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ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States

## House of Representatives

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January 18, 2012

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Dear Attorney General Holder:

We are following up on our request to the Department of Justice to provide us with a copy of any memoranda setting forth the legal and factual justifications for the targeted killing of Anwar al-Awlaki or to otherwise brief us on this matter. We initiated our request following reports that the Department's Office of Legal Counsel wrote a "secret memorandum" authorizing the lethal targeting of this United States citizen. See, e.g., Peter Finn, *Secret U.S. memo sanctioned killing of Aulqi*, Washington Post, Sept. 30, 2011. To our dismay, the Department has not yet confirmed whether it will comply with our request.

We understand that this matter involves classified information and implicates national security concerns, but these are not valid reasons to refuse to provide the requested information to Members of Congress. The Administration reportedly undertook a careful analysis of its legal obligations and the relevant facts before concluding that its action was lawful and appropriate. Reviewing these legal and factual justifications falls squarely within the House Judiciary Committee's jurisdiction as the extrajudicial killing of a United States citizen implicates serious constitutional and other legal considerations. Our Committee has a long line of instances where we have been provided classified briefings involving classified matters.

President Obama has pledged greater oversight and accountability to congressional committees as a means of preventing threats to the rule of law, which is particularly important here given the lack of judicial oversight for this type of executive branch conduct. The

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Administration sought and obtained dismissal of a lawsuit brought by Anwar al-Awlaki's father, who sought judicial review of the decision to target his son. *See Al-Aulaqi v. Obama*, 727 F.Supp. 2d 1 (2010). Judge Bates granted the Administration's motion to dismiss that suit, finding, among other things, that the case raised a non-justiciable political question, with the policy choices and determinations at issue in the case best left "to the halls of Congress or the confines of the Executive Branch." *Id.* at 44 (internal quotation marks omitted). Having successfully fought to foreclose court review, we believe it is incumbent on the Administration to accede to the oversight of congressional committees proffered to the court as a constitutionally mandated alternative to judicial review. The information that we seek is essential for any congressional oversight, and continued delay in responding to our request – and certainly any outright refusal to provide us with this information or an appropriate briefing – is inconsistent with the Administration's arguments to the court and its commitment to executive branch accountability. It also erodes public confidence that the rule of law is being respected by America's leaders.

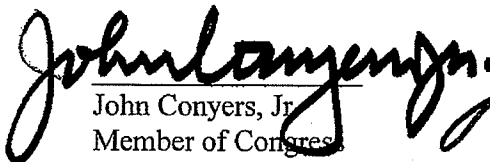
We therefore respectfully request that the Department schedule a time for us to review the relevant memoranda or to be briefed on this matter as soon as possible, with appropriate safeguards to protect classified information. We would also appreciate confirmation of whether other Members of Congress have been briefed on this issue and, if so, what legal memoranda or opinions were reviewed, and when those briefings took place.

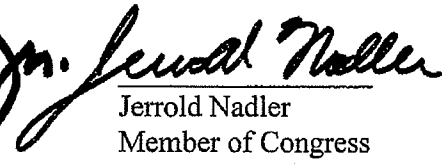
In addition to providing the opportunity for congressional oversight that we have requested, we also urge the Department to provide a public analysis – by, for example, redacting existing memoranda or opinions or preparing an appropriate white paper – that would allow for informed public debate over the use of lethal targeting as a counterterrorism measure. President Obama rightly has criticized the prior Administration for using secret legal memoranda to justify unlawful surveillance and the torture and mistreatment of terror suspects. The President must recognize that there is now considerable public dismay and criticism over what appears to be similar secrecy here. *See, e.g., Washington Post, Administration should do more to defend the Awlaki strike*, October 7, 2011. We urge the Department to take steps to address these concerns by providing to the public the legal principles and process that support the use of lethal targeting. Doing so will honor the President's commitment to greater accountability and transparency, and will help maintain public support for the Administration's counterterrorism efforts.

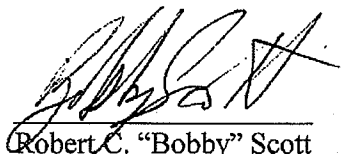
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Given the importance of this issue, we look forward to a response at your earliest convenience.

Sincerely,

  
John Conyers, Jr.  
Member of Congress

  
Jerrold Nadler  
Member of Congress

  
Robert C. "Bobby" Scott  
Member of Congress

cc: Hon. Lamar Smith

