

# THE ADMINISTRATION HAS NOT RESPONDED TO OVER 10 CONGRESSIONAL REQUESTS FOR TARGETED KILLING MEMO

Back in September 2010, when the Administration successfully argued that whether or not the government had the authority to kill Anwar al-Awlaki was a matter for the Executive and Congressional Branches to decide, it claimed Congress served as a check on that power.

The nonjusticiability of the plaintiff's claims in this Court "does not leave the executive power unbounded." *Schneider*, 412 F.3d at 200. "The political branches effectively exercise such checks and balances on each other in the area of political questions[,] and "[i]f the executive in fact has exceeded his appropriate role in the constitutional scheme, Congress enjoys a broad range of authorities with which to exercise restraint and balance." *Id.* Accordingly, "the allocation of political questions to the political branches is not inconsistent with our constitutional tradition of limited government and balance of powers." *Id.*

The Administration's behavior in the interim period has proven those assurances to be utterly false. Congress has asked the Administration on more than 10 separate occasions for the OLC memo authorizing the killing of Anwar al-Awlaki (many of these 10 documented requests refer to earlier requests, and Pat Leahy sent President Obama a letter that his office could not share).

And yet here we are, 22 months after the Administration assured Judge John Bates that Congress exercised some kind of check on the Executive, at least 17 months after members of Congress first started asking for the legal analysis, and the Administration has not responded to those requests.

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Here are the requests.

February 2011: Ron Wyden asks the Director of National Intelligence for the legal analysis behind the targeted killing program. (1)

April 2011: Ron Wyden calls Eric Holder to ask for legal analysis on targeted killing. (2)

May 2011: DOJ responds to Wyden's request, yet doesn't answer key questions.

May 18-20, 2011: DOJ (including Office of Legislative Affairs) discusses "draft legal analysis regarding the application of domestic and international law to the use of lethal force in a foreign country against U.S. citizens" (this may be the DOJ response to Ron Wyden).

October 5, 2011: Chuck Grassley sends Eric Holder a letter requesting the OLC memo by October 27, 2011. (3)

November 8, 2011: Pat Leahy complains about past Administration refusal to share targeted killing OLC memo. (4)

February 8, 2012: Ron Wyden follows up on his earlier requests for information on the targeted killing memo with Eric Holder. (5)

March 7, 2012: Tom Graves (R-GA) asks Robert Mueller whether Eric Holder's criteria for the targeted killing of Americans applies in the US; Mueller replies he'd have to ask DOJ. Per his office today, DOJ has not yet provided Graves with an answer. (6)

March 8, 2012: Pat Leahy renews his request for the OLC memo at DOJ appropriations hearing. (7)

June 7, 2012: After Jerry Nadler requests the memo, Eric Holder commits to providing the House Judiciary a briefing—but not the OLC memo—within a month. (8)

June 12, 2012: Pat Leahy renews his request for the OLC memo at DOJ oversight hearing. (9)

June 27, 2012: In Questions for the Record following a June 7 hearing, Jerry Nadler notes that DOJ has sought dismissal of court challenges to targeted killing by claiming “the appropriate check on executive branch conduct here is the Congress and that information is being shared with Congress to make that check a meaningful one,” but “we have yet to get any response” to “several requests” for the OLC memo authorizing targeted killing. He also renews his request for the briefing Holder had promised. (10)

July 19, 2012: Both Pat Leahy and Chuck Grassley complain about past unanswered requests for OLC memo. (Grassley prepared an amendment as well, but withdrew it in favor of Cornyn’s.) Leahy (but not Grassley) votes to table John Cornyn amendment to require Administration to release the memo.

July 24, 2012: SSCI passes Intelligence Authorization that requires DOJ to make all post-9/11 OLC memos available to the Senate Intelligence Committee, albeit with two big loopholes.