

United States Senate

WASHINGTON, DC 20510

February 4, 2013

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Obama:

Congratulations on your recent inauguration. We look forward to working with you in your second term. As the Senate considers a number of nominees for senior national security positions, we ask that you ensure that Congress is provided with the secret legal opinions outlining your authority to authorize the killing of Americans in the course of counterterrorism operations.

In our view, if individual Americans choose to take up arms against the United States as part of an opposing fighting force, there will clearly be circumstances in which the President has the authority to use lethal force against those Americans, just as President Lincoln had the authority to direct Union troops to fire upon Confederate forces during the Civil War. It is vitally important, however, for Congress and the American public to have a full understanding of how the executive branch interprets the limits and boundaries of this authority, so that Congress and the public can decide whether this authority has been properly defined, and whether the President's power to deliberately kill American citizens is subject to appropriate limitations and safeguards.

It is a matter of public record that your Administration believes the intelligence community has the authority to knowingly use lethal force against Americans in counterterrorism operations, and senior intelligence officials have indicated that the Justice Department's Office of Legal Counsel has written non-public legal opinions that explain the basis for this authority. A number of us have previously asked to see these opinions, but to date they have not been provided to Congress. We ask for your assistance in providing this information to Congress.

Specifically, we ask that you direct the Justice Department to provide Congress, specifically the Judiciary and Intelligence Committees, with any and all legal opinions that lay out the executive branch's official understanding of the President's authority to deliberately kill American citizens. We are not asking for any pre-decisional legal advice and do not believe that providing this information would violate any Constitutional privilege. However, if there is any concern that providing this information to Congress might implicate some sort of privilege, we would encourage you to simply waive whatever privilege might apply, if you would like to make it clear that you are not setting a precedent that applies to other categories of documents.

In your speech at the National Archives in May 2009, you stated that “Whenever we cannot release certain information to the public for valid national security reasons, I will insist that there is oversight of my actions – by Congress or by the courts.” We applaud this principled commitment to the Constitutional system of checks and balances, and hope that you will help us obtain the documents that we need to conduct the oversight that you have called for. The executive branch’s cooperation on this matter will help avoid an unnecessary confrontation that could affect the Senate’s consideration of nominees for national security positions.

Thank you for your attention to this important matter. We look forward to your response.

Sincerely,



Mark Udall

Tom Udare

Jeffrey A. Merkley

Al Franken

Susan M. Collins

Patrick Leahy

Lin Duhin

Chuck Grassley

Rob Portman

Mark Begich