

WILL THE GOVERNMENT FINALLY USE A LAWSUIT AS AN OPPORTUNITY TO EXPLAIN THE ANWAR AL-AWLAKI KILLING?

When the ACLU and CCR represented Nasser al-Awlaki in a suit to prevent the government from killing Nasser's son Anwar unless the government could prove he was an imminent threat, Judge John Bates threw the case out on standing grounds. The civil rights groups think they'll face no such problem on the suit alleging wrongful death they just filed suing Leon Panetta, David Petraeus, SOCOM Commander William McRaven, and JSOC Commander Joseph Votel. That's because Nasser al-Awlaki—suing on behalf of both his son and grandson, Abdulrahman—and Sarah Khan—suing on behalf of her son Samir, who was killed in the strike on Anwar—represent the estates of the dead men, so they should clearly have standing.

If that's right, the courts will have to find some other way to punt on this issue. Alternately, for the first time, the government will have to provide evidence to a court to judge whether or not it wrongly killed three American citizens.

That's one of the big issues behind this suit—an issue which I hope to follow up on later. As the Director of ACLU's National Security Project, Hina Shamsi, noted, while the facts alleged against Anwar (though not against his son or Samir Khan) are very serious, none of them have been attested in court yet (the government submitted some of the facts in the Abulmutallab sentencing, but only after the trial was over).

We don't want to minimize the seriousness of the allegations [against Anwar al-Awlaki]. It is the role of the

courts to distinguish between actual evidence and mere allegations.

She describes this as an opportunity for the government. If the government has evidence Awlaki presented an imminent threat, this case is an opportunity to present the evidence so it can be tested.

Of course, the government has had that opportunity three times before: in the earlier Nasser al-Awlaki suit, the Abdulmutallab trial, and the FOIA response. The government's efforts to avoid using that opportunity have gotten more and more ridiculous. But since they appear to have no shame on this point, I'm betting they find a way to avoid doing so now.