

PREET BHARARA
United States Attorney for the
Southern District of New York
SARAH S. NORMAND
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2709
Facsimile: (212) 637-2702
Sarah.Normand@usdoj.gov

TONY WEST
Assistant Attorney General
ELIZABETH J. SHAPIRO
AMY POWELL
Trial Attorneys
20 Massachusetts Ave., N.W.
Washington, D.C. 20530
Telephone: (202) 514-5302
Facsimile: (202) 616-8470
Elizabeth.Shapiro@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
AMERICAN CIVIL LIBERTIES UNION and
THE AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE, including its
component the Office of Legal Counsel, U.S.
DEPARTMENT OF DEFENSE, including its
component U.S. Special Operations Command,
and CENTRAL INTELLIGENCE AGENCY,

Defendants.
----- X

12 Civ. 794 (CM)

ANSWER

ECF CASE

Defendants the United States Department of Justice (“DOJ”), including its component the Office of Legal Counsel (“OLC”), the United States Department of Defense (“DOD”), including its component the United States Special Operations Command (“USSOCOM”), and the Central Intelligence Agency, by their attorneys, answer the complaint upon information and belief as follows:

1. State that the allegations in paragraph 1 constitute a characterization of this action to which no response is required.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2, except admit that lethal operations have been a topic of public discussion.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 3, except admit that, in general, lethal operations have been a topic of public discussion. Deny the allegations in the second sentence of paragraph 3, except admit that the President and Secretary of Defense have made public statements concerning lethal operations, and respectfully refer the Court to those statements for a complete and accurate statement of their contents.

4. Deny the allegations in paragraph 4, except admit that the President and Secretary of Defense have made public statements concerning lethal operations, and respectfully refer the Court to those statements for a complete and accurate statement of their contents.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 because the terms used in this paragraph – including “kill lists” and

“standards under which . . . Americans may be put to death” – are vague, ambiguous and argumentative.

6. State that the allegations in paragraph 6 constitute a characterization of this action and plaintiffs’ FOIA request to which no response is required. The Court is respectfully referred to plaintiffs’ complaint and FOIA request for a complete and accurate statement of their contents.

7. State that the allegations in paragraph 7 constitute a characterization of plaintiffs’ FOIA request to which no response is required. The Court is respectfully referred to plaintiffs’ FOIA request for a complete and accurate statement of its contents.

8. Deny the allegations in paragraph 8, except admit that the U.S. Government has not disclosed any records in response to the FOIA request and aver that each defendant has responded to the FOIA request, and respectfully refer the Court to defendants’ respective responses for a complete and accurate statement of their contents.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 because the terms used in this paragraph are vague, ambiguous, and argumentative, except admit that lethal operations have been a topic of public discussion.

10. State that the allegations in paragraph 10 constitute a legal conclusion to which no response is required.

11. State that the allegations in paragraph 11 constitute a legal conclusion to which no response is required.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. Admit the allegations in paragraph 14.

15. Admit the allegations in paragraph 15.

16. Admit the allegations in paragraph 16.

17. Admit that DOD has carried out lethal operations, including against foreign nationals, using drones and other means. With respect to any other agency of the U.S. Government, neither admit nor deny the allegations in paragraph 17, pursuant to 5 U.S.C. § 552(b)(1), (3). Deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding media reports in the second sentence of paragraph 17, except admit that lethal operations have been a topic of public discussion.

18. State that the term “the targeted killing program” in paragraph 18 is vague, ambiguous and argumentative. To the extent an answer is required, neither admit nor deny the allegations in paragraph 18, pursuant to 5 U.S.C. § 552(b)(1), (3).

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 19, except admit that lethal operations have been a topic of public discussion. The allegations in the second sentence of paragraph 19 purport to characterize a media report or reports concerning an alleged OLC memorandum, and the Court is respectfully referred to those media reports for a complete and accurate statement of their contents.

20. Neither admit nor deny the allegations in the first sentence of paragraph 20, pursuant

to 5 U.S.C. § 552(b)(1), (3), except admit that al-Awlaki was killed on or about September 30, 2011. The allegations in the second sentence of paragraph 20 purport to characterize media reports, to which the Court is respectfully referred for a complete and accurate statement of their contents.

21. Neither admit nor deny the allegations in paragraph 21, pursuant to 5 U.S.C. § 552(b)(1), (3).

22. Deny the allegations in paragraph 22, except admit that al-Awlaki was killed and the President made a public statement concerning al-Awlaki's death, and respectfully refer the Court to the President's statement for a complete and accurate statement of its contents.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 because the terms used in this paragraph – including “the targeted killing program,” “kill lists” and “standards under which . . . Americans may be put to death” – are vague, ambiguous and argumentative, except admit that the President and Secretary of Defense have made public statements concerning lethal operations, and respectfully refer the Court to those statements for a complete and accurate statement of their contents.

24. The allegations in paragraph 24 appear to refer back to allegations in paragraphs 20 and 21 that are neither admitted nor denied. Accordingly, neither admit nor deny the allegations in paragraph 24, pursuant to 5 U.S.C. § 552(b)(1), (3).

25. Deny the allegations in the first sentence of paragraph 25, except admit that lethal operations have been a topic of public discussion. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 25.

26. Deny knowledge or information sufficient to form a belief as to the accuracy of the quotation from John B. Bellinger III in paragraph 26.

27. Deny knowledge or information sufficient to form a belief as to the accuracy of the quotation from Peter Hoekstra in paragraph 27.

28. Deny knowledge or information sufficient to form a belief as to the accuracy of the quotation from Senator Carl Levin in paragraph 28.

29. Deny knowledge or information sufficient to form a belief as to the accuracy of the quotation from Senator Dianne Feinstein in paragraph 29.

30. With respect to the allegations in paragraph 30, admit that on October 19, 2011, plaintiffs submitted a FOIA request, to which the Court is respectfully referred for a complete and accurate statement of its contents.

31. State that the allegations in paragraph 31 constitute a characterization of plaintiffs' FOIA request to which no response is required. The Court is respectfully referred to plaintiffs' FOIA request for a complete and accurate statement of its contents.

32. State that the allegations in paragraph 32 constitute a characterization of plaintiffs' FOIA request to which no response is required. The Court is respectfully referred to plaintiffs' FOIA request for a complete and accurate statement of its contents.

33. State that the allegations in paragraph 33 characterize the Office of Information Policy's ("OIP's") October 27, 2011, response to plaintiffs' FOIA request, to which the Court is respectfully referred for a complete and accurate statement of its contents.

34. Admit the allegations in paragraph 34 with respect to the DOJ's Office of

Information Policy.

35. State that the allegations in paragraph 35 characterize DOD's October 31, 2011, response to plaintiffs' FOIA request, to which the Court is respectfully referred for a complete and accurate statement of its contents.

36. Admit allegations in the first sentence of paragraph 36. State that the remainder of paragraph 36 characterizes plaintiffs' December 16, 2011, administrative appeal, to which the Court is respectfully referred for a complete and accurate statement of its contents.

37. State that the allegations in the first sentence of paragraph 37 characterize DOD's December 27, 2011, response to plaintiffs' administrative appeal, to which the Court is respectfully referred for a complete and accurate statement of its contents. Admit the allegations in the second and third sentences of paragraph 37.

38. State that the allegations in paragraph 38 characterize CIA's November 17, 2011, response to plaintiffs' FOIA request, to which the Court is respectfully referred for a complete and accurate statement of its contents.

39. Admit the allegations in the first sentence of paragraph 39. State that the remaining allegations in paragraph 39 characterize plaintiffs' December 6, 2011, administrative appeal, to which the Court is respectfully referred for a complete and accurate statement of its contents.

40. State that the allegations in the first sentence of paragraph 40 characterize CIA's January 18, 2012, response to plaintiffs' administrative appeal, to which the Court is respectfully referred for a complete and accurate statement of its contents. Admit the allegations in the second sentence of paragraph 40.

41. State that the allegations in paragraph 41 characterize USSOCOM's November 7, 2011, response to plaintiffs' FOIA request, to which the Court is respectfully referred for a complete and accurate statement of its contents.

42. Admit the allegations in the first sentence of paragraph 42. State that the remaining allegations in paragraph 42 characterize plaintiffs' December 16, 2011, administrative appeal, to which the Court is respectfully referred for a complete and accurate statement of its contents.

43. State that the allegations in the first sentence of paragraph 43 characterize DOD's December 27, 2011, response to plaintiffs' administrative appeal, to which the Court is respectfully referred for a complete and accurate statement of its contents. Admit the allegations in the second sentence of paragraph 43.

44. State that the allegations in paragraph 44 characterize OLC's response to plaintiffs' FOIA request, to which the Court is respectfully referred for a complete and accurate statement of its contents.

45. Admit the allegations in the first sentence of paragraph 45. State that the allegations in the second sentence of paragraph 45 characterize plaintiffs' December 6, 2011, administrative appeal, to which the Court is respectfully referred for a complete and accurate statement of its contents.

46. Admit the allegations in paragraph 46.

47. Deny the allegations in paragraph 47.

48. Deny the allegations in paragraph 48.

49. Deny the allegations in paragraph 49.

50. Deny the allegations in paragraph 50.

51. Deny the allegations in paragraph 51.

The remainder of the complaint contains a request for relief, to which no response is required. To the extent a response is required, defendants deny the allegations contained in the remainder of the complaint and state that plaintiffs are not entitled to the requested relief or any other relief from defendants.

Defendants deny all allegations in plaintiffs' complaint not expressly admitted or denied.

FIRST DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

WHEREFORE, defendants are entitled to judgment dismissing plaintiffs' complaint with prejudice and granting such further relief as the Court deems just, including costs and disbursements.

Dated: March 5, 2012

TONY WEST
Assistant Attorney General

PREET BHARARA
United State Attorney for
Southern District of New York

By: /s/ Elizabeth J. Shapiro
ELIZABETH J. SHAPIRO
AMY POWELL
20 Massachusetts Ave., N.W.
Washington, D.C. 20530
Telephone: (202) 514-5302
Facsimile: (202) 616-8470
Elizabeth.Shapiro@usdoj.gov

By: /s/ Sarah S. Normand
SARAH S. NORMAND
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2709
Facsimile: (212) 637-2702
Sarah.Normand@usdoj.gov