

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Drone Program Secrecy Violates Constitution, Group Claims

TCP: President should release all legal opinions on targeted killing program

WASHINGTON, D.C. -- A bipartisan watchdog group says the Obama administration's refusal to make public the legal rationale for its targeted killing of suspected terrorists violates constitutional principles of checks and balances, and called on the president to release the rules of operation and all legal guidance about the program to Congress and the public.

"Our constitutional system of checks and balances demands robust oversight by Congress and consideration and debate by an informed public. Neither is possible when the rules are hidden from Congress and from public view," wrote the Liberty and Security Committee of The Constitution Project in a [statement released earlier](#) today. The bipartisan committee is made up of former members of Congress, former high-ranking intelligence and military officials and legal scholars. It is chaired by David Cole, a professor of law at Georgetown University, and David Keene, former chairman of the American Conservative Union.

According to press reports and court documents, the U.S. military and CIA have used unmanned drones to conduct hundreds of lethal strikes against terrorism suspects in Afghanistan, Pakistan and Yemen, and perhaps elsewhere. At least one American citizen has been targeted, and at least three American citizens are among the estimated several thousand people who have been killed using drones.

Calling the limited release of information about the program "woefully inadequate," the group notes that most of the legal analysis upon which the executive branch relies to justify targeted killing, as well as the rules that govern the program's operation, remain "cloaked in secrecy." Despite several high-profile appearances discussing the topic by administration officials, including the president, the Department of Justice refuses to even acknowledge its existence in legal filings, they wrote.

The statement urges the president to authorize public release of all opinions from the Justice Department's Office of Legal Counsel regarding the scope of the president's targeted killing authority along with "any other operative rules and legal guidance for the targeted killing program," redacted only to protect "properly classified information, such as the facts of a particular case or intelligence sources and methods."

"A leaked white paper is no substitute for the operative legal and policy analyses," the statement says, referring to a Department of Justice memo about the program obtained by NBC and released earlier this month.

The group also called on the executive branch to provide comprehensive information to all congressional committees of jurisdiction. Although properly classified information should not be made public, it should still be shared fully with those committees and their cleared staff, they wrote.

"For the president to withhold information from Congress regarding a program that Congress must fund, or to direct how Congress may use information to which it is entitled, violates constitutional principles of checks and balances," the group said.

In addition to Cole and Keene, among the Liberty and Security Committee members endorsing the statement are: former members of Congress Bob Barr (R-GA), Mickey Edwards (R-OK) and David Skaggs (D-CO); Mary McCarthy, former Director for Intelligence Programs, National Security Council and Special Assistant to President William Clinton; John Dean, Counsel to President Richard Nixon; Judge William S. Sessions, former Director of the FBI; Thomas Pickering, former Under Secretary of State for Political Affairs; Alberto Mora, former General Counsel, Department of the Navy; Philip Giraldi and Paul R. Pilar, both former CIA counterterrorism officers; Professor Eugene Fidell, Yale University; and Louis Fisher, a constitutional law specialist and expert on separation of powers, formerly with the Library of Congress.

The statement, entitled "Lift the Veil of Secrecy on Targeted Killing," with a full list of signatories is available on The Constitution Project's website (<http://www.constitutionproject.org>).

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Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation's broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.



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