United States government did carry them out and an explanation of the evidence and decision-making behind them.

The Justice Department, which is likely to provide lawyers for the defendants, may ask a judge to dismiss the case by asserting that the evidence necessary to litigate it would disclose state secrets, or that decisions about whom to kill in an armed conflict are “political questions” not fit for judicial review. The government asserted both arguments in the 2010 case, and the judge who dismissed that lawsuit also cited the “political question” doctrine.

Even if a judge declined to dismiss the case on those grounds, the officials could assert that “qualified immunity” protected them from lawsuits alleging that they violated someone’s constitutional rights while performing official actions that did not violate “clearly established law” at the time. [President Obama](#) is not named in the lawsuit; the Supreme Court has ruled that presidents enjoy “absolute immunity” from lawsuits stemming from their official actions.

While it has been widely reported that the United State carried out the strikes, the Obama administration has never officially acknowledged responsibility for them. The New York Times has described the details of a [secret Justice Department memorandum](#) that concluded that it would be lawful to target Anwar al-Awlaki if capturing him was infeasible. The Times and the A.C.L.U. have sued for disclosure of that document under the Freedom of Information Act.

Several administration officials, including Attorney General Eric H. Holder Jr. [in a speech at Northwestern University](#) in March, have also defended the targeting of citizens, without a trial, if they join terrorist groups and under certain conditions.

“Some have argued that the president is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of Al Qaeda or associated forces,” Mr. Holder said. “This is simply not accurate. ‘Due process’ and ‘judicial process’ are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process.”

In 2010, reports surfaced that Anwar al-Awlaki had been placed on a “kill list” after the attempted bombing of a Detroit-bound airliner on Dec. 25, 2009. The would-be bomber is said to have told his interrogators that Mr. Awlaki [recruited him for the operation](#). Mr. Awlaki has also been accused of playing a role in other terrorist plots, but he was not indicted or tried.

The complaint says Mr. Awlaki should not have been designated “for death without the protections of a judicial trial” by the executive branch and contends that at the time of his killing, he did not present any immediate “concrete, specific and imminent threat of death or serious bodily injury.” It also asserts that any threat he did present when he was found could have been mitigated without lethal force, although it does not say how.

Complicating matters, it is believed that the Sept. 30 strike specifically targeted Anwar al-Awlaki, making the people around him — including Mr. Khan — collateral damage. Likewise,

Mr. Awlaki's son is said to have been a bystander in the Oct. 14 strike. Mr. Khan was involved in producing propaganda for Al Qaeda's Yemen branch, but Abdulrahman al-Awlaki had not been accused of joining the group.

Under the international laws of war, civilians may not be deliberately targeted; while it can sometimes be lawful to shoot at a military target knowing that some civilians nearby may be killed, collateral deaths must be minimized and proportional to the military objective. Still, it is not clear how domestic-law constitutional rights interact with wartime targeting law, and the A.C.L.U. and the Center for Constitutional Rights dispute the extent to which armed-conflict rules apply in Yemen. In discussing Mr. Khan and Abdulrahman al-Awlaki, the complaint alleges that the defendants failed to take adequate measures to prevent bystanders from harm.

“Even in the context of an armed conflict, government officials must comply with the requirements of distinction and proportionality and take all feasible measures to protect bystanders,” it says.