

Statement of Reprieve
on
“‘Targeted Killing’ and the Rule of Law: The Legal and Human Costs of 20
Years of U.S. Drone Strikes”

Before the Senate Judiciary Committee
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Reprieve thanks the Senate Judiciary Committee for the opportunity to submit this statement for the record for its hearing, “‘Targeted Killing’ and the Rule of Law: The Legal and Human Costs of 20 Years of U.S. Drone Strikes”.

Reprieve has been at the forefront of the fight against the unlawful use of lethal drones. Since 2010, we have been investigating, litigating and advocating for transparency and accountability on behalf of hundreds of civilian victims of US strikes in Yemen, Pakistan, Libya and elsewhere. We have brought victims to testify before Congress;ⁱ filed claims in USⁱⁱ and Germanⁱⁱⁱ courts on behalf of innocent civilians killed in strikes; and brought a petition before the Inter-American Commission for Human Rights^{iv} on behalf of three families who have lost 37 members in seven attacks seeking a cessation of strikes until the US publishes its targeting criteria and carries out independent, thorough and transparent post-strike investigations.

For over a decade, we have worked closely with communities affected by US drone strikes. We have witnessed not just the immediate aftermath of strikes, but also the long-term trauma and damage these strikes cause to communities and the fabric of their societies.

I. A Decade Long Fight for Answers – And the Silence Families Have Found

Irrespective of where and when strikes have occurred, there has been one overarching similarity that has bound the communities that have been impacted by US strikes – the complete silence with which their pleas for transparency and accountability have been met.

This is nowhere better exemplified than in the case of the Jaber family in Yemen.^v Almost ten years ago, a US drone strike in Yemen killed Faisal bin Ali Jaber’s brother-in-law, Salem, and nephew, Waleed. Salem was an imam who preached against Al Qaeda, including in a sermon delivered mere days before the strike that killed him. Waleed was one of only two policemen in their small village of Khashamir. The family should have been celebrating a wedding the weekend Salem and Waleed were killed. Instead, they spent it picking up body parts.

Since that fateful day in August 2012, Faisal and his family have sought answers to the question of why the US chose to kill Salem and Waleed. After failing to get answers from the Yemeni government, in November 2013 and with the assistance of Reprieve, Faisal travelled thousands of miles to Washington DC. He met with lawmakers and even members of the National Security Council.^{vi} His visit came only weeks after a Pakistani father, Rafiq ur Rehman, and his two children, also assisted by Reprieve, came to Washington DC seeking similar answers. Rafiq wanted to know why a US drone strike in Pakistan killed his mother and injured his children.^{vii}

Neither Rafiq nor Faisal received answers. In fact, quite the opposite. The headline on the front page of the *New York Times* summed up Faisal's trip as "Questions on Drone Strike Find Only Silence."^{viii}

Faisal did not give up. In 2014, he and his family filed litigation against the German government for their role in assisting US drone strikes.^{ix} In 2015, President Obama publicly apologized to the families of two western hostages accidentally killed in a drone strike in Pakistan.^x When a similar apology was not forthcoming for his family, Faisal filed litigation in US courts seeking it.^{xi} A leaked cable showed the US realized Salem and Waleed were innocent civilians within hours of the strike.^{xii} Yet the Obama Administration fought to have Faisal's case seeking an apology dismissed.

In 2017 the DC Circuit granted the dismissal on the grounds that US drone strikes constitute a "political question" beyond the purview of the judiciary. In her concurrence, Judge Janice Brown questioned who would check the "outsized power" of the executive in the absence of the courts.^{xiii} She urged action:

"Our democracy is broken. We must, however, hope that it is not incurably so. This nation's reputation for open and measured action is our national birthright; it is a history that ensures our credibility in the international community. The spread of drones cannot be stopped, but the U.S. can still influence how they are used in the global community— including, someday, seeking recourse should our enemies turn these powerful weapons 180 degrees to target our homeland. The Executive and Congress must establish a clear policy for drone strikes and precise avenues for accountability."^{xiv}

Over four years later, the transparency and accountability Judge Brown wrote about still remains elusive for Faisal and thousands of other victims of US drone strikes. In December 2020 Faisal wrote in *Foreign Policy*:

"Since my visit to Washington in 2013, I have been asking the same simple question: 'How is it that two innocent men, who actively opposed terrorism, were killed?' Well-

meaning politicians in the United States, Europe, and my home country of Yemen have listened to my story and expressed their sympathy, but no one has provided an answer.”^{xv}

II. The Imprecision of Precision Warfare

Faisal’s story is not unique. Over the past decade, what happened to Faisal and his family has happened to thousands of others, most recently the Ahmadi family in the final days of the withdrawal from Afghanistan.^{xvi} It is a story that will continue repeating itself until the US ‘targeted killing’ program is brought to an end.

It is easy to think that because the drone itself is so precise, so too are the strikes. But drone strikes are only as precise as the intelligence that feeds them and what two decades of drone warfare has shown us is that the intelligence driving the US ‘targeted killing’ program is anything but precise.

Reprieve’s own investigations have found that in Yemen and Pakistan between 2004-2014, US drone strikes killed as many as 1,147 unknown people, including children, in failed attempts to kill 41 named individuals.^{xvii} These 41 men were reported to have been killed multiple times – sometimes as many as seven – leaving a trail of civilians killed in their wake.

Investigations by others have found similarly troubling rates of precision. A report by the London-based Bureau of Investigative Journalism found only 4% of drone victims in Pakistan were militants linked to Al-Qaeda. According to the Bureau’s report, even the CIA did not know the identities of everyone they killed: “[In leaked documents, the CIA] identified hundreds of those killed as simply Afghan or Pakistani fighters,” or as “unknown,” the report stated.^{xviii}

In 2016 Micah Zenko and Amelia May Wolf found that independent public databases showed “drone strikes in non-battlefield settings – Pakistan, Yemen and Somalia – result in 35 times more civilian fatalities than airstrikes by manned weapons in conventional battlefields, such as Iraq, Syria and Afghanistan.”^{xix}

One reason for this is that the US frequently uses drones in places where it has a limited footprint. As a result, it is overly reliant on signals intelligence (‘SIGINT’) from computers and cellphones, and the quality of those intercepts is limited.^{xx} Strikes are frequently taken based upon a ‘signature’ or ‘pattern of behavior’. The result is the US often does not know the identity of the target.

A former drone pilot, describing this method of targeting, stated: “It’s really like we’re targeting a cell phone. We’re not going after people – we’re going after their phones, in the hopes that the person on the other end of that missile is the bad guy.”^{xxi} In April 2014, General Michael Hayden,

former CIA Director, put it more bluntly when he told a John Hopkins University Symposium: “We kill people based on metadata.”^{xxii}

SIGINT, though, does not tell the whole story. It only indicates that communication between two devices (cell phones or computers) has taken place, along with limited other markers. It does not indicate the nature of that communication, who is holding the device or is in close proximity, or whether they are engaged in fighting. As a former CIA officer said, SIGINT “doesn’t tell you anything about context or your target’s plans and intentions.” Expressing concern with its reliability, the CIA officer stated: “Do all these guys they point a finger at really need to be taken out? Even if they’re getting 90 percent right that still leaves room for a lot of mistakes...”^{xxiii}

III. The Long Term Impacts on Communities

In 2016, in response to President Obama releasing estimated civilian casualty estimates, Faisal bin Ali Jaber wrote: “*A mere body count is not the end of the story. It is where the story begins.*”^{xxiv}

The psychological impacts of the attacks on communities cannot be underestimated: the trauma of losing loved ones and witnessing the violence of strikes are compounded by the repeated presence of the drones overhead in the days and years after a strike. The fear this generates tears at the very fabric of communities.

Dr Schaapveld, an expert in psychological trauma assessment, found in 2013 that of the 28 victims of drone strikes he interviewed, 99% had some type of traumatic disorder. He noted:

“Entire communities – including young children who are the next generation of Yemenis – are being traumatised and re-traumatised by drones. Not only is this having truly awful immediate effects but the psychological damage done will outlast any counter programme and surely outweigh any possible benefits.”^{xxv}

Like Faisal, Ahmed Ali Jaber and his wife Muznah witnessed the strike that killed Salem and Waleed nearly a decade ago. Ahmed recently told Reprieve about the continuing trauma they experience when they hear the drones overhead:

“Muznah and I have three beautiful children: 2 year old Entizam, 3 year old Yahya and 5 year old Salim. They are my life – our life, and they have brought us such joy and pride. Each time the buzz of a drone infiltrates our community, we bring our children into the house as quickly as we can. The oldest is kindergarten age, so they don’t understand why they can’t play outside and we can’t explain – they just sense our fear. When the sound dominates the atmosphere, we gather them in one room

and put on the television at top volume to try to drown out the sound, or put headphones on them playing music or the ithaan to try to calm and distract them.

One day I took my family on a trip outside Khashamer to a beauty spot in nature. We were happily sitting together, shooting the breeze, while the children were playing. Suddenly the thundering sound of a drone drowned out our conversation. Muznah burst into tears, then our children started crying – everyone was crying. I took them to the car, turned up the radio to the maximum volume to drown out the sound of the drones and drove home as quickly as I could, to try to comfort and protect my family. These kind of experiences lead us to stay at home, and stay in our village as much as possible.”^{xxvi}

In 2015, a Switzerland-based NGO, Al Karama Foundation, conducted a study to assess the prevalence of Post-Traumatic Stress Disorder (‘PTSD’) amongst civilians in villages in Yemen where US armed drones were operational. They found PTSD was “extremely prevalent” with many suffering from constant worry; a persistent fear of being killed or having a relative killed in a drone attack; and sleep disorders including nightmares or insomnia. Amongst the 27 children they interviewed, 96% said they were afraid that a drone attack may harm them, their families or community, 87% said they experienced unwanted and upsetting thoughts of drones, 74% said they were easily startled and 67% were experiencing problems with sleep such as insomnia, nightmares and bedwetting.^{xxvii} The interviewers noted other impacts such as enuresis,^{xxviii} especially when children hear that a drone attack happened or rumors that an attack is about to take place, and in one case speech problems, which had started after the child’s father was killed.^{xxix}

In addition to the long term impacts of strikes and the fear the presence of drones generates, there is also the very real impact losing a father or mother has on a child. In one strike Reprieve investigated, twelve men were killed. Those twelve men left behind 73 children, as well as wives who were then without the family’s primary breadwinner.

IV. Drone Strikes Don’t Make Us Safer

The imprecision of the US ‘targeted killing’ program means drone strikes are making us less, not more, safe.

When a US drone killed Salem and Waleed, it also took out a key ally. Salem’s sermons against Al Qaeda were exactly the kind of grassroots support needed to affect change over the long term. He was a figure the US should have been supporting, not targeting. His unjust extrajudicial killing not only silenced an important countering voice, it also fed the propaganda of those who seek to generate hostility towards the U.S.

The failure to learn from the mistaken killing of Salem and Waleed, though, means mistakes continue to be made. For example, Mohammed al-Qawli lost his brother, Ali, to a US drone strike in January 2013. Ali taught at an elementary school in the Juhana province of Sanaa, Yemen. The area lacked enough schools and teachers to staff them. Following the strike, Mohammed told Reprieve: “The US and Yemeni governments killed a young man who strongly opposed terrorism and tried to bring change through education — the very same things they purport to want themselves.”^{xxx} Again, instead of promoting peace and inclusion, the devastating impacts of the drone program served to do the opposite.

And nine years after the strike on Salem, the US targeted and killed Zemari Ahmadi.^{xxxi} Zemari worked for a California-based NGO named “Nutrition and Education International”, whose vision is to “to eradicate protein-energy malnutrition for under-nourished countries, especially among women and children.”^{xxxii} Nine others were killed in the strike, including seven children. The children had rushed to Zemari’s car, excited to see him.

The story of these three strikes has been replicated thousands of times throughout the last two decades, with each replica denting the chances of stability and prosperity in the region.

The destabilizing and counterproductive effect of the US strikes has been well-acknowledged by US military and intelligence leaders. Robert Grenier, former CIA station chief in Pakistan, said the drone program created “a situation where we are creating more enemies than we are removing from the battlefield.”^{xxxiii}

General Stanley McChrystal, who led US forces in Iraq and Afghanistan, similarly stated “The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates. They are hated on a visceral level, even by people who've never seen one or seen the effects of one.”^{xxxiv}

General David Petraeus, who oversaw all US forces in the Middle East and was a director of the CIA, lamented the strategic failure brought by the drone program in September 2021. He said, “when you’re using [drone strikes] with the frequency that we were and the numbers [of civilians] that were being hit, you inevitably violate the most important question that should be on the wall of your operations center: ‘Will this operation take more bad guys off the street than it creates by its conduct?’”^{xxxv}

With each mistaken strike comes the risk that it creates a vacuum for Al-Qaeda or another group to take advantage. Miqdad Tuaiman, who as a child witnessed his father and older brother being killed in a drone strike, and lost his younger brother to another strike, said “al-Qaeda would always attempt to contact family members, neighbors and friends after each strike.”^{xxxvi} Such strikes, he said, played into the Al Qaeda’s propaganda campaign.^{xxxvii} Anand Gopal, writing in the *New*

Yorker on the Afghanistan context, came to a similar determination- “the ceaseless killings of civilians led many Afghans to gravitate toward the Taliban.”^{xxxviii}

V. Outsized Executive Power

The risk is not just to the communities in foreign countries. The US “targeted” killing program poses a risk to our own democratic system of checks and balances.

Bilal Abdul Kareem is an American journalist in Syria who has sought to document all sides of the conflict, including those of rebel groups which the US believes have links to Al Qaeda. In the summer of 2016, Bilal narrowly missed being killed in five separate strikes, including twice at his office, twice in his vehicles, and again while reporting in an otherwise quiet area away from any field of active combat. Bilal was the only common denominator across five strikes. At least one involved a hellfire missile fired from a drone.

Bilal believes the US government misinterpreted his metadata, mistaking interviews with rebel leaders as indications of his involvement with proscribed groups. With Reprieve’s assistance, in March 2017, Bilal filed a lawsuit in the DC District Court, seeking to find out if he was on the US’s so-called ‘Kill List’ and if so, to challenge his inclusion. In June 2018, the DC District Court denied the Government’s request to dismiss the case on the grounds of “political question”. Judge Collyer found due process was Bilal’s “birthright” and that it was “not merely an old and dusty procedural obligation...Instead, it is a living, breathing concept that protects U.S. persons from overreaching government action even, perhaps, on an occasion of war.”^{xxxix}

The Government then invoked “state secrets” to block the case, and the DC Circuit heard oral arguments in November 2020. In a chilling colloquy during the oral argument, the Biden Administration argued the Executive’s ability to kill was limitless. A judge on the panel asked what recourse Mr. Kareem has if the government is actually trying to kill him. Government counsel speculated that Congress might be able to help but did not concede that the Legislative Branch could override the Executive Branch’s judgment about what constituted a state secret. The panel member asked whether the government’s response would be different if *she* were on the Kill List and the government intended to kill *her* in the United States. Even then, the government argued that the state secrets privilege would be absolute and foreclose relief.^{xl}

JUDGE MILLETT: Not just that -- no, no. What difference? What difference is it if me rather than Mr. Kareem and I'm here in the U.S.?

MR. HINSHELWOOD: Your Honor, I'm sorry. I don't want to suggest that there's, just to speak about how the privilege applies in these cases, **if your question is can a court once the privilege**

is properly invoked, which is an absolute[] privilege that the Government is able to invoke in this litigation, can a court then proceed to adjudicate the merits nevertheless or disregard the Government's application of the privilege, an invocation of the privilege in that circumstance, the answer is no.

Now, as a result, as this Court explained in *Halkin*, the result may be that meritorious constitutional claims don't get litigated, and that the consequences -

JUDGE MILLETT: This is killing U.S. citizens. That's quite a power to say that the Executive Branch has and it's absolutely unchecked. There's no capacity whatsoever for judicial review, for a habeas action, or this type of civil action which is a functional equivalent of a habeas action. There's nothing whatsoever. There's no precedent for that.^{xli} [emphasis added]

The judge went on to question the Government's counsel: "Do you appreciate how extraordinary that proposition is, that the U.S. Government can, the Executive Branch can unilaterally decide to kill U.S. citizens...without any process whatsoever?"^{xlii}

In January 2021, the DC Circuit held Bilal lacked standing to sue. It reached that finding after taking judicial notice of certain reports about the situation in Syria, from which it drew the conclusion that there was no plausible basis to conclude the US was trying to kill *him*.^{xliii} In November 2021, the US Supreme Court denied *cert* on the case without explanation.

VI. Accountability is Long Overdue

For too long, the US's 'targeted' killing program has been hidden in the shadows. It has left thousands of civilians dead, and their families to pick up the pieces while they ask themselves "why".^{xliv}

Here are just a few of the dozens of cases Reprieve has investigated over the years:

- Fahim Qureshi was only 14 years old when in 2009 a drone strike hit his home in North Waziristan, Pakistan, killing several of his family members and leaving him with horrific injuries. Reports suggest President Obama knew within hours that civilians had been killed in the strike. Yet, the US has never publicly acknowledged it or the harm that was done.^{xlv}
- Mohammed al Qawli's brother, Ali, was a school teacher when he was killed in Yemen in 2013. He was riding with his cousin, Salem, who was a taxi driver, when they unknowingly picked up the wrong people. Once the two unknown men got in the car, a drone hovering overhead killed all four of them. The US has never publicly acknowledged the strike that

killed Ali. Nor has Mohammed received any explanation.^{xlvi}

- In 2018, former civil servant Adel al Manthari was the sole survivor of a strike in Yemen that killed four of his relatives, including a member of the Yemeni military and a veteran. His injuries are extensive and he cannot afford the medical bills, nor can he work to support his family. Much as they did months ago in Afghanistan, the US insisted in the weeks after the strike that they had killed ‘militants’, despite evidence to the contrary. When Reprieve’s investigations challenged that narrative, they told the Daily Beast they would open a credibility assessment. To date, it is unclear whether that credibility assessment was carried out. Or what its findings were if it was. Adel has never heard from any US official.^{xlvii}
- The Al Ameri and Al Taisy families know all too well the trauma of losing loved ones. The two families have lost 34 members of their family, including nine children, to six US drone strikes and a US raid in the Al Baydah region of Yemen. In fear of the next strike, they have asked the Inter American Commission to help. Left without recourse in the US, they live in fear that the next strike is imminent. They do not know what else to do.^{xlviii}

At the end of last year, Ahmed Ali Jaber wrote in an op-ed for *Defense One*:

“I feel overwhelming fear and anxiety for the future of my children. They deserve so much better. I want them to be able to go about their lives – to move around their home and village freely, without fear. I want them to be able to watch fireworks not drones strikes. I don’t want my family to cry every time they hear a drone.”

“I want my children to live in peace. I want America’s forever wars to be forever, truly over.”^{xlix}

Twenty years on, it is time to bring the US drone program out of the shadows, and end our use of drones to carry out extrajudicial killings. We must provide meaningful accountability to these families and all those who have been harmed by US strikes. Only then can we fully understand the impact the program has had – and make sure the mistakes of the past do not repeat themselves in the future. Only then can we usher in a return to the rule of law for which America is known.

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ⁱⁱⁱ “Yemeni family appeals US drone strike case to Germany’s highest court,” *Middle East Eye*, 23 March 2021, <https://www.middleeasteye.net/news/yemen-family-us-drone-strike-case-germany-court>.

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- ^{xiii} *bin Ali Jaber v United States*, 861 F.3d 241 (D.C. Cir.), cert denied, 138 S. Ct. 480 (2017), available at: <https://www.cadc.uscourts.gov/internet/opinions.nsf/55ACB57812F8FC918525814F00517DA6/%24file/16-5093-1682112.pdf>, page 21.
- ^{xiv} *Ibid.* at page 22.
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- ^{xxvi} Reprieve interview with Ahmed bin Ali Jaber, via telephone on 18 March 2021.
- ^{xxvii} “Psychological Harm” in *The Humanitarian Impact of Drones*, The Women’s International League for Peace and Freedom, October 2017, pages 42-44.

^{xxviii} Enuresis is the inability to control urination.

^{xxix} “Psychological Harm” in *The Humanitarian Impact of Drones*, The Women’s International League for Peace and Freedom, October 2017, pages 42-44.

^{xxx} Mohammed Al Qawli, “The US killed my brother with a drone. I want to know why,” *Al Jazeera*, 5 December 2013, <http://america.aljazeera.com/opinions/2013/12/grieving-yemena-sinnocentdead.html>.

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^{xxxviii} Anand Gopal, “The other Afghan women,” *New Yorker*, 13 September 2021, <https://www.newyorker.com/magazine/2021/09/13/the-other-afghan-women>.

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^{xl} Transcript of Oral Argument, *Kareem v. Haspel*, 986 F.3d 859 (D.C. Cir. 2021). *See also*, *United States v. Abu Zubaydah*, Brief of amicus curiae of Bilal Abdul Kareem. 10 August 2021. Pages 9-13.

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^{xli} *Ibid* at Appx. Tr. 34:22 – 37:3.

^{xlii} *Ibid* at Appx. Tr. 37: 14-19.

^{xliii} Umar A. Farooq, “US Supreme Court rejects journalist Bilal Abdul Kareem’s ‘kill list’ lawsuit,” *Middle East Eye*, 16 November 2021, <https://www.middleeasteye.net/news/us-supreme-court-rejects-bilal-abdul-kareem-journalist-kill-list-lawsuit>.

^{xliiv} *See, e.g.* Nick Turse, “Drone strike victims in Yemen are desperate for accountability from the U.S.,” *Vice*, 15 April 2021, <https://www.vice.com/en/article/n7bj8b/drone-strike-victims-in-yemen-are-desperate-for-accountability-from-the-us>.

^{xli v} Spencer Ackerman, “Victim of Obama’s first drone strike: ‘I am the living example of what drones are,’” *The Guardian*, 23 January 2016, <https://www.theguardian.com/world/2016/jan/23/drone-strike-victim-barack-obama>.

^{xli vi} Spencer Ackerman, “After drones: the indelible mark of America’s remote control warfare,” *The Guardian*, 21 April 2016, <https://www.theguardian.com/us-news/2016/apr/21/drone-war-obama-pakistan-cia>.

^{xli vii} Adam Rawsley, “Family says they’re innocent victims of Trump’s drone war,” *The Daily Beast*, 7 May 2018, <https://www.thedailybeast.com/family-says-theyre-innocent-victims-of-trumps-drone-war>.

^{xli viii} Leah Feiger and Nick Turse, “A Yemeni family was repeatedly attacked by U.S. drones. Now, they’re seeking justice,” *Vice*, 26 January 2021, <https://www.vice.com/en/article/3anj33/a-yemeni-family-was-repeatedly-attacked-by-us-drones-now-theyre-seeking-justice>.

^{xli x} Ahmed Ali Jaber, “My children live in fear of US drones,” *Defense One*, 20 December 2021, <https://www.defenseone.com/ideas/2021/12/my-children-live-fear-us-drones/359795/>.