

**Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On  
“Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing”  
April 23, 2013**

Today, the Subcommittee on the Constitution, Civil Rights, and Human Rights holds an important hearing to explore the administration’s use of unmanned aerial vehicles, or “drones,” to target and kill suspected terrorists overseas. The subcommittee will examine the constitutional and statutory authority to use drones to conduct these targeted killings, as well as key questions regarding the scope of the battlefield, which individuals can be targeted, and the possibility of establishing a transparent legal framework for the use of drones by the government. I thank Senator Durbin for his continued leadership and persistence on these issues.

As we will hear from the witnesses today, the number of drone strikes overseas has risen dramatically in recent years, as has the death toll of both suspected terrorists and civilians. Although the total number of civilian casualties resulting from these strikes is a subject of ongoing debate, it cannot be disputed that American drone strikes overseas have stirred significant controversy, particularly in Pakistan, Yemen, and other countries of great strategic interest. For example, the reported practice of conducting “signature strikes” that do not target specific individuals, but rather persons who fall within a defined set of characteristics, has raised questions about the extent to which drone strikes are actually “targeted.” I am glad that today’s hearing will provide an opportunity to explore the broader foreign policy and humanitarian concerns raised by the use of drones to conduct targeted killings overseas – regardless of the nationality or citizenship of the targets.

It will also be important for us to examine carefully the constitutional implications of the use of drones to conduct counterterrorism operations overseas. The U.S. government is presumably conducting targeted drone strikes against terrorists overseas pursuant to the 2001 Authorization for the Use of Military Force, as well as the President’s executive war powers under Article II, but we must consider the limits of these authorities in the context of the use of drones. When U.S. troops were fully engaged on a so-called “hot” battlefield during the war in Afghanistan, the boundaries of the legal authorities upon which the administration relied upon for the use of force were much clearer. The scope of authority to conduct targeted drone strikes in Yemen or other locations beyond the traditional battlefield, however, is less clear. I hope that Congress will continue to scrutinize these activities, as well as the legal authorities for such strikes.

Congressional scrutiny will be particularly necessary as we continue to examine the constitutional and statutory authority that the administration asserts in targeting U.S. citizens overseas. For more than a year, I sought access to the complete legal justification prepared by the Department of Justice Office of Legal Counsel (OLC) to support the targeted killing of Americans. Members of our Committee have now been provided access to some OLC documents related to the targeting of U.S. citizens, and although I cannot share the substance of these classified documents, I can say that I spent considerable time scrutinizing these opinions and remain concerned about the constitutional and legal underpinnings that justify the targeted killing of American citizens overseas. I will continue to seek additional information from the

administration about these targeting decisions and the constitutional and legal authorities upon which it relies, and I will continue to advocate for public disclosure of this legal analysis, consistent with the protection of national security.

As we examine carefully the use of drones to conduct targeted killings, we should consider ways to ensure appropriate transparency and accountability. Several officials have discussed the possibility of establishing a separate court or tribunal to review, either before or after, the targeting decisions made by the executive branch, much like the Foreign Intelligence Surveillance Court. Additionally, press accounts have exposed debates within the administration about formally establishing a “playbook” to install specific procedures, guidelines, and restrictions on the executive’s ability to conduct drone strikes. I express no opinions on these specific proposals today, but I strongly believe that Congress must ensure that there are rigorous procedures in place for targeting decisions, as well as appropriate oversight, safeguards and transparency for Members of Congress and the public.

The Judiciary Committee has an important responsibility to conduct oversight of the executive branch – particularly concerning constitutional and national security issues. I look forward to the testimony from our witnesses so that we can work to ensure our safety and security, while also bringing terrorists to justice in ways that are consistent with our Constitution, our laws, and our values.

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