

Suit Seeks Accountability for Killings of Three Americans in U.S. Drone Strikes

Al-Aulaqi v. Panetta

What are “targeted killings” and when are they illegal?

Since 2001, and routinely since 2009, the United States has carried out deliberate and premeditated killings of suspected terrorists overseas. The U.S. practice of “targeted killing” has resulted in the deaths of thousands of people, including many hundreds of civilian bystanders. While some targeted killings have been carried out in the context of the wars in Afghanistan and Iraq, many have taken place outside the context of armed conflict. These killings rely on vague legal standards, a closed executive process, and evidence never presented to the courts, and are carried out by the CIA and a covert unit of the U.S. military called the Joint Special Operations Command (JSOC)

Under the Constitution and international law, individuals must be afforded due process and convicted for a capital crime before they can be executed by the state. In extremely narrow circumstances, due 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 that threat. However, it is clear that the United States’ “targeted killing” policy, which has resulted in the deaths of thousands by now, is not limited to these circumstances. Even under the laws of war, there are still legal constraints on the use of lethal force – for example the legal requirements of distinction and proportionality – with which the government has not complied.

Why are CCR and the ACLU bringing this lawsuit?

Al-Aulaqi v. Panetta, filed on July 18, 2012, sues senior CIA and military officials, and argues that the killings of three American citizens by their own government in drone strikes in Yemen in 2011 violate the U.S. Constitution and international law. On September 30, 2011, U.S. drone strikes killed Anwar Al-Aulaqi, who had been placed on government “kill lists” over a year before, and Samir Khan. 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. Several others were also killed in these two strikes, which took place in a country in which the United States is not engaged in armed conflict.

Our suit seeks to secure some accountability for those killed. It seeks some modicum of justice for Abdulrahman, the boy whose family could not give a proper burial because he was blown to pieces by a U.S. missile, and whom the United States never alleged committed any harm. Our suit seeks to ensure that there are no more Abdulrahmans in the future, that no more individuals are needlessly killed as the result of an unlawful and dangerous U.S. policy of killing that must end.

In claiming the power to target and kill individuals, including U.S. citizens, without due process and far from any field of armed conflict, the U.S. government is effectively turning the whole world into a potential battlefield, with incalculable harm to the lives of people everywhere. The Executive Branch must not be allowed to claim the extraordinary power to kill anyone it categorizes as a terrorist suspect, potentially anywhere in the world, without any meaningful check on its actions.

Under the Obama administration, U.S. targeted killings have escalated and expanded. Strikes have been carried out in Yemen, Somalia, Sudan, Pakistan and the Philippines. Thousands of people have been killed, including many hundreds of civilians. A single strike in Yemen, on December 17, 2009, killed 41 civilians, including 21

children. In Pakistan alone, the Obama administration has already reportedly launched six times as many strikes as the Bush administration, in fewer years in office.

How does this case relate to *Al-Aulaqi v. Obama*?

On August 30, 2010, CCR and the ACLU filed *Al-Aulaqi v. Obama* against President Obama, then-CIA Director Leon Panetta, and then-Defense Secretary Robert Gates, challenging their decision to authorize the targeted killing of U.S. citizen Anwar Al-Aulaqi in Yemen in violation of the Constitution and international law. On December 7, 2010, U.S. District Court Judge Bates dismissed the suit on procedural grounds, ruling that our client, Anwar Al-Aulaqi's father, did not have legal standing to challenge the targeting of his son, and that the case raised "political questions" not subject to court review. 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?"

What laws is the government violating in *Al-Aulaqi v. Panetta*?

Outside of armed conflict, the Constitution and international human rights law 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 due process. In the absence of due process, the Constitution and international human rights law prohibit killing unless an individual presents an imminent threat of death or serious physical harm and lethal force is a last resort.

The killings also constitute an **unconstitutional act of attainder** because executive branch officials designated Anwar Al-Aulaqi for death without the protections of a judicial trial. An act of attainder is an act that punishes a specific individual or group without judicial process, and is forbidden by the Constitution.

The United States was not engaged in war within or against Yemen at the time of the killings of Anwar and Abdulrahman Al-Aulaqi and Samir Khan, and the government's actions should have been constrained by the Constitution and international law.

Who are the parties in this case?

Our lawsuit is brought on behalf of Nasser Al-Aulaqi and Sarah Khan. Nasser is the father of Anwar Al-Aulaqi and grandfather of 16 year-old Abdulrahman Al-Aulaqi, U.S. citizens who were killed in two separate drone strikes in Yemen on September 30, 2011 and October 14, 2011. Sarah Khan is the mother of American citizen Samir Khan, who was killed in the same strike that killed Anwar Al-Aulaqi.

The case is brought against the senior U.S. officials responsible for authorizing and directing the killing of our clients' relatives by the CIA and JSOC. These four Defendants are former CIA Director David Petraeus; Secretary of Defense Leon Panetta; Commander of Special Operations Command William McCraven; and Commander of Joint Special Operations Command Joseph Votel.

What is the status of the case?

The Department of Justice, representing defendants, has moved to dismiss the case, arguing that there is no role for the judiciary in reviewing the claims because they raise "political questions" and national security concerns, and that defendants should be immune. We have argued that the judiciary has a crucial role in protecting constitutional rights and holding defendants accountable. Oral argument on Defendants' Motion to Dismiss will be heard in the United States District Court for the District of Columbia on July 19, 2013.

To learn more about *Al-Aulaqi v. Panetta* visit www.CCRjustice.org/targetedkillings