

DECLARATION OF MARY RONAN

I, Mary Ronan, hereby declare:

1. I am the Director of the Access Management Office for the National Security Council (NSC) Staff, Washington, D.C. I have served in this position since 2006. Prior to my service at the White House complex, I held similar positions in the National Archives and Records Administration. In my current position, I have authority to classify and declassify national security information originated by the White House, the NSC, and the NSC Staff, in accordance with the provisions of Executive Order 12958, as amended. All references in this declaration to E.O. 12958 are to the order as amended by E.O. 13292 of March 25, 2003.

2. Among my duties as Director of Access Management for the NSC Staff, I am responsible for responding to requests by the public for copies of NSC records and for handling document referrals from federal agencies seeking guidance as to whether NSC records in their custody may be released. In executing this function, I determine whether information that is requested from NSC records may be declassified and released, consistent with Executive Order 12958, or whether it must remain classified and not be released to protect the national security interests of the United States. In consultation with counsel, I also help

determine whether information that is requested from NSC records should not be released for other reasons, such as where the information is subject to a claim of privilege and its release would adversely affect important government interests.

3. Section 1.3(a) of Executive Order 12958 provides that the authority to classify information originally may be exercised only by the President and, in the performance of executive duties, the Vice President; agency heads and officials designated by the President in the Federal Register; and United States Government officials delegated this authority pursuant to section 1.3(c) of the Order. Section 1.3(c)(2) provides that TOP SECRET original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to section 1.3(a)(2) of the Order. Section 1.3(b) of the Executive Order provides that original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL. As an original classification authority, I am authorized to conduct classification reviews and to make original classification decisions.

4. I have reviewed and am generally familiar with the request for records made by the American Civil Liberties Union ("ACLU") that is the subject of the litigation in ACLU v.

Department of Justice, et al, No. 04-cv-4151 (AKH). During the week of September 16, 2009 the National Security Council Staff received a referral from the United States Department of Justice's Office of Legal Counsel ("OLC"), which transmitted 18 documents to the NSC Staff for consultation. In particular, OLC sought guidance as to whether two NSC documents in the custody of OLC, consisting of 26 pages in total, were covered by FOIA exemption (b)(1). The two documents referred to the National Security Council Staff are documents 13 and 16 on OLC's Vaughn index. I submit this declaration to explain why the National Security Council Staff invokes Exemption 1 to withhold information in these two documents.

5. Title 5 U.S.C. Section 552(b)(1) states that FOIA does not apply to matters that are "(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy," and "(B) are in fact properly classified pursuant to such Executive order."

6. I have personally reviewed the two packages of documents submitted to the NSC Staff by OLC, and have concluded that National Security Council information in those documents, to which the (b)(1) exemption has been applied, continues to meet the classification criteria of E.O. 12958, and should therefore be withheld pursuant to FOIA Exemption (b)(1).

7. Document 13 (Bates numbers 003322-003331). Document 13 on OLC's Vaughn index, consisting of 10 pages, is a package of documents comprising a routing slip, a fax cover sheet, meeting notice, agenda, summary of conclusions of a NSC Principals Committee meeting, and (one discussion paper. They are classified either as CONFIDENTIAL or SECRET. Further discussion of the reasons for classifying these documents can be found in paragraphs 12 and 13. The package of documents was classified by the NSC's Executive Secretary.

8. Document 16 (Bates numbers 003344-003359). Document 16 on OLC's Vaughn index, consisting of 16 pages, is a package of documents comprising a routing memo, a classification cover sheet, a fax cover sheet, meeting notice, agenda, summary of conclusions of a NSC Principals Committee meeting, and two discussion papers. They are classified as either CONFIDENTIAL or SECRET. Further discussion of the reasons for classifying these documents can be found in paragraphs 12 and 13. The package of documents was classified by the Executive Secretary of the National Security Council.

9. I have reviewed these documents, for which the National Security Council is the original classifying authority, and determined that they have been classified in accordance with the substantive and procedural requirements of Executive Order

12958 and that they are currently and properly classified. Both packages of documents are properly classified as either CONFIDENTIAL or SECRET under E.O. 12958, and accordingly may not be released except in redacted form. I have determined that, as understood under E.O. 12958, the information in these documents that has been classified as SECRET constitutes information the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security. I have also determined that, as understood under E.O. 12958, the information in these documents classified as CONFIDENTIAL constitutes information the unauthorized disclosure of which could reasonably be expected to result in damage to the national security.

10. Both packages of documents at issue in this declaration are properly classified under section 1.4(d) of E.O. 12958 because they concern the foreign activities of the United States. Six pages of document 16 (Bates numbers 003347-003349 & 003352-003254) are also properly classified under section 1.4(b) of Executive Order 12958 because they implicate foreign government information.

11. I have isolated the reasonably segregable parts of these documents that can be released consistent with FOIA exemption (b) (1) without adversely affecting the foreign relations and national security of the United States. However,

because I understand the Justice Department to be asserting other exemptions over these documents, such as FOIA exemption (b) (5), there are no segregable parts of the documents that can be released to plaintiffs at this time period.

12. Document 13 in OLC's Vaughn index contains a sub-document bearing the Bates range 003328-003331. That document is a Discussion Paper, and it is properly classified under section 1.4(d) of E.O. 12958. The sub-document is a draft response to the International Committee of the Red Cross (ICRC) on the designation of the conflict in Afghanistan and its effect on the detention of enemy combatants. The work of the ICRC, especially in on-going conflicts, is vitally important and necessarily sensitive. The confidential exchanges between the ICRC and sovereign governments allow the Committee to receive information on prisoners of war and other detainees that otherwise would likely be unavailable. Thus, the ICRC has consistently maintained that publication of this sensitive information would limit its effectiveness. As the ICRC considers its requests and the responses to be confidential, release of this document would damage the relationship and limit the ability of the United States to work effectively with the ICRC. There is no reasonably segregable part of the sub-document (bearing the Bates range 003328-003331) that can be

released without adversely affecting the foreign relations and national security of the United States.

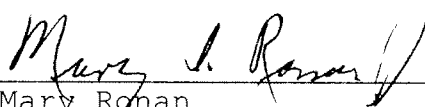
13. Document 16 in OLC's Vaughn index contains several sub-documents bearing the Bates ranges 003347-003348 ("Meeting Notice"), 003349 ("Agenda"), and 003352-003354 ("Discussion Paper"). These sub-documents are properly classified under sections 1.4(b) and 1.4(d) of Executive Order 12958 because they concern foreign government information and the foreign relations or foreign activities of the United States. The documents describe confidential information provided to the United States on efforts to detain and prosecute suspected terrorists. Release of this document would enable foreign governments or entities that are opposed to U.S. policy objectives to undermine the United States' cooperative relationships with foreign governments and otherwise frustrate the implementation of United States foreign policy objectives, thus adversely affecting the national security of the United States. Sub-documents 003347-003348 and 003349 have been redacted to protect the information described. However, I have determined that there is no reasonably segregable part of sub-document 003352-003354 that can be released without adversely affecting the foreign relations and national security of the United States.

14. Additionally, sub-document 003355-003359 ("Discussion Paper") is properly classified under section 1.4(d) of Executive

Order 12958. The sub-document is a draft response to the ICRC on the designation of the conflict in Afghanistan and its effect on the detention of enemy combatants. For the reasons described supra, in paragraph 11, release of this document would damage our relationship with and limit our ability to work with the ICRC, thus adversely affecting the foreign relations and national security of the United States. I have also determined that there is no reasonably segregable part of the sub-document that can be released without adversely affecting the foreign relations and national security of the United States.

15. I have determined that the information contained within the two responsive packages of documents has not been classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Mary Ronan
Director, Access Management
National Security Council

Executed on: November 20, 2009.