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CORRECTION TO THIS ARTICLE

This article misstated the first name of the federal judge considering the lawsuit over the United States' targeting of Anwar al-Aulaqi. The judge is U.S. District Judge John Bates, not Robert Bates.

Obama invokes 'state secrets' claim to dismiss suit against targeting of U.S. citizen al-Aulaqi

By Spencer S. Hsu
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The Obama administration urged a federal judge early Saturday to dismiss a lawsuit over its targeting of a U.S. citizen [for killing overseas](#), saying that the case would reveal state secrets.

The U.S.-born citizen, [Anwar al-Aulaqi](#), is a cleric now believed to be in Yemen. Federal authorities allege that he is leading a branch of al-Qaeda there.

Government lawyers called the state-secrets argument a last resort to toss out the case, and it seems likely to revive a debate over the reach of a president's powers in the global [war against al-Qaeda](#).

Civil liberties groups sued the U.S. government on behalf of Aulaqi's father, arguing that the CIA and the Joint Special Operations Command's placement of Aulaqi on a capture-or-kill list of suspected terrorists - outside a war zone and absent an imminent threat - amounted to an extrajudicial execution order against a U.S. citizen. They asked a U.S. district court in Washington to block the targeting.

In response, Justice Department spokesman Matthew Miller said that the groups are asking "a court to take the unprecedented step of intervening in an ongoing military action to direct the President how to manage that action - all on behalf of a leader of a foreign terrorist organization."

Miller added, "If al-Aulaqi wishes to access our legal system, he should surrender to American authorities and return to the United States, where he will be held accountable for his actions."

In a statement, lawyers for Nasser al-Aulaqi condemned the government's request to dismiss the case without debating its merits, saying that judicial review of the pursuit of targets far from the battlefield of [Afghanistan](#) is vital.

"The idea that courts should have no role whatsoever in determining the criteria by which the executive branch can kill its own citizens is unacceptable in a democracy," the American Civil Liberties Union and Center for Constitutional Rights said.

"In matters of life and death, no executive should have a blank check," they said.

The government filed its brief to U.S. District Judge Robert Bates just after a midnight Friday deadline, blaming technical problems, and the late-night maneuvering underscored the political and diplomatic stakes for President Obama. His administration announced last year that it would [set a higher bar](#) when hiding details of controversial national security policies.

Justice Department officials said they invoked the controversial legal argument reluctantly, mindful that domestic and international critics attacked former president George W. Bush for waging the fight against terrorism with excessive secrecy and unchecked claims of executive power.

The Obama administration has cited the state-secrets argument in at least three cases since taking office - in defense of [Bush-era warrantless wiretapping](#), [surveillance of an Islamic charity](#), and [the torture and rendition of CIA prisoners](#). It prevailed in the last case last week, [on a 6 to 5 vote](#) by the U.S. Court of Appeals for the 9th Circuit.

A senior Justice official, speaking on condition of anonymity, said the administration is engaging in "a much narrower use of state secrets" than did its predecessor, which cited the argument dozens of times - often, the official said, to "shut down inquiries into wrongdoing."

In its 60-page filing, the Justice Department cites state secrets as the last of four arguments, objecting first that Aulaqi's father lacks standing, that courts cannot lawfully bind future presidents' actions in as-yet undefined conflicts, and that in war the targeting of adversaries is inherently a "political question."

Robert M. Chesney, a national security law specialist at the University of Texas School of Law, said that Obama lawyers would undoubtedly prefer not to stoke the state-secrets debate, or to risk judicial review of its claim to a borderless battlefield.

"The real big issue here is . . . are we only at war in Afghanistan, or can the U.S. government lawfully use war powers in other cases, at least where the host nation consents or there is no host government?" Chesney said.

"You're trying to avoid a judicial ruling on the merits of the whole issue," Chesney said, adding, "But at the end of the day, if it's your best argument in a case you want to win, you're going to make that argument."

Staff researcher Julie Tate contributed to this report.

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