

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

Civil Action No. 18-2784 (CJN)

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Central Intelligence Agency hereby notifies the Court of the Supreme Court’s decision in *United States Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. ___ (2021), attached hereto, which is relevant to the issues presented in this case.

In *Sierra Club*, the Supreme Court held that the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the “Services”) properly withheld under Exemption 5 draft biological opinions analyzing a proposed EPA rule. *See Op.* at 1. The Court held that the “deliberative process privilege protects the draft biological opinions . . . because they reflect a preliminary view—not a final decision[.]” *Id.* at 7 (“A draft is, by definition, a preliminary version of a piece of writing subject to feedback and change.”). The “determinative fact” was “that the decisionmakers at the Services neither approved the drafts nor sent them to the EPA.” *Id.*

In the instant case, as explained in the CIA’s summary judgment briefing and supporting documents, the CIA did not treat the draft documents withheld under the deliberative process privilege as final. Instead, they were preliminary versions subject to feedback and change. Accordingly, they are protected by the deliberative process privilege.

Respectfully submitted,

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