



Written by [Joe Wolverton, II, J.D.](#) on April 10, 2014

Federal Court: Drone Killing of U.S. Citizens Is Constitutional

On April 4, a federal court dismissed a  lawsuit challenging the constitutionality of the Obama administration's killing of three American citizens in two drone strikes in 2011.

The complaint was filed by the American Civil Liberties Union (ACLU) and the Center for Constitutional Rights (CCR) on behalf of the families of Anwar al-Awlaki, Samir Khan, and Abdulrahman al-Awlaki, Anwar al-Awlaki's 16-year-old son.

The complaint focuses on the violations to the Constitution arising from the assassinations of the three men, who were American citizens. Anwar al-Awlaki was born in the state of New Mexico, while his son Abdulrahman was born in Colorado. Khan was a naturalized U.S. citizen whose family lived in Charlotte, North Carolina. Anwar Al-Awlaki and Samir Khan were killed in Yemen on September 30, 2011, while Anwar's son Abdulrahman was killed in a separate drone strike on October 14, 2011.

According to the lawsuit:

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, in countries including Yemen, Somalia, Pakistan, Sudan, and the Philippines.

These killings rely on vague legal standards, a closed executive process, and evidence never presented to the courts.... 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.

All those reasonable arguments are moot now, in light of the court's tossing of the case.

Upon hearing the court's decision, Nasser Al-Awlaki, the father of Anwar and grandfather of Abdulrahman, said, as reported by the CCR:

I am deeply disappointed by the judge's decision and in the American justice system. What I am asking is simply for the government to account to a court its killings of my American son and grandson, and for the court to decide if those killings were lawful. Like any parent or grandparent would, I want answers from the government when it decides to take life, but all I have got so far is secrecy and a refusal even to explain.

Although Obama administration officials finally admitted that the three men were killed by the United States, they argued to the federal court that national security concerns should preclude the matter from being adjudicated.

While Judge Rosemary M. Collyer refused to accept the concept of the executive branch judging the constitutionality of its own actions, she dismissed the suit.

On the CCR website, the group's lead attorney, Maria LaHood, commented on the effect of Collyer's refusal to judge the legality of the murders:

Judge Collyer effectively convicted Anwar Al-Aulaqi posthumously based on the government's own



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say-so, and found that the constitutional rights of 16-year-old Abdulrahman Al-Aulaqi and Samir Khan weren't violated because the government didn't target them. It seems there's no remedy if the government intended to kill you, and no remedy if it didn't. This decision is a true travesty of justice for our constitutional democracy, and for all victims of the U.S. government's unlawful killings.

LaHood's understanding of the constitutional standards for government-sanctioned assassination is accurate. Any killing by the government must conform to the standards established by the Fifth Amendment. That key provision of the Bill of Rights guarantees that "no person shall ... be deprived of life, liberty, or property, without due process of law."

While every person killed in the name of the United States who has not received the due process the Constitution guarantees is a tragedy and a significant weakening of our moral and constitutional foundation, the case of Abdulrahman al-Awlaki is particularly disturbing and his killing unconscionable.

As he sat enjoying a roadside picnic in Yemen with a few second cousins and their friends — most of whom the young Colorado native had never met before that day — the teenager and all his companions were killed by two Hellfire missiles fired from a Predator drone.

A question that has never been answered by President Barack Obama — the man who authorizes such assassinations — is what law authorized the murder of Abdulrahman al-Awlaki.

Some in the Obama administration, including the president, have argued that such sudden strikes are justified in the face of a credible threat posed by the victim. No such claim has been made in the case of the younger al-Awlaki. He posed no threat to the national security of the United States, but he was killed without opportunity to defend himself before an impartial judge in a court of law.

Although he was killed three years ago, to date the Obama administration has never informed the country of any wrongdoing by this teenager, other than being related to a man (his father) who posted on the Internet anti-American videos that allegedly influenced others to commit crimes. A government-sanctioned assassination of such an individual is repugnant to all those who cherish life, liberty, and the due process that protects them.

An additional denial of due process came from the fact that no known attempt was ever made to capture this young man and take him into U.S. custody. Of course, that could be because he might actually have ended up in a court of law if he had been apprehended; and President Obama, a former lawyer, knows that trials can be long, messy, and unpredictable. It is much quicker and cleaner just to launch a missile and kill someone without going through the hassle of due process.

Finally, with regard to civilian casualties, not even the White House claims that Abdulrahman al-Awlaki was a member of al-Qaeda or any associated group believed to pose a threat to the United States. He was quite literally killed for being associated with one who was allegedly associated with those allegedly associated with al-Qaeda.

Not only was the target of the nighttime drone attack a civilian, but so were the boys sitting with him when two U.S. missiles lit up the area and killed them all. Being merely near a person related to someone accused of being associated with a group allegedly affiliated with an alleged al-Qaeda network is apparently sufficient provocation for becoming "collateral damage" in the U.S. "war on terror."

Judge Collyer's decision to dismiss this historic lawsuit witnesses the era into which our Republic has entered. The president of the United States sits in a chair in the White House rifling through dossiers of



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suspected terrorists. After listening to the advice of his clique of counselors, it is the president himself who designates who of the lineup is to be killed. As the *New York Times* explained in 2012:

Mr. Obama has placed himself at the helm of a top secret “nominations” process to designate terrorists for kill or capture, of which the capture part has become largely theoretical. He had vowed to align the fight against Al Qaeda with American values; the chart, introducing people whose deaths he might soon be asked to order, underscored just what a moral and legal conundrum this could be.

The legal conundrum has apparently now been solved in favor of the president’s power to add names to and subtract them from kill lists worthy of the bloodthirstiest Roman dictators.

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