

# Center for Constitutional Rights

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

**<https://ccrjustice.org/home/what-we-do/our-cases/ccr-and-aclu-v-ofac-al-aulaqi-v-obama>**

## Campaign and Advocacy

The case was dismissed on December 7, 2010, on standing and because the court ruled that it raised "political questions" not subject to court review. The court did not rule on the merits of the case.

In June 2010, the Center for Constitutional Rights and the American Civil Liberties Union were retained by Nasser Al-Aulaqi, the father of Anwar Al-Aulaqi, to bring a lawsuit in connection with the governments decision to authorize the killing of his son, a U.S. citizen who had been placed on secret kill lists maintained by the CIA and the U.S. militarys covert Joint Special Operations Command (JSOC) earlier that year. Shortly thereafter, the Secretary of the Treasury designated Anwar al-Aulaqi a Specially Designated Global Terrorist, which made it a crime for lawyers to provide *pro bono* legal services for his benefit without first seeking a license from the Office of Foreign Assets Control (OFAC). CCR and the ACLU sought a license, but after the governments failure to grant one despite the urgency created by the outstanding authorization for Al-Aulaqis killing, CCR and the ACLU brought suit challenging the legality and constitutionality of the licensing scheme. The government thereupon provided the license.

In August 2010, CCR and the ACLU filed suit on behalf of Nasser Al-Aulaqi, challenging the governments decision authorizing the CIA and JSOC to target and kill his son in Yemen. Outside of the context of armed conflict, the Constitution and international human rights treaties the U.S. has ratified prohibit the state from depriving persons of life without due process, except as a last resort to protect against an imminent threat of deadly harm. Anwar Al-Aulaqi was being targeted far from the United States war in Afghanistan, and the standing order for his killing flew in the face of the plain meaning of the laws imminence requirement. The district court in Washington, D.C., dismissed the case on jurisdictional grounds, without reaching the merits. This case is part of CCRs work challenging unlawful drone killings by the United States and other fundamental rights violations being committed in the name of national security.

Federal court releases previously secret government memo outlining legal justification for Al-Aulaqi killing

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The U.S. Court of Appeals for the Second Circuit orders the release of the July 2010 Department of Justice memo in response to a Freedom of Information Act (FOIA) lawsuit brought by *The New York Times* and the ACLU.

CCR and ACLU file lawsuit against senior CIA and military officials challenging the killing of Anwar Al-Aulaqi, Anwar's sixteen-year-old son, Abdulrahman Al-Aulaqi, and Samir Khan.

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Full details available on the [Al-Aulaqi v. Panetta](#) case page.

U.S. drone strike kills Anwar Al-Aulaqi in Yemen

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In addition to Al-Aulaqi, the strikes kill U.S. citizen Samir Khan and three others.

DC District Court Judge John Bates finds that the plaintiff does not have legal standing to challenge the targeting of his son, and that the case raises political questions not subject to court review. The opinion, though, does not rule on the merits of the case and acknowledges the serious issues raised by the lawsuit. Judge Bates calls the case unique and extraordinary, says it presents [s]tark, and perplexing, questions and finds that the merits present fundamental questions of separation of powers involving the proper role of the courts in our constitutional structure. He, finds, however, 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

Oral argument focuses on the procedural and substantive issues raised by the government in its motion to dismiss the lawsuit.

CCR and ACLU file a brief in response to the government's opposition to the preliminary injunction motion and motion to discuss the lawsuit. In its opposition and motion, the government maintains that Nasser Al-Aulaqi lacks standing to bring the case, that the issues are political questions not appropriate for judicial review, and that litigation would risk disclosure of "state secrets." In response, CCR and the ACLU argue that Dr. Al-Aulaqi has appropriate standing to assert his son's constitutional claims, that the determination of those claims present squarely justiciable issues, that Dr. Al-Aulaqi has also stated an appropriate claim in his own right under the Alien Tort Statute against the extra-judicial killing of his son, and that "state secrets" do not foreclose litigation of his claims.

Three declarations were submitted in support of the brief and the premise that the targeted killing of Dr. Al-Aulaqi's son in Yemen would occur outside the context of armed conflict, including from [Professor Bernard Haykel](#) of Princeton University addressing factual issues concerning Yemen and Al-Qaeda in the Arabian Peninsula, and from [Professor Mary Ellen O'Connell](#) of Notre Dame University addressing legal issues concerning armed conflict.

The lawsuit, on behalf of Dr. Nasser Al-Aulaqi against President Obama, CIA Director Panetta and Defense Secretary Gates, challenges their decision to authorize the targeted killing of his son, U.S. citizen Anwar Al-Aulaqi, in violation of the Constitution and international law. CCR and the ACLU also file a preliminary injunction motion, which asks the court to declare it illegal for the government to kill Anwar Al-Aulaqi unless he is found to present a concrete, imminent threat and there are no other means besides lethal force that could be used to stop the threat. While the government can legitimately use lethal force against civilians in certain circumstances outside of a judicial process, the authority claimed by senior Obama administration officials is far broader than what the Constitution and international law allow. Under international human rights law, lethal force may be used in peacetime only when there is an imminent threat of deadly attack and when lethal force is a last resort. A program in which names are added to a list through a secret bureaucratic process and remain there 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.

Moreover, targeting individuals for killing who are suspected of crimes but have not been convicted without oversight, due process or disclosed standards for being placed on the kill list also poses the risk that the government will target the wrong people. Since 9/11, the U.S. government has detained thousands of men as terrorists, only for courts or the government itself to discover later that the evidence was wrong or unreliable and release them.

CCR and the ACLU had submitted a request to the Treasury Department's Office of Foreign Assets Control (OFAC) in July seeking authorization to provide pro bono legal services to Nasser Al-Aulaqi. The OFAC requirements generally make it illegal to provide any service, including legal representation, to or for the benefit of an individual who is a Specifically Designated Global Terrorist (SDGT). A lawyer who provides legal representation for the benefit of a designated person without getting special permission is subject to criminal and civil penalties. OFAC designated Anwar Al-Aulawi as a SDGT on July 23, 2010. In early August, CCR and the ACLU filed suit against OFAC, charging that OFAC exceeded its authority by subjecting uncompensated legal services to a licensing requirement, and that OFAC's regulations violate the First Amendment, the Fifth Amendment and the principle of separation of powers. The lawsuit asked the court to invalidate the regulations and to make clear that lawyers can provide representation for the benefit of designated individuals without first seeking the government's consent. The next day, OFAC licensed CCR and the ACLU to represent Nasser Al-Aulaqi.

U.S. reportedly authorizes killing of U.S. citizen Anwar Al-Awlaki

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Several U.S. newspapers report, citing governmental officials, that the U.S. has authorized the targeted killing of Anwar Al-Aulaqi. After the *Los Angeles Times* first reported on the possibility in January, former director of national intelligence Dennis Blair testified in February that taking direct action against an American was possible if specific permission were obtained.

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