

Yemeni terror backer gains civil liberties support from ACLU

By Eli Lake

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The father of a U.S.-Yemeni citizen known as al Qaeda's top English-language Internet recruiter is fighting to have his son removed from a list of potential targets for kill or capture by the CIA or the U.S. military, and two prominent civil-liberties groups want to do his bidding in court.

The American Civil Liberties Union (ACLU) and the Center for Constitutional Rights (CCR) announced Aug. 3 that they are asking the Treasury Department to let them offer pro-bono legal services to Nasser al-Awlaki, whose son Anwar al-Awlaki is linked to the fatal shooting of 13 people at Fort Hood, Texas, and the effort to blow up a plane over Detroit on Christmas Day.

The Treasury Department says providing legal counsel on behalf of Anwar al-Awlaki requires a special exemption from the Office of Foreign Assets Control because he is a designated foreign terrorist.

Jameel Jaffer, a litigator and director of the ACLU's National Security Project, traveled with a colleague to Yemen earlier this year to meet with Nasser al-Awlaki and with Yemeni human rights groups, the attorney said Aug. 3.

If the ACLU wins the right to represent the elder Mr. al-Awlaki, it would be the first major legal challenge to President Obama's implicit assertion of a right to kill or capture Americans who have joined al Qaeda without due process.

Mr. Obama, as did his predecessor, President George W. Bush, has claimed that a Sept. 14, 2001, resolution of war from Congress authorizes the use of military force all over the world against al Qaeda. U.S. drones have been deployed in Yemen, Pakistan and Somalia — countries with which the United States

is not formally at war.

In response to a question about the new legal challenge, White House spokesman Robert Gibbs said Aug. 3 that "the United States hasn't decided that Anwar al-Awlaki is aligned with a terrorist group. Anwar al-Awlaki has in videos cast his lot with al Qaeda and its extremist allies. Anwar al-Awlaki is acting as a regional commander for al Qaeda in the Arabian Peninsula."

Mr. Gibbs specifically rejected an analogy that U.S. citizens traveling overseas could be placed on a list that would let the military or CIA kill or capture them.

"Let's not take a tourist that might visit Italy overseas and equate him to somebody who has on countless times in video pledged to uphold and support the violent and murderous theories of al Qaeda," he said.

Anwar al-Awlaki is a cleric whose English-language sermons are said to have been instrumental in inspiring a number of attacks inside the U.S., including the Fort Hood shootings blamed on Army Maj. Nidal Malik Hassan. The U.S. government also has said he plays a major role in the leadership of al Qaeda's affiliate in Yemen.

Last month, the Treasury Department designated the younger Mr. al-Awlaki as a foreign terrorist and began to go after his financial assets.

But the two civil liberties groups are saying: Not so fast.

Vince Warren, executive director of the Center for Constitutional Rights, said that a court of law should determine whether Anwar al-Awlaki's recruitment activities qualify as an immediate or imminent threat that would let a single agency of the U.S. government act as an unreviewable judge, jury and executioner.

"Whether or not it is an imminent threat, whether those sermons qualify or whether or not there is an immediacy to

what he is saying is precisely what should be argued in a court of law," said Anthony Romero, executive director of the ACLU.

Adam Szubin, the director of Treasury's foreign asset control agency, said Aug. 3 that the ACLU's charge that it had been prohibited from representing Nasser al-Awlaki was misleading.

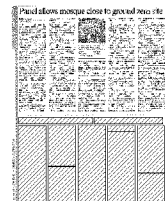
The ACLU applied for a license to represent the elder Mr. al-Awlaki 11 days ago, but has yet to receive it.

Mr. Szubin's statement continued, saying: "[The Office of Foreign Asset Control's] longstanding policy, as reflected in the general license, is to broadly authorize the provision of pro bono legal services to designated persons in legal proceedings challenging governmental action. To the extent that the particular legal services that the ACLU wishes to provide in this instance do not fall into any of the broad categories that are generally licensed, OFAC will work with the ACLU to ensure that the legal services can be delivered."

The ACLU and CCR, in a joint statement, said in response: "OFAC has neither issued a license nor stated that we don't need one. It suggests that it might eventually grant us a license for our work, but our application has already gone unanswered for eleven days. OFAC is well aware that the case relates to the government's decision to add a U.S. citizen to its 'targeted killing' list. To say that the matter is urgent is a dramatic understatement. Instead of issuing press releases, OFAC should simply issue us a license."

Dennis C. Blair, Mr. Obama's first director of national intelligence, told Congress on Feb. 3 that there is a list of Americans who had joined al Qaeda who could be targeted for killing.

Stewart Baker, the author of a



new book on technology and terrorism, "Skating on Stilts," and a former general counsel for the National Security Agency, said Mr. al-Awlaki was a legitimate target for the U.S. military despite his American citizenship.

"Awlaki has joined people who are engaged in military operations against the United States," Mr. Baker said. "He is at war voluntarily with the United States and therefore the United States can shoot back."