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VIA CM/ECF

September 19, 2012

Ms. Mark J. Langer
U.S. Court of Appeals for the
District of Columbia Circuit
333 Constitution Avenue, N.W.
Room 5523
Washington, D.C. 20001

RE: *ACLU v. CIA*, No. 11-5320 (D.C. Cir.)
Scheduled for Oral Argument on September 20, 2012

Dear Mr. Langer:

Plaintiffs' 28(j) letter seeks to supplement the record with media reports purportedly "relating to the CIA's drone program." None of those sources meets this Court's exacting standard for official acknowledgment.

Plaintiffs themselves concede that statements by members and staff of Congress quoted in the *Los Angeles Times* "are not official acknowledgements in themselves." The article cites statements of unidentified officials, specifically noting that some of the officials spoke "on the condition [they] not be identified," and a general statement from a Senator that does not mention the CIA and could not, in any event, constitute official acknowledgment by the agency. See *Wilson v. CIA*, 586 F.3d 171, 189-191 (D.C. Cir. 2009) (Congressional Record publication not "official disclosure").

Similarly, the President's recent interview with CNN and the video aired during the Democratic National Convention add nothing new to this case and do not constitute an official disclosure of any classified information. Plaintiffs

acknowledge that the President "does not expressly mention the CIA" in either source. In the CNN interview, the President discusses the potential use of lethal force against U.S. citizens, which is not classified, while emphasizing the need to be "careful" not to address "classified issues." The video states that Anwar Al-Aulaqi "was killed," without confirming or denying that the CIA (or, indeed, the United States) was responsible for his death.

The statements relied on by plaintiffs, whether viewed separately or collectively, do not show official acknowledgment. To hold otherwise would penalize the government's efforts to provide as much public information as possible regarding counterterrorism operations while nevertheless protecting classified information. If Executive Branch officials' limited and carefully circumscribed statements constituted "official disclosure" of other information under FOIA, there would be "a strong disincentive ever to provide the citizenry with briefings of any kind on sensitive topics." *Pub. Citizen v. Dep't of State*, 11 F.3d 198, 199 (D.C. Cir. 1993); accord *Bassiouni v. CIA*, 392 F.3d 244, 247 (7th Cir. 2004) ("if even a smidgen of disclosure required [the agency] to open its files, there would be no smidgens"). For this reason, plaintiffs' arguments should be rejected.

Sincerely,

/s/ Sharon Swingle

Sharon Swingle
Attorney

cc: all counsel (via CM/ECF)