

IS THE GOVERNMENT USING OFAC TO PREVENT DUE PROCESS?

The ACLU and CCR just had a conference call to talk about their suit challenging the licensing scheme the Treasury Department's Office of Foreign Asset Control uses to prevent lawyers from representing those on OFAC's designated terrorist list. Much of the discussion pertained to whether Anwar al-Awlaki could be legitimately considered an enemy combatant given his alleged incitement of attacks on the US.

But I was most interested in the timing. As the CCR summary notes, Awlaki's father, Nasser al-Awlaki, first retained the ACLU and CCR in "early July" to challenge the assassination order on his son on due process grounds. Within weeks, on July 16, 2010, the government designated Anwar al-Awlaki a specially designated global terrorist. At that point, ACLU and CCR had to stop their work on suing the government and apply for a license allowing them to represent the Awlakis. As ACLU Executive Director Anthony Romero noted, listing Awlaki put lawyers in neutral, "while we were in 3rd or 4th gear a few weeks ago" as they wait for the bureaucratic process of getting a license play out.

I asked whether they thought this was intentional—that is, whether they thought the government had designated Awlaki a terrorist so as to make it harder for the ACLU and CCR to represent him. Romero admitted the timing of the listing "did raise our eyebrows." He said the timing raises the question of "whether OFA is being used to impede lawyers' ability to challenge" programs like the kill list. And ACLU Attorney Ben Wizner noted how long after the government put Awlaki on the kill list it was before they started to designate him a terrorist and freeze his assets.

Implicit in my question was how the government knew the ACLU and CCR were representing the Awlakis. I will work to clarify that, though Romero did say that the lawyers on the case had traveled to Yemen and started meeting with the family.

In any case, add the timing of the government's designation of Anwar al-Awlaki as a terrorist to the list of other things that already stink about the government's efforts to kill him with no due process.

Note: The quotes in this are my transcriptions of the call itself. Since I'm mid-move, I didn't manage to record the call, but will check the quotes for attribution and accuracy later this PM.