

From [Center for Constitutional Rights](#) | Original Article

A federal court today acknowledged the serious issues raised by a lawsuit challenging the Obama administration's targeted killing policy, but dismissed the case on the grounds that the plaintiff did not have legal standing to challenge the targeting of his son, and that the case raised "political questions" not subject to court review. The **Center for Constitutional Rights (CCR)** and the **American Civil Liberties Union**

filed the lawsuit in August, charging that the administration's asserted authority to execute U.S. citizens outside combat zones who do not pose an imminent threat violates the U.S. Constitution and international law. The judge did not rule on the merits of the case.

Despite granting the government's motion to dismiss the case, Judge John Bates of the U.S. District Court for the District of Columbia called the case "unique and extraordinary," said it presented "[s]tark, and perplexing, questions" and found that the merits "present fundamental questions of separation of powers involving the proper role of the courts in our constitutional structure." Ultimately, however, he dismissed the case on procedural grounds and found that "the serious issues regarding the merits of the alleged authorization of the targeted killing of a U.S. citizen overseas must await another day..." "If the court's ruling is correct, the government has unreviewable authority to carry out the targeted killing of any American, anywhere, whom the president deems to be a threat to the nation," said

Jameel Jaffer, Deputy Legal Director of the ACLU

. "It would be difficult to conceive of a proposition more inconsistent with the Constitution or more dangerous to American liberty. It's worth remembering that the power that the court invests in the president today will be available not just in this case but in future cases, and not just to the current president but to every future president. It is a profound mistake to allow this

unparalleled power to be exercised free from the checks and balances that apply in every other context. We continue to believe that the government's power to use lethal force against American citizens should be subject to meaningful oversight by the courts."

The ACLU and CCR were retained by Nasser Al-Aulaqi to bring a lawsuit in connection with the government's decision to authorize the targeted killing of his son, U.S. citizen Anwar Al-Aulaqi. The lawsuit asked the court to rule that, outside the context of armed conflict, the government can carry out the targeted killing of an American citizen only as a last resort to address an imminent threat to life or physical safety. The lawsuit also asked the court to order the government to disclose the legal standard it uses to place U.S. citizens on government kill lists.

Judge Bates did not decide these issues, however, because he found that the plaintiff did not have the right to assert his son's interests in court, and "that there are circumstances in which the Executive's unilateral decision to kill a U.S. citizen overseas is 'constitutionally committed to the political branches' and judicially unreviewable." Regarding the latter "political question" issue, the judge acknowledged "the somewhat unsettling nature of its conclusion."

"The court refused to hear a claim on behalf of a U.S. citizen under threat of death by his own government that his personal constitutional rights have been violated – exactly what the court itself acknowledges it appears no court has ever done," said

CCR attorney Pardiss Kebriaei.

"The court's holding on the political question doctrine is indeed 'unsettling.'"

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?"

The lawsuit was filed against CIA Director Leon Panetta, Defense Secretary Robert Gates and President Barack Obama in the U.S. District Court for the District of Columbia. Attorneys on the case are Jaffer, Ben Wizner, Jonathan Manes and Jennifer Turner of the ACLU; Kebriaei, Maria LaHood and Bill Quigley of CCR; and Arthur B. Spitzer of the ACLU of the Nation's Capital. Co-counsel in Yemen is Mohammed Allawo of the Allawo Law Firm and the National Organization for Defending Human Rights (HOOD).

In response to a related case challenging regulations that prohibited the ACLU and CCR from bringing a lawsuit on behalf of Nasser al-Aulaqi without first obtaining a license from the Treasury Department's Office of Foreign Assets Control (OFAC), the Treasury today issued significant amendments to its regulations. Among other changes, the new regulations mean that uncompensated attorneys will no longer be required to apply for a license in order to represent

individuals before any domestic courts or administrative agencies.

Today's decision and other documents related to the targeted killing case are available online at www.ccrjustice.org/targetedkillings. Documents related to the OFAC case are available online at: www.aclu.org/ofac

Judge Acknowledges ACLU And CCR Case Raises Important Questions About Legality Of Obama Administration's Claimed Authority To Kill Americans Outside Combat Zones