

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION,
et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

No. 18-cv-2784 (CJN)

RESPONSE TO DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs hereby submit this response to Defendant’s Notice of Supplemental Authority, ECF No. 32. The Supreme Court’s opinion, *United States Fish & Wildlife Service v. Sierra Club, Inc.*, 141 S. Ct. 777 (2021), confirms that courts adjudicating an agency’s claim of deliberative-process privilege look to the functional role of a document in the agency’s decision-making process. *See id.* at ___, ECF No. 32-1 at 13 (“Determining whether an agency’s position is final for purposes of the deliberative process privilege is a functional rather than formal inquiry.”); *see also id.* at ___, ECF No. 32-1 at 15 (Breyer, J., dissenting) (“I agree with the Court that whether a document is final or deliberative primarily depends upon its function within an agency’s decision-making process.” (cleaned up)). In this case, Defendant has not justified its decision to withhold responsive records, including draft documents, with the level of detail and particularity required for the Court to determine whether those records are functionally predecisional and deliberative. *See* Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment 13–24, ECF No. 27; *see also* Plaintiffs’ Response to Defendant’s Supplemental Declaration and Vaughn Index 1–2, ECF No. 30.

Dated: March 25, 2021

Respectfully submitted,

/s/ Charles Hogle

Charles Hogle
Dror Ladin
Hina Shamsi
American Civil Liberties Union Foundation
125 Broad St, 18th Fl
New York, NY 10004
646.905.8379
chogle@aclu.org

Arthur B. Spitzer
D.C. Bar No. 235960
American Civil Liberties Union of the District of
Columbia
915 15th Street NW, 2nd Floor
Washington, DC 20005
202.601.4266
aspitzer@acludc.org

Counsel for Plaintiffs