

April 16, 2014

The Honorable Mike Rogers
Chairman, House Permanent
Select Committee on Intelligence
HVC-304, U.S. Capitol
Washington, DC 20515

The Honorable C.A. Dutch Ruppertsberger
Ranking Member, House Permanent
Select Committee on Intelligence
HVC-304, U.S. Capitol
Washington, DC 20515

The Honorable Buck McKeon
Chairman, House Armed
Services Committee
2120 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Adam Smith
Ranking Member, House Armed
Services Committee
2120 Rayburn House Office Bldg.
Washington, DC 20515

Dear Chairman Rogers, Chairman McKeon, Ranking Member Ruppertsberger and Ranking Member Smith:

As advocates for a more open government and an end to the use of “secret law,” the undersigned organizations write to express our support for H.R. 4372, the Targeted Lethal Force Transparency Act, introduced by Representative Adam Schiff (D-CA) and Representative Walter Jones (R-NC).

The law would require the President to publicly report the total number of “combatants” and “civilians” killed or injured in drone strikes (excluding strikes in Afghanistan), for each year since 2008 and each year going forward. The law also requires the President to make public the definitions of “combatant” and “civilian” used in arriving at these numbers.

Multiple organizations have documented that lethal strikes by the United States government have killed thousands of people in Yemen and Pakistan. Director of Central Intelligence John Brennan said during his confirmation hearing that “[w]e need to acknowledge it publicly” when the United States accidentally kills civilians. But in practice no such public acknowledgment has occurred even in cases where human rights organizations have amassed compelling evidence of civilian harm, such as a December 12, 2013 strike that reportedly killed 12 individuals participating in a wedding procession outside Rad’a, Yemen.

The Targeted Lethal Force Transparency Act is an essential first step towards giving the public the information it needs to have a meaningful understanding of and debate about the targeted killing program, and we commend Representatives Schiff and Jones for their bipartisan commitment to transparency and democratic decision-making. The bill’s requirement that the Executive Branch provide its definitions of “combatant” and “civilian” as well as casualty estimates is particularly crucial in light of the gap between official claims about “single digit” civilian casualties and non-governmental reports that suggest a much higher civilian death toll. Any definitions and figures provided under H.R. 4372 would need to be carefully scrutinized,

but they would be more useful than the blanket assurances about lack of harm to civilians that the public has now.

Even if the Targeted Lethal Force Transparency Act is signed into law, however, the Executive Branch could continue to withhold key pieces of information. H.R.4372 does not require disclosure of the number of people killed in targeted lethal strikes using technology other than drones, such as the 2009 Tomahawk missile strike in Al-Majala, Yemen that Human Rights Watch found killed 41 villagers. It does not require release of casualty figures for any individual strike, or acknowledgment of any details sufficient to allow for independent investigation into reports of civilian casualties. Most importantly, the bill does not require disclosure of the Office of Legal Counsel (OLC) memos that provide the legal rationale and operational rules for the drone program.

In addition to passing H.R. 4372, Congress should consider additional measures to cure the information deficiencies noted above. At a minimum, Congress should compel disclosure of Office of Legal Counsel (OLC) memos that describe functional legal limits to the drone program. Those memos are critical to understanding how the executive branch and its agencies are interpreting the bounds and limits of the law. Yet the Executive Branch continues to refuse to disclose them, to either Congress or the public. Even the OLC memos about the standards for killing U.S. citizens have only been made available to certain Congressional committees under highly restricted conditions. Many other OLC memos on the drone program have not been made available to a single Representative or Senator.

We urge you to pass H.R. 4372, and to push for an end to secret law and a more open and accountable government.

Thank you very much for your consideration. To speak further with our coalition about these issues, please follow up with Katherine Hawkins at khawkins@openthegovernment.org or 202-332-3276.

Sincerely,

Advocacy for Principled Action in Government
American Library Association
Appeal for Justice
Arab American Institute
Brave New Films
Center for Effective Government
Citizens for Responsibility and Ethics in Washington (CREW)
The Constitution Project
Cyber Privacy Project
DownsizeDC.Org
Freedom of the Press Foundation
Government Accountability Project (GAP)

Just Foreign Policy
Media Freedom Foundation
No More Guantánamos
OpenTheGovernment.Org
Peace Action
Project Censored
Project On Government Oversight (POGO)
Society of Professional Journalists

cc: Members of the House Permanent Select Committee on Intelligence
Members of the House Armed Services Committee