

May 13, 2014

The Honorable Eric H. Holder, Jr  
Attorney General of the United States  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

On behalf of the undersigned organizations, we are writing to urge you to decline to appeal the recent ruling of the United States Court of Appeals for the Second Circuit that ordered the Executive Branch to make public crucial information about the targeted killing program. Releasing a redacted version of the Office of Legal Counsel (OLC) memo to the Department of Defense explaining the justification for drone strikes targeting U.S. citizens is clearly in line with the Department of Justice's best practices, and, more importantly, promotes openness and accountability.

In *New York Times Co. v. United States*, a decision concerning Freedom of Information Act requests by two New York Times reporters and the American Civil Liberties Union (ACLU), the Second Circuit ordered the release of the legal analysis from a July 16, 2010 OLC memo by David Barron. The court held that "legal analysis is not an intelligence source and method," and "whatever protection the legal analysis might once have had has been lost by public statements of public officials at the highest levels and official disclosure of" a Department of Justice (DOJ) White Paper summarizing the OLC memo.<sup>1</sup>

According to DOJ's memorandum on "Best Practices for OLC Legal Advice and Written Opinions," the Office should evaluate the release of an OLC opinion under "the presumption that it should make its significant opinions fully and promptly available to the public." The guidance does contemplate withholding some OLC opinions on grounds of privilege. The major examples given of this, however, are: (1) a situation where "an agency requests advice regarding a proposed course of action, the Office concludes it is legally impermissible, and the action is therefore not taken;" and (2) "issues that are of little interest to the public or others besides the requesting agency." Neither of these applies to the OLC memoranda on targeted killing. The Central Intelligence Agency (CIA) and Department of Defense have acted in reliance on OLC advice in hundreds of strikes that killed thousands of individuals, including four U.S. citizens.<sup>2</sup>

The public needs access to OLC memos that interpret or explain what the executive branch believes the law gives them the power to do. As DOJ's Best Practices document succinctly describes, one of the reasons to apply a presumption of openness to OLC memos is that it "contribut[es] to accountability and effective government, and promot[es] public confidence in the legality of government action." Surely this is all the more true when the subject of the memo deals with life and death matters and raises serious questions regarding the constitutionally-protected right to a trial by jury.

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<sup>1</sup> <https://epic.org/amicus/foia/new-york-times/2d-Cir-Opinion.pdf>

<sup>2</sup> <http://www.justice.gov/olc/pdf/olc-legal-advice-opinions.pdf>

We urge you to decline to appeal the ruling and move to make as much information as possible about the government's targeted killing program, including a redacted version of the July 16, 2010 OLC memo, available as soon as possible. Thank you in advance for your consideration of this request.

Sincerely,

American Library Association	Human Rights First
Bill of Rights Defense Committee – BORDC	Just Foreign Policy
Center for Constitutional Rights – CCR	National Coalition Against Censorship
Center for Effective Government	National Security Archive
Center for Media and Democracy	National Security Counselors
Citizens for Responsibility and Ethics in Washington –CREW	National Security Network
The Constitution Project	New England First Amendment Coalition
Council on American-Islamic Relations – CAIR	No More Guantanamos
Defending Dissent Foundation	OpenTheGovernment.org
Demand Progress	Progressive Librarians Guild
Electronic Privacy Information Center – EPIC	Project On Government Oversight –POGO
Essential Information	Public Citizen
Federation of American Scientists	Society of Professional Journalists
Freedom of the Press Foundation	Sunlight Foundation
Government Accountability Project – GAP	Win Without War

Cc: Donald B. Verrilli, Jr., Solicitor General of the United States  
Preet Bharara, United States Attorney for the Southern District of New York  
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Matthew Collette, Attorney, Appellate Staff  
Sharon Swingle, Attorney, Appellate Staff  
David Sandler, White House Associate Counsel