



April 28, 2010

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. President:

On behalf of the ACLU and its 500,000 members, I am writing to express our profound concern about recent reports indicating that you have authorized a program that contemplates the killing of suspected terrorists – including U.S. citizens – located far away from zones of actual armed conflict. If accurately described, this program violates international law and, at least insofar as it affects U.S. citizens, it is also unconstitutional.

The U.S. is engaged in non-international armed conflict in Afghanistan and Iraq and the lawfulness of its actions must be judged in that context. The program that you have reportedly authorized appears to envision the use of lethal force not just on the battlefield in Iraq, Afghanistan, or even the Pakistani border regions, but anywhere in the world, including against individuals who may not constitute lawful targets. The entire world is not a war zone, and wartime tactics that may be permitted on the battlefields in Afghanistan and Iraq cannot be deployed anywhere in the world where a terrorism suspect happens to be located. Your administration has eschewed the rhetoric of the “Global War on Terror.” You should now disavow the sweeping legal theory that underlies that slogan.

Even in an armed conflict zone, individuals may be targeted only if they take a direct part in hostilities, for such time as they do so, or if they have taken up a continuous combat function. Propagandists, financiers, and other non-combat “supporters” of hostile groups cannot lawfully be targeted with lethal force. Applicable international humanitarian law also prohibits targeted killing except in order to prevent an individual’s future participation in hostilities; fighters cannot be targeted solely as retribution for past actions. Furthermore, basic law-of-armed-conflict principles require that in such operations, civilians who are not taking direct part in hostilities must not be targeted, precautions must always be taken to spare the civilian population, anticipated civilian casualties must never be disproportionate to the expected concrete military advantage, and strikes must only occur when required by military necessity.

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Outside armed conflict zones, the use of lethal force by the United States is strictly limited by international law and, at least in some circumstances, the Constitution. These laws permit lethal force to be used only as a last resort, and only to prevent imminent attacks that are likely to cause death or serious physical injury. According to news reports, the program you have authorized is based on “kill lists” to which names are added, sometimes for months at a time, after a secret internal process. Such a program of long-premeditated and bureaucratized killing is plainly not limited to targeting genuinely imminent threats. Any such program is far more sweeping than the law allows and raises grave constitutional and human rights concerns.

In a series of cases involving prisoners currently held by the U.S. at Guantanamo Bay, your administration has taken the position that the 2001 Authorization for Use of Military Force permits the detention of individuals captured anywhere in the world, even individuals who have no connection to the battlefield. For example, your administration has advanced that argument in the case of one of our clients – Mohammedou Salahi – who was detained in Mauritania. We do not think the AUMF can be read so broadly. In *Hamdi v. Rumsfeld*, the Supreme Court interpreted the AUMF consistently with international law, permitting the detention of a U.S. citizen captured in Afghanistan only because the detention of *battlefield* combatants was “so fundamental and accepted an incident to war as to be an exercise of the ‘necessary and appropriate force’ Congress has authorized the President to use.” 542 U.S. 507, 518 (2004). But even if the AUMF could be read to authorize the *detention* of suspected terrorists apprehended far from any zone of actual combat, it is a far more radical thing to propose that the AUMF authorizes the extrajudicial *execution* of those people. Outside of armed conflict zones, human rights law and the Constitution prescribe strict limits on the use of lethal force, limits that are narrower than those applicable in armed conflicts, and narrower than the standards governing detention. Targeted killing of suspects away from the battlefield is not a “fundamental and accepted . . . incident to war.” Based on the available information, neither does your targeted killing program appear to be an exercise of “necessary and appropriate force” used only as a last resort to prevent imminent threats. The AUMF may be broad, but the authority it granted was not limitless, and it cannot now be construed to have silently overridden the limits prescribed by international law.

The program you have reportedly endorsed is not simply illegal but also unwise, because how our country responds to the threat of terrorism will in large measure determine the rules that govern *every* nation’s conduct in similar contexts. If the United States claims the authority to use lethal force against suspected enemies of the U.S. anywhere in the world – using unmanned drones or other means – then other countries will regard that conduct as justified. The prospect of foreign governments hunting and killing their enemies within our borders or those of our allies is abhorrent.

The program you have endorsed also risks the deaths of innocent people. Over the last eight years, we have seen the government over and over again detain men as “terrorists,” only to discover later that the evidence was weak, wrong, or non-existent. Of the many hundreds of individuals previously detained at Guantánamo, the vast majority have been released or are awaiting release. Furthermore, the government has failed to prove the

lawfulness of imprisoning individual Guantánamo detainees in 34 of the 48 cases that have been reviewed by the federal courts thus far, even though the government had years to gather and analyze evidence for those cases and had itself determined that those prisoners were detainable. This experience should lead you to reject out of hand a program that would invest the CIA or the U.S. military with the unchecked authority to impose an extrajudicial death sentence on U.S. citizens and others found far from any actual battlefield.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Romero". The signature is stylized with a large, looped initial "A" and a cursive "Romero".

Anthony D. Romero  
Executive Director