



Written by [Michael Tennant](#) on September 1, 2010

Groups Sue to Prevent Targeted Killing of U.S. Citizens

Does the President of the United States have the authority to order the assassination of anyone, anywhere in the world? The obvious answer, based just on the Fifth Amendment's guarantee of due process of law prior to depriving someone of life, is no.

This has not prevented Presidents from asserting such authority, though they have usually done so covertly. President Barack Obama, however, has taken the extraordinary step of [asserting](#) such authority openly and including U.S. citizens among the potential targets.



One of those citizens is Anwar al-Awlaki, an American-born Muslim cleric who the government alleges is connected with various terrorists, including the 9/11 attackers, the Fort Hood shooter, and the "Underwear Bomber." Awlaki is believed to be hiding in Yemen, where he fled in 2001. The *New York Times* [reported](#) in April that Obama, with the approval of the National Security Council, had ordered both the CIA and the military to add Awlaki's name to their respective lists of assassination targets. In addition, National Public Radio [reported](#) in July that "there have been almost a dozen drone and airstrikes targeting Awlaki."

The American Civil Liberties Union and the Center for Constitutional Rights have taken up Awlaki's case, filing a [lawsuit](#) on his behalf, with his father serving as plaintiff since Awlaki cannot safely come out of hiding. The lawsuit, filed in federal court in the District of Columbia, names Obama, CIA Director Leon Panetta, and Defense Secretary Robert Gates as defendants.

The ACLU and CCR had previously sued for the right to represent Awlaki. The government had insisted that the organizations obtain a "license" from the Treasury Department before they could represent Awlaki. As *The New American* [reported](#), Treasury did grant such a license a day after the suit was filed. The groups, however, have chosen to proceed with the licensing lawsuit on the eminently reasonable grounds that American attorneys should not have to get the government's permission to serve as counsel for an American citizen.

The newly filed lawsuit specifically challenges "the executive's authority to carry out 'targeted killings' of U.S. citizens suspected of terrorism far from any field of armed conflict" and the "government's refusal to disclose the standard by which it determines to target U.S. citizens for death." It also, naturally, requests "an injunction prohibiting the targeted killing of" Awlaki.

The complaint explains the illegality of these policies thus:

Outside of armed conflict, both the Constitution and international law prohibit targeted killing except as a last resort to protect against concrete, specific, and imminent threats of death or serious physical injury. The summary use of force is lawful in these narrow circumstances only because the imminence of the threat makes judicial process infeasible. A targeted killing policy under which individuals are added to kill lists after a bureaucratic process and remain on these



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lists for months at a time plainly goes beyond the use of lethal force as a last resort to address imminent threats, and accordingly goes beyond what the Constitution and international law permit.

The suit also points out that while “executive officials have condemned [Awlaki’s] public statements and sermons” and have alleged that he has “taken on an ‘operational’ role in a terrorist organization,” the “U.S. government has not, however, publicly indicted [Awlaki] for any terrorism-related crime.” At the same, the suit says, “Yemeni officials ... have publicly stated that their government’s security forces are taking measures to arrest [Awlaki] for possible charge and trial”; and the Yemeni government has requested that the United States provide them with any evidence our government has against him. In short, the executive branch of the U.S. government is acting as judge, jury, and executioner in violation of due process of both domestic and international law.

Awlaki’s complaint presents four claims for relief. First, the targeted-killings policy violates the Fourth Amendment’s prohibition against unreasonable seizure in that it “seizes” its targets, including U.S. citizens, by killing them. Second, it violates the Fifth Amendment “right not to be deprived of life without due process.” (Of this claim, Glenn Greenwald [writes](#): “Just re-read that and contemplate that in Barack Obama’s America, that right even needs to be contested.) Third, the policy “violates treaty and customary international law by authorizing ... the killing of individuals ... without judicial process”; this claim is brought on behalf of Awlaki’s father, under the Alien Tort Statute, “to prevent the injury he would suffer if Defendants were to kill his son.” Fourth, the policy “violates the Fifth Amendment by authorizing the killing of U.S. citizens ... on the basis of criteria that are secret.”

Lest one think that Awlaki has forfeited his constitutional rights by fleeing to Yemen, Greenwald explains that the notion that the Constitution does not apply to Americans abroad is patently false and, furthermore, that the common belief that the Constitution only applies to American citizens is just as false and “has been squarely rejected by the Supreme Court for more than a century.”

Greenwald elaborates on the significance of many Americans’ reactions to the Awlaki case and the whole targeted-killings policy:

What I’ve found most disturbing about this controversy from the start is how many Americans are willing to blindly believe the Government’s accusations of Terrorism against their fellow citizens — provided they’re Muslims with foreign-sounding names — without needing to see any evidence at all. All government officials have to do is anonymously leak to the media extremely vague accusations against someone without any evidence presented (*Awlaki is involved in multiple plots!!*), and a substantial number of people will then immediately run around yelling: *Kill that Terrorist!!*

It’s an authoritarian scene out of some near-future dystopian novel, yet it’s exactly what is happening. This is precisely the reaction of a substantial portion of the population which has been trained to believe every unproven government accusation of Terrorism. The mere utterance of the accusation — *Terrorist* — sends them into mindless, fear-driven submission, so extreme that they’re willing even to endorse a Presidential-imposed death penalty on American citizens with no due process: about the most tyrannical power that can be imagined, literally. The fact that [this very same Government is continuously and repeatedly wrong when it makes those accusations](#) does not seem to be even a cause for hesitation among this faction. They just keep dutifully reciting the ultimate authoritarian anthem: *if my Government says it, it must be true, and I don’t need to see any evidence or indulge any of this bothersome process stuff — trials and courts or whatever — before punishment is meted out, including*



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the death penalty.

This attitude is not limited to one political party, either, says Greenwald: “The power-revering factions on the Right have joined with some Democratic loyalists who are comfortable with any power now that their Party controls the White House.” Moreover, he adds, the attitude of many Democrats is that “it was an extreme outrage of the highest order — a shredding of the Constitution — when George Bush imprisoned or even just eavesdropped on American citizens without due process. But it’s perfectly acceptable — even noble — for Barack Obama to kill them without any due process.”

As vile a terrorist supporter as Awlaki might be — and so far all we have are allegations but no formal charges — he still deserves to win this case. If he loses, the courts will have officially established that the President may order the assassination of anyone, anywhere, for any unstated reason. When Presidents can spy on their own citizens, imprison them for life, and murder them — all in complete secrecy and without any semblance of judicial process — just how far away from full-blown dictatorship are we?

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