



Written by [Joe Wolverton, II, J.D.](#) on August 5, 2010

Feds Grant Permission to Challenge Targeting of U.S. Citizens

On Wednesday, officials from the Department of the Treasury removed a hurdle from the path of two organizations seeking to challenge the constitutionality of a government directive authorizing the use of lethal force against American citizens.

The Treasury Department's decision was handed down just one day after the American Civil Liberties Union and the Center for Constitutional Rights filed suit against the United States of America for refusing their initial request for a license to have the issue of the constitutionality of an executive order that authorizes the targeting of American citizens designated as terrorists.



The regulation at issue in the case is Executive Order 13224, which was signed on September 23, 2001 by President George W. Bush, establishing the label of "Specially Designated Global Terrorist (SDGT)." A person so designated is placed under an official embargo and the government of the United States is required to block the assets of that person. The rationale for such an action is the suspicion that the person or organization is engaged in terrorist activities.

Under the terms of the executive order, the designation as an SDGT allows the United States to block the assets of foreign individuals and entities that commit, or pose a significant risk of committing, acts of terrorism, and to block the assets of individuals and entities that provide support, services, or assistance to, or otherwise associate with, terrorists and terrorist organizations designated under the order, as well as their subsidiaries, front organizations, agents, and associates.

The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury maintains a list of SDGTs.

The individual so designated that is at the center of the current controversy is Anwar al-Awlaki. Awlaki is an American-born son Yemeni parents who has been linked to Nidal Hasan, the psychiatrist accused of murdering 13 people in a Ft. Hood shooting spree, as well as Umar Farouk Abdulmutallab, the Nigerian man accused of trying to blow up a Northwest Airlines flight over Detroit on Christmas Day 2009.

Recently, the government has insisted that there is a tie binding Awlaki to Faisal Shahzad who pled guilty last month to attempting to detonate a car bomb in Times Square.

[The New American](#) has chronicled the story of Awlaki since officials associated his name with Hasan



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and news of his yearlong electronic correspondence with the Army major surfaced after the November 5 massacre.

Awlaki is a self-styled cleric suspected of having ties to a few of the members of al-Qaeda terrorists who carried out the attacks of September 11, 2001. Awlaki fled to Yemen to escape the heightened scrutiny that followed the investigation into the events leading up to the events of 9/11.

The government of the United States believes that Awlaki is hiding in the mountainous coastal regions of Yemen and that he is being harbored by the branch of al-Qaeda based in the region, known as al-Qaeda in the Arabian Peninsula (AQAP).

It was reported by the [New York Times](#) in April that President Barack Obama had directed the CIA and the military to include Awlaki's name on the infamous hit list. Awlaki is believed to be the first American to be added to the list.

This dubious distinction spurred two American civil rights groups to work on behalf of Awlaki's father, Nasser, to have the targeting of his son rendered invalid for violating the constitutionally guaranteed right to life and due process being denied his son.

The last straw was the official designation on July 16 of Awlaki on the list of SDGT. This assignment had the legally binding effect of freezing Awlaki's assets and proscribing any American citizen from having dealings with the person whose name is now marked with the taint of "terrorist."

In the document filed with the court, the groups seeking the license claimed that their request must be expedited as they believe that "the ability to file a lawsuit as quickly as possible may spell the difference between life and death for Anwar al-[Awlaki]."

Upon receiving notice of the favorable ruling, the ACLU did not celebrate, rather they announced their intention to zealously pursue their action against the government and the constitutionality of the officially sanctioned killing of an American citizen. "While we appreciate [the government's] quick response to our lawsuit, we continue to believe that the regulations are unconstitutional because they require lawyers who are providing uncompensated legal representation to seek the government's permission before challenging the constitutionality of the government's conduct," a spokesman said.

As a result of the decision, the attorneys for the two groups are now empowered to shine the light of legal scrutiny on some of the most central constitutionally suspect aspects of the ongoing "War on Terror." Most notably, there is the continuing debate over the sustainability of the definition of an "enemy combatant" that is presently applied. Also, whether those classified as an "enemy combatant," regardless of citizenship, have a protected right to a trial on the merits of the accusations against them.



The man who is the nominal client of the ACLU and the Center for Constitutional Rights, Naser al-Awlaki, contends that his son is not a terrorist and that the administration is trumping up most of the charges leveled against his son and basing them on the most tenuous of assumed associations.

The senior al-Awlaki hired the two groups early in July to initiate a formal challenge to government's placement of his son's name on a list of people to be killed with the permission of the United States.

Lawyers from the organizations accepted the job on a pro bono basis and began crafting a complaint averring that the executive branch was constitutionally forbidden from ordering the death of a person without allowing the "due process of the law" to run its course, that is to say, without a proper trial, as well as arguing that the very regulatory scheme that created the SDGT label is "arbitrary and capricious" and violates the rights afforded to all citizens by the First and Fifth Amendments to the Constitution.

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