

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)

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs hereby respectfully notify the Court of the D.C. Circuit’s opinion in *Reporters Committee for Freedom of the Press v. FBI*, No. 20-5091 (July 2, 2021), 2021 WL 2753938, a copy of which is attached (“Slip Op.”). In *Reporters Committee*, the D.C. Circuit provides insight into two questions at the heart of the present case: first, the type of information an agency must provide to establish that a document withheld under Exemption 5 and the deliberative-process privilege is both predecisional and deliberative, *see* Slip Op. 13–26; second, the depth of explanation required for an agency to satisfy the independent foreseeable-harm requirement imposed by the FOIA Improvement Act, *see id.* at 26–33.

Critically, as to the foreseeable-harm requirement, the D.C. Circuit instructs that “the foreseeability requirement means that agencies must concretely explain how disclosure would—not could—adversely impair internal deliberations,” and that a “perfunctory statement that disclosure of all the withheld information—regardless of category or substance—would jeopardize the free exchange of information . . . will not suffice.” *Id.* at 28 (cleaned up). Thus, “what is needed is a focused and concrete demonstration of why disclosure of the particular type

of material at issue will, in the specific context of the agency action at issue, actually impede those same agency deliberations going forward.” *Id.* Applying that standard, the D.C. Circuit rejects as insufficient “boilerplate and generic assertions that release of any deliberative material would necessarily chill internal discussions,” *id.* at 29, that are strikingly similar to the boilerplate and generic assertions of harm offered by the CIA in this case.

Dated: July 5, 2021

Respectfully submitted,

/s/ Charles Hogle

Charles Hogle
Dror Ladin
Hina Shamsi (D.C. Bar No. MI0071)
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