



Written by [Joe Wolverton, II, J.D.](#) on September 25, 2012

Fed. Appeals Court Skewers CIA on Charade of Secrecy About Drone Program

During a hearing on a lawsuit challenging the CIA's persistent stonewalling of a petition seeking details of its death-by-drone program, federal appeals court judges grilled government lawyers on the intelligence agency's need to keep the scheme secret.

Attorneys representing the American Civil Liberties Union (ACLU) appeared September 20 before a three-judge panel of the D.C. Court of Appeals defending a [Freedom of Information Act \(FOIA\) request to the CIA](#) for greater information on the policies and procedures guiding its use of drones to kill suspected enemies of the United States.



In order to shake the documents loose from the government's grip, the ACLU and a group of reporters have filed several Freedom of Information Act petitions requesting that the federal government provide greater access to operational details of the drone program and the legal arguments forwarded by the Obama administration in justifying not only the use of the drones, but their use in the killing of thousands of people in Pakistan alone.

The ACLU's Chris Calabrese [told the Associated Press](#) that the recently composed code of conduct for the drone industry is respectable, but does not go far enough.

"I think it's really important that they're paying attention to privacy. That's to their credit. But I can't imagine they expect this to quell privacy concerns," he told the Associated Press.

"I think Congress needs to step in. This is new technology. It's potentially incredibly invasive. People are profoundly discomforted by the idea of drones monitoring them," he continued.

Maybe, maybe not.

[According to a recent](#) survey conducted by the Monmouth University Polling Institute, nearly 80 percent of respondents supported using drones for search-and-rescue missions.

Over 60 percent were in favor of drones being used to search for criminals.

The ACLU's first petition was filed in January 2010 and "seeks to learn when, where and against whom drone strikes can be authorized, and how the U.S. ensures compliance with international laws relating to extrajudicial killings."

Recognizing the absurdity of the government's well-practiced talent for talking out of both sides of its mouth, lawyers for the ACLU told the judges that recently several high-ranking members of the Obama administration have made public statements acknowledging the use of drones in the killing of individuals targeted by the federal government for their alleged involvement in plans to threaten national security.



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In their [brief](#), the ACLU pointed out that

in response to a question about drone strikes at a public forum in 2009, then-Director Panetta called such strikes “the only game in town in terms of confronting and trying to disrupt the al-Qaeda leadership.” (The statement is even published on the CIA’s own website.) More recently, Panetta [revealed](#) to *60 Minutes* that, as CIA director, he made recommendations to the president regarding the lethal targeting of U.S. citizens. President Obama has also repeatedly discussed the drone program, including by taking credit for the drone strike that killed U.S. citizen Anwar al-Awlaki in Yemen last year.

[Pro Publica adds:](#)

The ACLU collected nearly two hundred on- and off-the-record statements to the media by current and former U.S. officials about the CIA’s use of drones for targeted killing.

The statements cover most of Obama’s first term in office. Taken together, they show the extent to which the government keeps disclosures about the CIA’s drone war mostly on its own terms.

The government answered that neither these examples, nor similar [statements made by White House senior counterterrorism adviser John Brennan](#) are express admissions by the federal government of the CIA’s participation in the program to target and kill suspected militants.

Such arguments seemed not to convince the court, however. In a question put to the government’s legal counsel, Judge Merrick Garland recalled Brennan’s speech. In that address delivered in April, Brennan declared “the United States government conducts targeted strikes against specific al-Qaeda terrorists.”

“Isn’t that an official acknowledgment that the CIA is involved with the drone program?” Garland asked [according to the Associated Press](#).

Apparently not. Stuart F. Delery, acting assistant attorney general, responded that Brennan didn’t directly tie the drone program to the CIA, as there are 17 other agencies in the U.S. intelligence community.

The Associated Press aptly described the exchange: “Garland said that the government was asking the court to say “the emperor has clothes, even when the emperor’s boss says the emperor doesn’t have clothes.”

As [The New American has reported](#), since the FOIA was filed the CIA has consistently refused to either admit or deny that it possesses documentation relating to the policy of preemptive assassination.

This procedural parry is known as a Glomar response. In such a maneuver, the agency that is the subject of the FOIA inquiry “neither confirms nor denies” the existence of the material requested.

Named for [a ship built by the Central Intelligence Agency \(CIA\)](#) to covertly recover a sunken Soviet submarine, a Glomar response typically is given in two scenarios.

First, where a refusal to forward the documents would have the effect of admitting that they actually exist, thus compromising national security.

Second, law enforcement agencies will give a Glomar response when producing the requested information would stigmatize a person named in the documents being sought.

At the hearing on September 20, the government claims it is no longer standing behind the Glomar shield. The Associated Press story reported that Delery informed the court that the CIA can “now



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publicly acknowledge that it possesses records responsive to the ACLU's FOIA request." What it will not do, however, is "provide the number, nature or categorization of those records."

Should the CIA and the White House persist in their drive to eliminate anyone believed by them to merit summary execution, the fundamental constitutional principle of due process would be obliterated forever.

This fundamental restraint on the royal presumption of the power to lop off heads on command was incorporated by our Founders in the Bill of Rights, particularly in the Fifth Amendment that says in relevant part: "No person shall ... be deprived of life, liberty, or property, without due process of law."

Moreover, the federal government's nearly daily approval of another drone-delivered assassination is an effrontery to over 650 years of our Anglo-American law's protection from autocratic decrees of death without due process of law.

When any president or bureaucrat usurps power by placing names on a kill list and then having those people punished without opportunity to answer the accusations against them, that person places our Republic on a trajectory toward tyranny and government-sponsored terrorism.

In fairness, it would be another matter if those targeted and executed by the president or the CIA were armed enemy combatants. They are not. Were these suspected "militants" enemy soldiers captured during wartime they would be necessarily afforded certain rights granted to POWs. Those slated for assassination are not allowed any rights — neither the due process rights given to those accused of crimes nor the rights of fair treatment given to enemies captured on the battlefield. The White House has assumed all power over life and death and created *ex nihilo* a new category of individual — one deprived of rights altogether.

Photo of Predator drone: AP Images



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