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VIA CM/ECF

November 16, 2012

Mr. 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.)
Oral Argument Held on September 20, 2012

Dear Mr. Langer:

Plaintiffs have again submitted media reports to this Court that plaintiffs characterize as establishing "the CIA's use of armed drones to carry out targeted killings." 28(j) Letter. Like plaintiffs' earlier submissions, these sources do not establish official acknowledgement by the CIA.

Plaintiffs' own letter describes numerous statements quoted in the media reports as being attributed to unidentified "'officials,' 'administration officials,' 'high-ranking administration officials,' and 'senior administration officials.'" This Court has made clear that statements made by unidentified officials do not constitute official disclosure. *See ACLU v. Department of Defense*, 628 F.3d 612, 620-621 (D.C. Cir. 2011). Similarly, plaintiffs rely on statements by former National Counterterrorism Center Director Michael Leiter, but the statements of a former agency official "cannot be deemed an 'official' act of the Agency." *Wilson v. CIA*, 586 F.3d 171, 189 (2d Cir. 2009).

Finally, plaintiffs rely on press reporting attributed to Deputy National Security Advisor John Brennan. In addition to the fact that Brennan is not a CIA official, plaintiffs have identified no statement by Brennan acknowledging CIA's use of armed drones for targeted killing. For example, although the letter appears to state that Brennan was quoted discussing his "efforts to curtail the CIA's primary responsibility for targeted killings," the quoted language is not a direct quote from Brennan (nor, for that matter, does it mention drones). That a reporter may reach that conclusion, based in part on statements made by a large number of unidentified current and former officials, *see* K. DeYoung, "A CIA veteran transforms U.S. counterterrorism policy," Wash. Post. (Oct. 24, 2012), does not meet the "strict test" for official disclosure. *Wilson*, 586 F.3d at 186. In order for classified information to be officially disclosed for these purposes, "(1) the information requested must be as specific as the information previously released; (2) the information requested must match the information previously disclosed; and (3) the information requested must already have been made public through an official and documented disclosure." *ACLU v. U.S. Dep't of Defense*, 628 F.3d 612, 620-621 (D.C. Cir. 2011). Plaintiffs' press reports fall far short of this exacting standard.

Sincerely,

/s/ Sharon Swingle

Sharon Swingle
Attorney

cc: all counsel (via CM/ECF)