

# 17-779

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT  
Docket No. 17-779**

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AMERICAN CIVIL LIBERTIES UNION, CENTER FOR  
CONSTITUTIONAL RIGHTS, INC., PHYSICIANS FOR HUMAN  
RIGHTS, VETERANS FOR COMMON SENSE, VETERANS FOR  
PEACE,

—v.— *Plaintiffs-Appellees,*

UNITED STATES DEPARTMENT OF DEFENSE, its components  
DEPARTMENT OF ARMY, DEPARTMENT OF NAVY, DEPARTMENT  
OF AIR FORCE, DEFENSE INTELLIGENCE AGENCY, UNITED  
STATES DEPARTMENT OF THE ARMY,

*Defendants-Appellants,*

*(Caption continued on inside cover)*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**JOINT APPENDIX  
VOLUME I OF II  
(Pages JA-1 to JA-240)**

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UNITED STATES DEPARTMENT OF HOMELAND SECURITY,  
UNITED STATES DEPARTMENT OF JUSTICE, and its  
Components CIVIL RIGHTS DIVISION, CRIMINAL DIVISION,  
OFFICE OF INFORMATION AND PRIVACY, OFFICE OF  
INTELLIGENCE, POLICY AND REVIEW, FEDERAL BUREAU OF  
INVESTIGATION, UNITED STATES DEPARTMENT OF STATE,  
CENTRAL INTELLIGENCE AGENCY, FEDERAL BUREAU OF  
INVESTIGATION,

*Defendants.*

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CLOSED,APPEAL,ECF

**U.S. District Court  
Southern District of New York (Foley Square)  
CIVIL DOCKET FOR CASE #: 1:04-cv-04151-AKH**

American Civil Liberties Union et al v. Department of Defense et al  
Assigned to: Judge Alvin K. Hellerstein  
Related Cases: [1:09 cv 05413 AKH](#)  
[1:10 cv 07092 AKH](#)  
[1:15 cv 09317 AKH](#)

Cause: 05:552 Freedom of Information Act

Date Filed: 06/02/2004  
Date Terminated: 01/19/2017  
Jury Demand: None  
Nature of Suit: 895 Freedom of Information Act  
Jurisdiction: U.S. Government Defendant

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<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
06/02/2004	<a href="#"><u>1</u></a>	COMPLAINT against Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State. (Filing Fee \$ 150.00, Receipt Number 510269) Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(gf, ) Additional attachment(s) added on 6/7/2004 (gf, ). (Entered: 06/03/2004)
06/02/2004		SUMMONS ISSUED as to Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State. (gf, ) (Entered: 06/03/2004)
06/02/2004		Magistrate Judge Douglas F. Eaton is so designated. (gf, ) (Entered: 06/03/2004)
06/02/2004		Case Designated ECF. (gf, ) (Entered: 06/03/2004)
06/29/2004		***REJECTION OF ATTEMPTED PAPER FILING IN ECF CASE. The following document(s) affidavit of service by Lawrence S. Lustberg, was rejected by the Clerk's Office and must be FILED ELECTRONICALLY on the Court's ECF System. (snu, ) (Entered: 07/02/2004)
07/06/2004	<a href="#"><u>2</u></a>	FIRST MOTION for Preliminary Injunction. Document filed by American Civil Liberties Union, Center for

JA-11

		Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Ching, Jennifer) (Entered: 07/06/2004)
07/06/2004	<a href="#">3</a>	MOTION for Preliminary Injunction. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Ching, Jennifer) (Entered: 07/06/2004)
07/06/2004	<a href="#">4</a>	MOTION for Preliminary Injunction. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Exhibit # <a href="#">3</a> Exhibit # <a href="#">4</a> Exhibit # <a href="#">5</a> Exhibit # <a href="#">6</a> Exhibit # <a href="#">7</a> Exhibit # <a href="#">8</a> Exhibit # <a href="#">9</a> Exhibit # <a href="#">10</a> Exhibit # <a href="#">11</a> Exhibit # <a href="#">12</a> Exhibit # <a href="#">13</a> Exhibit)(Ching, Jennifer) (Entered: 07/06/2004)
07/06/2004	<a href="#">5</a>	FIRST AMENDED COMPLAINT against all defendants.Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Supplement)(Ching, Jennifer) (Entered: 07/06/2004)
07/06/2004		***REJECTION OF ATTEMPTED PAPER FILING IN ECF CASE. The following document(s) notice of motion and declaration by Lawrence Lustberg, was rejected by the Clerk's Office and must be FILED ELECTRONICALLY on the Court's ECF System. (snu, ) (Entered: 07/09/2004)
07/28/2004	<a href="#">6</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 7/22/04. Defendants' time to respond to the amended complaint is extended to 7/30/04. Defendants' Response to plaintiffs' motion for preliminary injunction due by 7/30/2004. Reply due by 8/6/2004. Oral Argument set for 8/12/2004 03:00 PM before Judge Alvin K. Hellerstein. (Signed by Judge Alvin K. Hellerstein on 7/27/04) (kw, ) (Entered: 07/28/2004)
07/28/2004		Set Answer Due Date purs. to <a href="#">6</a> Endorsed Letter,, Set Scheduling Order Deadlines, as to Central Intelligence Agency answer due on 7/30/2004; Department Of Homeland Security answer due on 7/30/2004; Department Of Justice answer due on 7/30/2004; Department of Defense answer due on 7/30/2004; Department of State answer due on 7/30/2004. (kw, ) (Entered: 07/28/2004)
07/30/2004	<a href="#">7</a>	ANSWER to Amended Complaint. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State. Related document: <a href="#">5</a> Amended Complaint, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Lane, Sean) (Entered: 07/30/2004)
07/30/2004	<a href="#">8</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">2</a> FIRST MOTION for Preliminary Injunction., <a href="#">3</a> MOTION for Preliminary Injunction., <a href="#">4</a> MOTION for Preliminary Injunction.. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State. (Lane, Sean) (Entered: 07/30/2004)
07/30/2004	<a href="#">9</a>	FILING ERROR DEFICIENT DOCKET ENTRY DECLARATION of Sean H. Lane in Opposition re: <a href="#">2</a> FIRST MOTION for Preliminary Injunction., <a href="#">3</a> MOTION for Preliminary Injunction, <a href="#">4</a> MOTION for Preliminary Injunction. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State. (Lane, Sean) Modified on 8/6/2004 (kg, ). (Entered: 07/30/2004)
07/30/2004	<a href="#">10</a>	DECLARATION of Sean H. Lane in Opposition re: <a href="#">2</a> FIRST MOTION for Preliminary Injunction., <a href="#">3</a> MOTION for Preliminary Injunction., <a href="#">4</a> MOTION for Preliminary Injunction.. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State. (Attachments: # <a href="#">1</a> Exhibits to Lane Declaration)(Lane, Sean) (Entered: 07/30/2004)
07/30/2004	<a href="#">11</a>	DECLARATION of C. Y. Talbott in Opposition re: <a href="#">2</a> FIRST MOTION for Preliminary Injunction., <a href="#">3</a> MOTION for Preliminary Injunction., <a href="#">4</a> MOTION for Preliminary Injunction.. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State. (Lane, Sean) (Entered: 07/30/2004)
08/06/2004	<a href="#">12</a>	FIRST REPLY MEMORANDUM OF LAW in Support re: <a href="#">2</a> FIRST MOTION for Preliminary Injunction.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit Exhibits 14 16# <a href="#">2</a> Affidavit Certification of Service) (Ching, Jennifer) (Entered: 08/06/2004)
08/17/2004	<a href="#">13</a>	STIPULATION AND ORDER: regarding the procedures that will govern the documents sought by the plaintiffs in their October 2003 and May 2004 FOIA requests. (Signed by Judge Alvin K. Hellerstein on 8/17/04) (kw, ) (Entered: 08/18/2004)
09/07/2004	<a href="#">14</a>	ENDORSED LETTER addressed to Judge Hellerstein from Jennifer Ching dated 08/30/04 re: counsel is granted an extension of two days to complete the negotiation of a FOIA processing schedule. The parties will send their completed order to the Court by close of business on Wednesday, 09/01/04; (Signed by Judge Gerard E. Lynch Part I on 8/31/04) (djc, ) Modified on 9/8/2004 (djc, ). (Entered: 09/08/2004)
09/07/2004	<a href="#">15</a>	ENDORSED LETTER addressed to Judge Hellerstein from Jennifer Ching dated 09/02/04 re: the conference is adjourned to Friday, September 10 at 11:00 a.m.. (Signed by Judge Alvin K. Hellerstein on 9/7/04) (djc, ) (Entered: 09/08/2004)
09/15/2004	<a href="#">16</a>	OPINION AND ORDER #90641: I order that by 10/15/04 defendants must produce or identify all responsive documents as set forth in this document. The parties shall appear on 10/25/04 for a status conference. (Signed by Judge Alvin K. Hellerstein on 9/15/04) (kw, ) Modified on 10/28/2004 (ae, ). (Entered: 09/15/2004)



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09/21/2004	17	TRANSCRIPT of proceedings held on 9/10/04 before Judge Alvin K. Hellerstein.(pa, ) (Entered: 09/21/2004)
10/19/2004	<a href="#">18</a>	FILING ERROR ELECTRONIC FILING FOR NON ECF DOCUMENT STATUS REPORT. <i>Government Report on Compliance with September 15, 2004 Order and Request for Limited Relief from that Order</i> Document filed by Central Intelligence Agency, Department Of Justice, Department of Defense, Department of State.(Skinner, Peter) Modified on 5/9/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">19</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Marilyn A. Dorn in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Central Intelligence Agency.(Skinner, Peter) Modified on 5/9/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">20</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Scott A. Koch in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Central Intelligence Agency.(Skinner, Peter) Modified on 5/9/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">21</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Stewart F. Aly in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of Defense.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">22</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Margaret B. Baines in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of Defense.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">23</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Brian S. Kinsey in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of Defense.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">24</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Philip J. McGuire in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of Defense.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">25</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Samuel W. Morris in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of Defense.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">26</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Robert Storer in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of Defense.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">27</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>First Declaration of Margaret P. Grafeld in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of State. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3# <a href="#">4</a> Exhibit 4# <a href="#">5</a> Exhibit 5# <a href="#">6</a> Exhibit 6# <a href="#">7</a> Exhibit 7# <a href="#">8</a> Exhibit 8# <a href="#">9</a> Exhibit 9# <a href="#">10</a> Exhibit 10)(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">28</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Second Declaration of Margaret P. Grafeld in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department of State.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/19/2004	<a href="#">29</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Keith R. Gehle in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department Of Justice.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/19/2004)
10/20/2004	<a href="#">30</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of Steven G. Bradbury in Support of Government's Report on Compliance and Request for Limited Relief</i> Document filed by Department Of Justice.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/20/2004)
10/20/2004	<a href="#">31</a>	CERTIFICATE OF SERVICE of Government Report on Compliance and Request for Limited Relief and Accompanying Declarations served on ACLU, et al. on 10/16/2004. Document filed by Central Intelligence Agency, Department Of Justice, Department of Defense, Department of State. (Skinner, Peter) (Entered: 10/20/2004)
10/25/2004		Minute Entry for proceedings held before Judge Alvin K. Hellerstein : Status Conference held on 10/25/2004. (jeh, ) (Entered: 10/28/2004)
10/26/2004	<a href="#">32</a>	FILING ERROR ELECTRONIC FILING FOR NON ECF DOCUMENT STATUS REPORT. <i>Second Government Report on Compliance with September 15, 2004 Order</i> Document filed by Central Intelligence Agency, Department Of Justice, Department of Defense, Department of State.(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/26/2004)
10/26/2004	<a href="#">33</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU STATUS REPORT. <i>Declaration of David M. Hardy in Support of Second Government Report on Compliance with September 15, Order</i> Document filed by Department Of Justice. (Attachments: # <a href="#">1</a> Exhibit A)(Skinner, Peter) Modified on 5/10/2005 (st, ). (Entered: 10/26/2004)
10/26/2004	<a href="#">34</a>	CERTIFICATE OF SERVICE of Second Government Report on Compliance and Accompanying Declaration served on ACLU, et al. on 10/22/2004. Document filed by Department Of Justice. (Skinner, Peter) (Entered: 10/26/2004)
11/01/2004	<a href="#">35</a>	ORDER as to plaintiffs' Freedom of Information Act demands dated 8/16/04: plaintiffs, by 10/29/04, shall identify the issues they believe are ripe for summary judgment; the parties shall then file motions and supporting and opposing papers according to a schedule to which they mutually agree; as to all outstanding documents responsive to plaintiffs' FOIA

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		demands dated 8/16/04, unless specifically directed otherwise herein, defendants shall provide substantially complete responses by 11/8/04, subject to good faith exception as to any documents not capable of identification and response by said date; as to defendant Department of Defense: defendant shall provide substantially complete responses to all other pending FOIA demands by plaintiffs by 1/31/05, and partial responses to all other pending FOIA demands by plaintiffs by 1/31/05, and partial responses, at a rate reflecting identification and review of at least 10,000 pages per month, by 11/30/04 and 12/31/04, etc. as further set forth in this Order. The parties shall appear on 11/16/04 at 4 p.m. for the next status and case management conference. So Ordered. (Signed by Judge Alvin K. Hellerstein on 10/25/04) (jco) (Entered: 11/03/2004)
11/05/2004	36	TRANSCRIPT of proceedings held on 10/25/04 before Judge Alvin K. Hellerstein.(Belfiore, John) (Entered: 11/05/2004)
11/08/2004	<a href="#">37</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 11/4/04 re: the C.I.A. requests the following briefing schedule: C.I.A.'s motion papers due 11/10/04; opposition papers due 11/19/04 and reply papers due 12/1/04. Application GRANTED. (Signed by Judge Alvin K. Hellerstein on 11/8/04) (db, ) (Entered: 11/09/2004)
11/08/2004		Set/Reset Deadlines: Motions due by 11/10/2004. Replies due by 12/1/2004. Responses due by 11/19/2004 (db, ) (Entered: 11/09/2004)
11/10/2004	<a href="#">38</a>	MOTION to Stay <i>the Court's September 15, 2004 Order</i> . Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 11/10/2004)
11/11/2004	<a href="#">39</a>	MEMORANDUM OF LAW in Support re: <a href="#">38</a> MOTION to Stay <i>the Court's September 15, 2004 Order</i> .. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 11/11/2004)
11/11/2004	<a href="#">40</a>	DECLARATION of Mona B. Alderson in Support re: <a href="#">38</a> MOTION to Stay <i>the Court's September 15, 2004 Order</i> .. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 11/11/2004)
11/11/2004	<a href="#">41</a>	CERTIFICATE OF SERVICE of Papers in Support of Motion for Limited Relief from September 15, 2004 Order served on ACLU, et al. on November 10, 2004. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 11/11/2004)
11/18/2004	42	TRANSCRIPT of proceedings before Judge Alvin K. Hellerstein.(Martin, Leslie) (Entered: 11/18/2004)
11/29/2004	<a href="#">43</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">38</a> MOTION to Stay <i>the Court's September 15, 2004 Order</i> .. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) (Entered: 11/29/2004)
12/06/2004	<a href="#">44</a>	ORDER; by December 30, 2004, plaintiffs shall file their motion for summary judgment regarding selected documents on plaintiffs' list of seventy items dated August 16, 2004 as set forth in plaintiffs' letter dated October 29, 2004; Government's opposition due by 01/28/05; Plaintiffs shall file their reply by 02/11/05; defendants shall file their reply brief in support of any cross motion by 02/25/05... By December 15, 2004, the Government shall serve upon plaintiffs a final administrative response to plaintiffs' FOIA requests, together with any responsive documents appropriate for release, on behalf of the FBI and CIA;...the Court will hold a conference with the parties on February 22, 2005 at 4:00 p.m. to resolve any remaining issues; (Signed by Judge Alvin K. Hellerstein on 12/2/04) (dj, ) (Entered: 12/06/2004)
12/08/2004	<a href="#">45</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">38</a> MOTION to Stay <i>the Court's September 15, 2004 Order</i> .. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 12/08/2004)
12/20/2004		MEMORANDUM TO THE DOCKET CLERK: Oral Argument held on 12/20/04 on motion for CIA application limited relief from 09/15/04 order (dj, ) (Entered: 01/04/2005)
01/06/2005	46	TRANSCRIPT of proceedings held on 12/20/04 (jog, ) (Entered: 01/06/2005)
01/13/2005	<a href="#">47</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU MOTION for Summary Judgment , <i>Partial</i> . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Memorandum of Law in Support# <a href="#">2</a> Exhibit A C# <a href="#">3</a> Exhibit D H# <a href="#">4</a> Exhibit I L# <a href="#">5</a> Exhibit M# <a href="#">6</a> Exhibit N, part one# <a href="#">7</a> Exhibit N, part 2# <a href="#">8</a> Exhibit O Q)(Batsides, Demetrios) Modified on 9/21/2005 (sn). (Entered: 01/13/2005)
01/18/2005	<a href="#">48</a>	MOTION for Partial Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Memorandum of Law in Support# <a href="#">2</a> Exhibit A C# <a href="#">3</a> Exhibit D H# <a href="#">4</a> Exhibit I L# <a href="#">5</a> Exhibit M# <a href="#">6</a> Exhibit N, part one# <a href="#">7</a> Exhibit N, part two# <a href="#">8</a> Exhibit O Q)(Lustberg, Lawrence) (Entered: 01/18/2005)
02/01/2005	<a href="#">49</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 1/28/05 re: counsel request an extension of time for the Department of Defense to complete its processing and production of all documents responsive to plaintiffs's FOIA requests in this case. Defendant shall continue its rate of proceedings, but in volumes at least 15% greater than in previous months. (Signed by Judge Alvin K. Hellerstein on 2/1/05) (sac, ) (Entered: 02/02/2005)
02/02/2005	<a href="#">50</a>	OPINION AND ORDER #91205 re: I deny the CIA's motion for a stay of its obligation to comply with my Opinion and Order of 9/15/04. The CIA shall search and review in response to plaintiffs' FOIA requests,as described in my Opinion and Order of 9/15/04. If the parties cannot comply with the schedule for filing summary judgment papers heretofore ordered, they shall propose a revised schedule by joint letter to be submitted by 2/12/05; <a href="#">38</a> MOTION to Stay, the Court's September 15, 2004 Order, filed by Central Intelligence Agency,. (Signed by Judge Alvin K. Hellerstein on 2/2/05) (sac, ) Modified on 2/14/2005 (snu, ). (Entered: 02/02/2005)

02/08/2005	<a href="#">51</a>	MOTION to Stay re: <a href="#">50</a> Memorandum & Opinion,, <i>Pending Consideration of Appeal</i> . Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 02/08/2005)
02/08/2005	<a href="#">52</a>	MEMORANDUM OF LAW in Support re: <a href="#">51</a> MOTION to Stay re: <a href="#">50</a> Memorandum & Opinion,, <i>Pending Consideration of Appeal</i> .. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 02/08/2005)
02/15/2005	<a href="#">56</a>	ENDORSED LETTER addressed to Judge Alvin H. Hellerstein from Saen H. Lane dated 2/11/05 re: Counsel writes to propose the following schedule Government's opposition and cross motion 2/24/05; plaintiffs' opposition and reply brief; Government's reply brief 3/24/05. And for the Court to grant the parties an extension of time to submit their summary judgment papers in accordance with the proposed schedule. So Ordered. (Signed by Judge Alvin K. Hellerstein on 2/15/05) (jco, ) (Entered: 02/18/2005)
02/16/2005	<a href="#">53</a>	MOTION for Reconsideration re; <a href="#">50</a> Memorandum & Opinion,,. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 02/16/2005)
02/16/2005	<a href="#">54</a>	MEMORANDUM OF LAW in Support re: <a href="#">53</a> MOTION for Reconsideration re; <a href="#">50</a> Memorandum & Opinion,,. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 02/16/2005)
02/16/2005	<a href="#">55</a>	DECLARATION of Marilyn A. Dorn in Support re: <a href="#">53</a> MOTION for Reconsideration re; <a href="#">50</a> Memorandum & Opinion,,. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 02/16/2005)
02/18/2005	<a href="#">57</a>	ORDER denying <a href="#">51</a> Motion to Stay . (Signed by Judge Alvin K. Hellerstein on 2/18/2005) (jp, ) (Entered: 02/23/2005)
02/18/2005	<a href="#">58</a>	ORDER REGULATING PROCEDURES; re: <a href="#">53</a> MOTION for Reconsideration: Responses due by 2/25/2005; the issues will be heard on 3/4/2005 at 2:00 p.m. (Signed by Judge Alvin K. Hellerstein on 2/18/2005) (jp, ) (Entered: 02/23/2005)
02/18/2005	<a href="#">60</a>	ORDER that plntfs are instructed to file their opposition, if any, to this newest submission by 2/25/05. The issues will be heard on 3/4/05 at 2 pm. (Signed by Judge Alvin K. Hellerstein on 2/18/05) (cd, ) (Entered: 03/01/2005)
02/23/2005	<a href="#">63</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 2/22/05 re: Gov't opposition and cross motion due 3/10/05; Plaintiffs' opposition and reply brief; Gov't reply brief due 4/7/05. (Signed by Judge Alvin K. Hellerstein on 2/23/05) (pl, ) (Entered: 03/04/2005)
02/24/2005	<a href="#">59</a>	FIRST MEMORANDUM OF LAW in Opposition re: <a href="#">53</a> MOTION for Reconsideration re; <a href="#">50</a> Memorandum & Opinion,,. <i>Opposition to Defendant CIA's Motion for Partial Relief</i> . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) (Entered: 02/24/2005)
02/25/2005		Minute Entry for proceedings held before Judge Alvin K. Hellerstein : Status Conference held on 2/25/2005. (db, ) (Entered: 03/03/2005)
02/28/2005	<a href="#">62</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 2/18/05 re: the parties shall meet face to face and confer. Issues notcompromised can be advised to me at the argument of 3/4/05. (Signed by Judge Alvin K. Hellerstein on 2/25/05) (pl, ) (Entered: 03/04/2005)
03/01/2005	<a href="#">64</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein. from Sean H. Lane dated 2/28/05 re: granting requests for a 3 day extension ot time for the dfts dept. of defense to compelte its processing obligations for the month of February. (Signed by Judge Alvin K. Hellerstein on 3/1/05) (pl, ) (Entered: 03/04/2005)
03/02/2005	<a href="#">61</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">53</a> MOTION for Reconsideration re; <a href="#">50</a> Memorandum & Opinion,,. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 03/02/2005)
03/09/2005	<a href="#">65</a>	DECLARATION of Marilyn Dorn in Support re: <a href="#">53</a> MOTION for Reconsideration re; <a href="#">50</a> Memorandum & Opinion,,. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 03/09/2005)
03/10/2005	<a href="#">66</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean Lane dated 3/9/05 re: counsel for the government requests an 11 day extension of time until 3/21/05 for the government to respond to plaintiffs' motion for partial summary judgment and cross motion; plaintiffs' opposition and reply brief 4/4/05; government's reply brief 4/18/05. Motion granted. (Signed by Judge Alvin K. Hellerstein on 3/9/05) (dle, ) (Entered: 03/14/2005)
03/10/2005		Set/Reset Deadlines as to <a href="#">48</a> MOTION for Partial Summary Judgment., <a href="#">47</a> MOTION for Summary Judgment , <i>Partial</i> .. Responses due by 3/21/2005 Replies due by 4/4/2005. (dle, ) (Entered: 03/14/2005)
03/22/2005	<a href="#">67</a>	ORDER; defendant Dept. of Defense will process 8,000 pages of responsive documents every fifteen days.. Docmts to be released will be served by the Gov't on the 15th and last day of each month, with the parties to work out a schedule for the month of March; on or before 04/15/05, as per the Court's 02/02/05 Order, defendant Central Intelligence Agency will complete processing of the investigative files in the Office of the Inspector General; On or before 04/04/05, the FBI will produce a declaration, as specified in vaughn v. Rosen.... (Signed by Judge Alvin K. Hellerstein on 3/22/05) (djc, ) (Entered: 03/23/2005)
03/22/2005	<a href="#">71</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 3/18/05 re: motion granted; extension until 3/25/05, for Gov't to respond to plaintiffs motion for Partial Summary Judgment. (Signed by Judge Alvin K. Hellerstein on 3/22/05) (pl, ) (Entered: 03/28/2005)
03/24/2005	68	TRANSCRIPT of proceedings held on 3/4/05 before Judge Alvin K. Hellerstein. (lma, ) (Entered: 03/24/2005)
03/25/2005	69	TRANSCRIPT of proceedings held on 03/04/05 before Judge Alvin K. Hellerstein. (es, ) (Entered: 03/25/2005)

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03/25/2005	<a href="#">70</a>	ENDORSED LETTER addressed to Judge Hellerstein from Sean H. Lane dated 3/25/05 re: the following schedule is granted; Government's opposition and cross motion due 03/31/05; plaintiffs' opposition and reply brief due 04/14/05; Government's reply brief due April 28, 2005. (Signed by Judge Alvin K. Hellerstein on 3/25/05) (djc, ) (Entered: 03/28/2005)
03/28/2005	<a href="#">82</a>	NOTICE TO PARTIES. The date and time for Argument on plaintiffs' motion for partial summary is set for 5/11/2005 at 04:00 PM, at 500 Pearl Street, Courtroom 14D. No further adjournments will be granted. The Court desires a prompt response from the department of defense to the complaints expressed in the letter of Megan Lewis dated 3/28/05, specifically, an explanation as to why fewer document have been processed than the number the parties agreed should be processed, and why productions to plaintiffs have been delayed beyond due dates until after public disclosures were made (Signed by Judge Alvin K. Hellerstein on 3/28/05) (yv, ) (Entered: 04/01/2005)
03/30/2005	<a href="#">72</a>	MOTION for Summary Judgment. Document filed by Central Intelligence Agency, Department of Defense. Responses due by 4/14/2005 Return Date set for 5/11/2005 04:00 PM. (Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">73</a>	RULE 56.1 STATEMENT. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">74</a>	DECLARATION of Charles A. Allen in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B)(Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">75</a>	DECLARATION of Stewart F. Aly in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C# <a href="#">4</a> Exhibit D# <a href="#">5</a> Exhibit E# <a href="#">6</a> Exhibit F)(Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">76</a>	DECLARATION of Diane E. Beaver in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">77</a>	DECLARATION of Geoffrey S. Corn in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">78</a>	DECLARATION of Edward R. Cummings in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C# <a href="#">4</a> Exhibit D)(Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">79</a>	DECLARATION of Marilyn A. Dorn in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A)(Skinner, Peter) (Entered: 03/30/2005)
03/30/2005	<a href="#">80</a>	MEMORANDUM OF LAW in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 03/30/2005)
03/31/2005	<a href="#">81</a>	DECLARATION of Phillip J. McGuire in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 03/31/2005)
04/05/2005	<a href="#">83</a>	ORDER; DOD's motion is denied. DOD shall use zealous and good faith efforts to bring itself into compliance with the schedule provided by the consent order of 3/22/05. (Signed by Judge Alvin K. Hellerstein on 4/5/05) (sac, ) (Entered: 04/06/2005)
04/12/2005		MEMORANDUM TO THE DOCKET CLERK: In camera proceedings held 4/12/05. (ae, ) (Entered: 04/21/2005)
04/14/2005	<a href="#">84</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Megan Lewis dated 4/13/05 re: granting request for the filing of plaintiff's brief on 4/21/05. (Signed by Judge Alvin K. Hellerstein on 4/13/05) (pl, ) (Entered: 04/15/2005)
04/15/2005	<a href="#">85</a>	ORDER ; denying motion for stay (superceding order of 4/5/05). (Signed by Judge Alvin K. Hellerstein on 4/7/05) (pl, ) (Entered: 04/15/2005)
04/18/2005	<a href="#">86</a>	ORDER; that the CIA has satisfied the procedural requirements of the CIA Information Act, 50 U.S.C. section 431(a), and has established that information responsive to plaintiffs' FOIA requests likely would be found in those operational files that have been designated as exempt from FOIA; that, in accordance with the remainder of the court's 2/2/05 Opinion and Order, the CIA obligation to search to search and review not to operation files, but only to relevant documents that have already been identified and produced to, or otherwise collected by, CIA's Office of Inspector General (Signed by Judge Alvin K. Hellerstein on 4/18/05) (pl, ) Modified on 4/19/2005 (pl, ). (Entered: 04/19/2005)
04/18/2005	<a href="#">87</a>	ORDER; that CIA's request for an extension of time until 7/15/05 to complete processing o f documents is rejected without prejudice, and maybe renewed in complaint with chambers Rule 1D. (Signed by Judge Alvin K. Hellerstein on 4/18/05) (pl, ) (Entered: 04/20/2005)
04/21/2005	<a href="#">88</a>	ENDORSED LETTER addressed to Judge Hellerstein from Megan Lewis dated 4/13/05 re: request for an extension of time within which to file opposition to defendants' motion for partial summary judgment and reply in support of plaintiffs' motion for partial summary judgment to 4/28/05., Set Deadlines/Hearing as to <a href="#">48</a> MOTION for Partial Summary Judgment., <a href="#">72</a> MOTION for Summary Judgment.: Responses due by 4/28/2005. Replies due by 4/28/2005. Application granted (Signed by Judge Alvin K. Hellerstein on 4/20/05) (yv, ) (Entered: 04/22/2005)
04/28/2005	<a href="#">89</a>	FILING ERROR DEFICIENT DOCKET ENTRY MEMORANDUM OF LAW in Opposition re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Attachments: # <a href="#">1</a> Memo part 2# <a href="#">2</a> Exhibits 1 through 6# <a href="#">3</a> Scott Horton Declaration# <a href="#">4</a> Horton Declaration exhibits A

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		and B# <a href="#">5</a> Marco Sassoli Declaration with Exhibit A)(Lustberg, Lawrence) Modified on 5/9/2005 (st, ). (Entered: 04/28/2005)
04/28/2005	<a href="#">90</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU NOTICE of Statement Pursuant to Local Rule 56.1. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Lustberg, Lawrence) Modified on 5/9/2005 (st, ). (Entered: 04/28/2005)
04/29/2005	<a href="#">91</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">47</a> MOTION for Summary Judgment , <i>Partial</i> ., <a href="#">72</a> MOTION for Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Attachments: # <a href="#">1</a> Part two of Memorandum# <a href="#">2</a> Exhibits 1 through 6# <a href="#">3</a> Scott Horton Declaration in Support# <a href="#">4</a> Horton Declaration Exhibits A and B# <a href="#">5</a> Marco Sassoli Declaration in Support with Exhibit A)(Lustberg, Lawrence) (Entered: 04/29/2005)
04/29/2005	<a href="#">92</a>	COUNTER STATEMENT TO <a href="#">73</a> Rule 56.1 Statement. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Lustberg, Lawrence) (Entered: 04/29/2005)
05/10/2005		***NOTE TO ATTORNEY TO RE FILE DOCUMENT DOCUMENT TYPE ERROR. Note to Attorney Peter M. Skinner to RE FILE Document <a href="#">26</a> Status Report., <a href="#">19</a> Status Report., <a href="#">27</a> Status Report., <a href="#">20</a> Status Report., <a href="#">28</a> Status Report., <a href="#">29</a> Status Report., <a href="#">30</a> Status Report., <a href="#">21</a> Status Report., <a href="#">22</a> Status Report., <a href="#">23</a> Status Report., <a href="#">24</a> Status Report., <a href="#">33</a> Status Report., <a href="#">25</a> Status Report.. Use the document type Declaration in Support (non motion) found under the document list Other Answers. (st, ) (Entered: 05/10/2005)
05/10/2005		***NOTE TO ATTORNEY TO RE FILE DOCUMENT NON ECF DOCUMENT ERROR. Note to Attorney Peter M. Skinner to contact the Judges Chambers on filing Letters Document Nos. [18 and 32] Status Reports. These documents are not filed via ECF. (st, ) (Entered: 05/10/2005)
05/12/2005	<a href="#">93</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 5/11/05 re: Counsel writes to request a one week extension until 5/19/05 to file its reply brief relating to the pending motions. So Ordered. (Signed by Judge Alvin K. Hellerstein on 5/12/05) (jco, ) (Entered: 05/12/2005)
05/12/2005		Set Deadlines/Hearings: Reply Brief due by 5/19/2005. (jco, ) (Entered: 05/12/2005)
05/19/2005	<a href="#">94</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 05/19/2005)
05/19/2005	<a href="#">95</a>	DECLARATION of Stewart F. Aly in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 05/19/2005)
05/19/2005	<a href="#">96</a>	DECLARATION of Michael G. Seidel in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A)(Skinner, Peter) (Entered: 05/19/2005)
05/19/2005	<a href="#">97</a>	RULE 56.1 STATEMENT. Document filed by Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 05/19/2005)
05/23/2005	<a href="#">98</a>	ENDORSED LETTER addressed to Judge Hellerstein from Peter Skinner dated 5/20/05: granting motion of deft CIA for an extension of time until 7/15/05 to complete the processing of documents etc, on condition of no further requests by CIA for enlargement of time. (Signed by Judge Alvin K. Hellerstein on 5/23/05) (cd, ) (Entered: 05/23/2005)
05/26/2005		Minute Entry for proceedings held before Judge Alvin K. Hellerstein : Oral Argument held on 5/26/2005 re: corss motins for S.J. Hearing adjourned until 5/31/05 (pl, ) (Entered: 06/02/2005)
05/26/2005		Minute Entry for proceedings held before Judge Alvin K. Hellerstein : Oral Argument held on 5/26/2005 re: <a href="#">47</a> MOTION for Summary Judgment , <i>Partial</i> . filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">72</a> MOTION for Summary Judgment. filed by Central Intelligence Agency,, Department of Defense,, <a href="#">48</a> MOTION for Partial Summary Judgment. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, (dle, ) (Entered: 06/08/2005)
06/01/2005	<a href="#">100</a>	ORDER: regarding procedures that the Government shall follow in the handling, processing and/or redacting of documents named Government Exhibits GX 1 through GX 9. The Department of Defense shall reprocess and redact the remaining "Darby" photographs by 6/30/05 as further set forth in said Order. (Signed by Judge Denise L. Cote, Part I on 6/1/05) (db, ) (Entered: 06/03/2005)
06/03/2005	99	TRANSCRIPT of proceedings held on 05/31/05 before Judge Alvin K. Hellerstein. (es, ) (Entered: 06/03/2005)
06/17/2005	102	TRANSCRIPT of proceedings held on 05/31/05 before Judge Alvin K. Hellerstein. (es, ) (Entered: 06/17/2005)
06/20/2005	<a href="#">103</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 6/16/05 re: counsel for the government requests an extension of the 6/17/05 deadline to report results of their review of documents. The enlargement of time until 7/8/05 is granted. The in camera review will be conducted in chambers at 2:15 p.m., 7/15/05. (Signed by Judge Alvin K. Hellerstein on 6/20/05) (dle, ) (Entered: 06/21/2005)
06/23/2005	104	TRANSCRIPT of proceedings held on 5/31/2005 @4:10pm before Judge Alvin K. Hellerstein. (lb, ) (Entered: 06/23/2005)
06/27/2005	105	TRANSCRIPT of proceedings held on 5/26/2005 @11:30am before Judge Alvin K. Hellerstein. (lb, ) (Entered: 06/27/2005)

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07/28/2005	<a href="#">106</a>	ORDER; regarding the procedures that will govern the handling of confidential information. Nothing in this Confidentiality Order shall preclude Plaintiffs from challenging the existence or scope of the Order once they have reviewed the information the Gov't seeks to protect, should they wish to do so. (Signed by Judge Alvin K. Hellerstein on 7/22/05) (pl, ) (Entered: 07/28/2005)
07/28/2005	<a href="#">107</a>	ORDER. The Government's request to file a complete and unredacted set of its submission under seal is granted. The Government's request to redact certain portions of its submissions to be publicly filed is granted. The Government shall electronically file a redacted public version of its submission, with redactions clearly delineated, as soon as possible after entry of this Order. Plaintiffs shall file any motion to unseal portions of the Government's submission by 8/3/05 (Signed by Judge Alvin K. Hellerstein on 7/28/05) (yv, ) (Entered: 07/28/2005)
07/28/2005	<a href="#">110</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU MOTION for Partial Summary Judgment <i>Supplemental Memorandum in Further Support</i> . Document filed by Department of Defense. (McShain, Heather) Modified on 7/29/2005 (gf, ). (Entered: 07/28/2005)
07/28/2005	<a href="#">111</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU DECLARATION of Richard B. Myers in Support re: <a href="#">110</a> MOTION for Partial Summary Judgment <i>Supplemental Memorandum in Further Support</i> .. Document filed by Department of Defense. (Attachments: # <a href="#">1</a> )(McShain, Heather) Modified on 7/29/2005 (gf, ). (Entered: 07/28/2005)
07/28/2005	<a href="#">112</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU DECLARATION of Richard Schlicher in Support re: <a href="#">110</a> MOTION for Partial Summary Judgment <i>Supplemental Memorandum in Further Support</i> ., <a href="#">111</a> Declaration in Support. Document filed by Department of Defense. (McShain, Heather) Modified on 7/29/2005 (gf, ). (Entered: 07/28/2005)
07/28/2005	<a href="#">113</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU DECLARATION of Phillip J. McGuire in Support re: <a href="#">110</a> MOTION for Partial Summary Judgment <i>Supplemental Memorandum in Further Support</i> ., <a href="#">111</a> Declaration in Support, <a href="#">112</a> Declaration in Support. Document filed by Department of Defense. (Attachments: # <a href="#">1</a> ) (McShain, Heather) Modified on 7/29/2005 (gf, ). (Entered: 07/28/2005)
07/28/2005	<a href="#">114</a>	SUPPLEMENTAL MEMORANDUM OF LAW in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (McShain, Heather) (Entered: 07/28/2005)
07/28/2005	<a href="#">115</a>	DECLARATION of Richard B. Myers in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (Attachments: # <a href="#">1</a> )(McShain, Heather) (Entered: 07/28/2005)
07/28/2005	<a href="#">116</a>	DECLARATION of Ronald Schlicher in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (McShain, Heather) (Entered: 07/28/2005)
07/28/2005	<a href="#">117</a>	DECLARATION of Phillip J. McGuire in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (Attachments: # <a href="#">1</a> )(McShain, Heather) (Entered: 07/28/2005)
08/03/2005	<a href="#">118</a>	MOTION to File Amicus Brief. Document filed by Advance Publications, Inc., American Society of Newspaper Editors, CBS Broadcasting, Inc., CBS Broadcastings, Inc., Investigative Reporters and Editors, Inc., NBC Universal, Inc., Reporters Committee for Freedom of the Press, The E.W. Scripps Company, The Hearst Corporation, The National Newspaper Association, The New York Times Co., The Newspaper Guild CWA, The Radio Television News Directors Association, The Society of Professional Journalists, The Tribune Company. (Attachments: # <a href="#">1</a> # <a href="#">2</a> Affidavit Declaration of David B. Smallman# <a href="#">3</a> Exhibit Exhibit 1: Proposed Brief Amici Curiae)(Smallman, David) (Entered: 08/03/2005)
08/03/2005	<a href="#">119</a>	ORDER REGULATION PROCEDURES. (Signed by Judge Alvin K. Hellerstein on 8/3/05) (pl, ) (Entered: 08/04/2005)
08/05/2005	<a href="#">120</a>	ORDER granting <a href="#">118</a> Motion to File Amicus Brief . Leave to file the brief. Amici Curiae is granted. The brief will be considered. (Signed by Judge Alvin K. Hellerstein on 8/5/05) (jco, ) (Entered: 08/08/2005)
08/08/2005	<a href="#">121</a>	ORDER plaintiffs will submit their opposition to Defendant's Supplemental Partial Summary Judgment Motion, and their motion to vacate the Protective Order entered 7/22/05, and accompanying memorandum of law, by Wednesday, 8/3/05; defendant will submit their opposition and reply by Wednesday, 8/10/05; and plaintiffs will submit their reply on 8/12/05; (2) a hearing on this matter will held on 8/15/05 at 10:00 a.m. 12:30 noon, part of this will be closed to the public. (3) Defendant is directed to designate publicity those sections of its Memo of Law and accompanying declarations that were provided to Plaintiffs but not to the public. (Signed by Judge Alvin K. Hellerstein on 8/8/05) (jco, ) Additional attachment(s) added on 8/11/2005 (jco, ). Modified on 8/11/2005 (jco, ). (Entered: 08/09/2005)
08/08/2005		Set Deadlines/Hearings: Motions due by 7/22/2005. Replies due by 8/12/2005. Responses due by 8/10/2005 (jco, ) (Entered: 08/09/2005)
08/08/2005	<a href="#">122</a>	ORDER PERMITTING BRIEFING to the extent any party contends that the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108 458, 118 Stat. 3638 enacted 12/17/04, and effective not later than six months after the date of the enactment of the Act, except as other wise expressly provided in the Act changes any rule for decision with regard to the five disputes that are the subject of the parties' recent motions for partial summary judgment, that party may state its position by noon Friday 8/12/05. If nothing is received by that date, the Court will assume that the parties contend that no rule for decision has been changed. So Ordered. (Signed by Judge Alvin K. Hellerstein on 8/8/05) (jco, ) (Entered: 08/09/2005)
08/08/2005	123	LETTER addressed to Judge Hellerstein from Peter M. Skinner dated 8/2/05 re: request for a modification of the procedure that the Court has established to resolve plaintiffs' challenge to the Government's segregability review of the

		documents responsive to Request 43 of plaintiffs "List of 70". Document filed by Department Of Justice, Department of State, Central Intelligence Agency, Department of Defense, Department Of Homeland Security.(yv, ) (Entered: 08/10/2005)
08/10/2005	<a href="#">124</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU MOTION to File Amicus Brief. Document filed by American Legion. Return Date set for 8/15/2005 09:30 AM. (Attachments: # <a href="#">1</a> # <a href="#">2</a> # <a href="#">3</a> # <a href="#">4</a> # <a href="#">5</a> # <a href="#">6</a> ) (Mills, Charles) Modified on 8/11/2005 (kg). (Entered: 08/10/2005)
08/11/2005		***NOTE TO ATTORNEY TO RE FILE DOCUMENT DOCUMENT TYPE ERROR. Note to Attorney Charles Mills to RE FILE Document <a href="#">124</a> MOTION to File Amicus Brief. Use the document type Memorandum of Law in Support of Motion found under the document list Responses and Replies. (kg) (Entered: 08/11/2005)
08/11/2005	<a href="#">125</a>	MEMORANDUM OF LAW in Support re: <a href="#">48</a> MOTION for Partial Summary Judgment.. Document filed by American Legion. (Attachments: # <a href="#">1</a> # <a href="#">2</a> # <a href="#">3</a> # <a href="#">4</a> # <a href="#">5</a> # <a href="#">6</a> # <a href="#">7</a> )(Mills, Charles) (Entered: 08/11/2005)
08/11/2005	<a href="#">126</a>	ORDER CLARIFYING SCHEDULE FOR ORAL ARGUMENT ON EXEMPTION 7(F); this Order clarifies my Order, dated 8/8/05, which was incorrectly described on the Court's docketing system. Oral argument on Defendants' Supplemental Memorandum of Law in further support of their Partial Summary Judgment Motion, and Plaintiffs' Motion to Vacate the Protective Order entered 7/22/05, both of which relate to the application of FOIA Exemption 7(F) to the Darby Photographs, will be held on 8/15/05. The portion of the argument, from 10:00 a.m. to 11 a.m., will be a sealed proceeding. The second portion of the argument, from 11 a.m. to 12:30 p.m, will be open to the public. (Signed by Judge Alvin K. Hellerstein on 8/11/05) (sac, ) (Entered: 08/11/2005)
08/11/2005	<a href="#">127</a>	MEMO ENDORSEMENT on Memorandum of Law in Support of Motion for leave to file a Memorandum of an Amicus Curiae; Motion granted. I will consider brief and papers. (Signed by Judge Alvin K. Hellerstein on 8/11/05) (sac, ) (Entered: 08/11/2005)
08/11/2005	<a href="#">128</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">72</a> MOTION for Summary Judgment., <a href="#">48</a> MOTION for Partial Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Attachments: # <a href="#">1</a> Declaration of Michael E. Pheneger)(Lustberg, Lawrence) (Entered: 08/11/2005)
08/11/2005	<a href="#">129</a>	MOTION to Vacate <a href="#">106</a> Order, and for Access to Papers Filed by the Government in Support of Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Lustberg, Lawrence) (Entered: 08/11/2005)
08/11/2005		Minute Entry for proceedings held before Judge Alvin K. Hellerstein : Ex parte Conference held on 7/29/2005 with United States Attorney's Office concerning the Central Intelligence Agency's submission ex parte and in camera of the Fifth Declaration of Marily A. Dorn, dated July 15, 2005, which provided classified information concerning the CIA's refusal to confirm or deny the existence of three documents requested by Plaintiffs. (tb, ) (Entered: 08/16/2005)
08/12/2005	<a href="#">130</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">129</a> MOTION to Vacate <a href="#">106</a> Order, and for Access to Papers Filed by the Government in Support of Summary Judgment.. Document filed by Department of Defense. (McShain, Heather) (Entered: 08/12/2005)
08/12/2005	<a href="#">131</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (McShain, Heather) (Entered: 08/12/2005)
08/12/2005	<a href="#">132</a>	REPLY AFFIRMATION of Richard B. Myers in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (Attachments: # <a href="#">1</a> )(McShain, Heather) (Entered: 08/12/2005)
08/12/2005	<a href="#">133</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 8/12/05 re: the Clerk shall add this letter to the Docket. (Signed by Judge Alvin K. Hellerstein on 8/12/05) (db, ) (Entered: 08/15/2005)
08/12/2005	<a href="#">134</a>	ENDORSED LETTER from Sean H. Lane dated 8/12/05 re: Application GRANTED. Government is permitted to publicly file the Amended Declaration to replace the publicly filed version of General Myers' original and that original be removed from the Court docket. (Signed by Judge Alvin K. Hellerstein on 8/12/05) (db, ) (Entered: 08/15/2005)
08/17/2005	<a href="#">140</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 8/17/05 re: without further objections by plaintiff, I am....to accept the representation by dft witout this need for a.....presentation.. (Signed by Judge Alvin K. Hellerstein on 8/17/05) (pl, ) (Entered: 08/18/2005)
08/18/2005	<a href="#">141</a>	TRANSCRIPT of proceedings held on 8/15/05 before Judge Alvin K. Hellerstein. (Ima, ) (Entered: 08/18/2005)
08/19/2005	<a href="#">142</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 8/18/05 re: the suggested procedures are accepted. This letter and endorsed order shall be accepted. (Signed by Judge Alvin K. Hellerstein on 8/19/05) (db, ) (Entered: 08/22/2005)
08/23/2005	<a href="#">143</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">48</a> MOTION for Partial Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Attachments: # <a href="#">1</a> Declaration of Khaled Fahmy) (Lustberg, Lawrence) (Entered: 08/23/2005)
08/23/2005	<a href="#">144</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">129</a> MOTION to Vacate <a href="#">106</a> Order, and for Access to Papers Filed by the Government in Support of Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Lustberg, Lawrence) (Entered: 08/23/2005)
08/29/2005	<a href="#">145</a>	ORDER...The oral argument on Defendants' Supplemental Memorandum of Law in further support of their Partial Summary Judgment Motion, which relates to the application of FOIA Exemption 7(f) to the Darby Photographs, will be

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		held tomorrow, August 30, 2005 at 3 p.m. The argument is open to the public. (Signed by Judge Alvin K. Hellerstein on 8/29/05) (rag, ) (Entered: 08/29/2005)
08/29/2005	<a href="#">146</a>	DECLARATION of Ronald Schlicher in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (McShain, Heather) (Entered: 08/29/2005)
08/29/2005	<a href="#">147</a>	DECLARATION of Richard B. Myers in Support re: <a href="#">72</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (Attachments: # <a href="#">1</a> )(McShain, Heather) (Entered: 08/29/2005)
08/31/2005		Minute Entry for proceedings held before Judge Alvin K. Hellerstein : Oral Argument held on 8/31/2005 re: <a href="#">48</a> MOTION for Partial Summary Judgment filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (jco, ) (Entered: 09/06/2005)
09/26/2005	<a href="#">149</a>	TRANSCRIPT of proceedings held on 8/30/2005 before Judge Alvin K. Hellerstein. (jar, ) (Entered: 09/26/2005)
09/29/2005	<a href="#">150</a>	OPINION AND ORDER;92194 granting in part and denying in part re: <a href="#">72</a> MOTION for Summary Judgment. filed by Central Intelligence Agency,, Department of Defense,, <a href="#">48</a> MOTION for Partial Summary Judgment. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace; this Opinion and Order is stayed twenty days in order to allow for appeal by either side, should it wish to do so. (Signed by Judge Alvin K. Hellerstein on 9/29/05) (pl, ) Modified on 10/3/2005 (ns, ). (Entered: 09/30/2005)
10/17/2005	<a href="#">151</a>	MOTION for Reconsideration re; <a href="#">150</a> Memorandum & Opinion,, Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 10/17/2005)
10/17/2005	<a href="#">152</a>	MEMORANDUM OF LAW in Support re: <a href="#">151</a> MOTION for Reconsideration re; <a href="#">150</a> Memorandum & Opinion,,... Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 10/17/2005)
10/18/2005	<a href="#">153</a>	ORDER ENLARGING STAY;.. the aforementioned stay shall be enlarged to Wednesday, October 26,2005, in order to allow for consideration of the government's motion and any plaintiff opposition. (Signed by Judge Alvin K. Hellerstein on 10/18/05) (dj, ) (Entered: 10/19/2005)
10/24/2005	<a href="#">154</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">151</a> MOTION for Reconsideration re; <a href="#">150</a> Memorandum & Opinion,,... Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Lustberg, Lawrence) (Entered: 10/24/2005)
10/24/2005	<a href="#">155</a>	ORDER that the stay as set forth herein shall be enlarged to 11/1/05 in order to allow for consideration of the government motion and the plaintiff's opposition. (Signed by Judge Alvin K. Hellerstein on 10/24/05) (dle, ) (Entered: 10/24/2005)
10/26/2005	<a href="#">156</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">151</a> MOTION for Reconsideration re; <a href="#">150</a> Memorandum & Opinion,,... Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 10/26/2005)
10/31/2005		***STRICKEN DOCUMENT. Deleted document number 157 from the case record. The document was stricken from this case pursuant to <a href="#">163</a> Order. (rag, ) (Entered: 11/09/2005)
11/02/2005	<a href="#">158</a>	ORDER DENYING GOVERNMENT'S MOTION FOR PARTIAL RECONSIDERATION re 9/29/05 opinion. I grant one further enlargement to the govt, to 11/15/05 to consider whether to file an appeal or to comply with the Opinion. (Signed by Judge Alvin K. Hellerstein on 11/2/05) (cd, ) (Entered: 11/03/2005)
11/07/2005	<a href="#">159</a>	SECOND MOTION for Partial Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Attachments: # <a href="#">1</a> Memorandum of Law in Support of Plaintiffs' Second Motion for Partial Summary Judgment (Part 1)# <a href="#">2</a> Memo of Law (Part 2)# <a href="#">3</a> Memo of Law (Part 3))(Lustberg, Lawrence) (Entered: 11/07/2005)
11/08/2005	<a href="#">160</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Megan Lewis dated 11/7/05 re: Counsel writes to request permission to file a hard copy of exhibits attached to the memo of law. So Ordered. (Signed by Judge Alvin K. Hellerstein on 11/8/05) (jco, ) (Entered: 11/09/2005)
11/09/2005	<a href="#">161</a>	EXHIBITS, fld as per doc #160. Document filed by American Civil Liberties Union.(cd, ) (Entered: 11/09/2005)
11/09/2005	<a href="#">162</a>	EXHIBITS, fld as per doc #160. Document filed by American Civil Liberties Union.(cd, ) (Entered: 11/09/2005)
11/09/2005	<a href="#">163</a>	ORDER...An order was filed under seal on 10/31/05, referenced as document number 157 on the docket sheet. The clerk shall delete that entry from the docket sheet and destroy the pdf file. The order filed 11/7/05, referenced as document number 158 on the docket sheet, replaces said order. (Signed by Judge Alvin K. Hellerstein on 11/9/05) (rag, ) (Entered: 11/09/2005)
11/16/2005	<a href="#">164</a>	ORDER ENLARGING STAY: Ordered that the aforementioned stay shall be enlarged to 11/22/2005. No further enlargements will be granted. (Signed by Judge Alvin K. Hellerstein on 11/15/2005) (lb, ) (Entered: 11/17/2005)
11/22/2005	<a href="#">165</a>	FILING ERROR ELECTRONIC FILING FOR NON ECF DOCUMENT NOTICE of APPEAL re: <a href="#">150</a> Memorandum & Opinion,, Document filed by Department of the Army, Department of Defense. (Lane, Sean) Modified on 12/2/2005 (gf, ). (Entered: 11/22/2005)
11/28/2005	<a href="#">166</a>	NOTICE OF APPEAL from <a href="#">150</a> Memorandum & Opinion,, Document filed by Department of the Army, Department of Defense. (nd, ) (Entered: 11/29/2005)
11/29/2005		Transmission of Notice of Appeal to the District Judge re: <a href="#">166</a> Notice of Appeal. (nd, ) (Entered: 11/29/2005)



11/29/2005	Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">166</a> Notice of Appeal. (nd.) (Entered: 11/29/2005)
11/29/2005	<p>Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">34</a> Certificate of Service Other filed by Department Of Justice,, <a href="#">96</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department Of Defense,, <a href="#">97</a> Rule 56.1 Statement filed by Central Intelligence Agency,, Department of Defense,, <a href="#">82</a> Order, Set Hearings,,,,, <a href="#">98</a> Endorsed Letter,, <a href="#">10</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">158</a> Order,, <a href="#">159</a> SECOND MOTION for Partial Summary Judgment. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">11</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">160</a> Endorsed Letter,, <a href="#">58</a> Order, Set Motion and R&amp;R Deadlines/Hearings, <a href="#">140</a> Endorsed Letter,, <a href="#">35</a> Order,,,,, <a href="#">59</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">37</a> Endorsed Letter,, <a href="#">38</a> MOTION to Stay <i>the Court's September 15, 2004 Order</i>. filed by Central Intelligence Agency,, <a href="#">100</a> Order,, <a href="#">83</a> Order, <a href="#">84</a> Endorsed Letter, <a href="#">12</a> Reply Memorandum of Law in Support of Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">163</a> Order,, <a href="#">85</a> Order, <a href="#">13</a> Stipulation and Order, <a href="#">14</a> Endorsed Letter,, <a href="#">15</a> Endorsed Letter, <a href="#">16</a> Memorandum &amp; Opinion, Set Deadlines/Hearings,, <a href="#">164</a> Order, <a href="#">60</a> Order, <a href="#">61</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">39</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">62</a> Endorsed Letter,, <a href="#">40</a> Declaration in Support of Motion filed by Central Intelligence Agency,, <a href="#">63</a> Endorsed Letter,, <a href="#">142</a> Endorsed Letter, <a href="#">41</a> Certificate of Service Other filed by Central Intelligence Agency,, <a href="#">143</a> Reply Memorandum of Law in Support of Motion filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">144</a> Reply Memorandum of Law in Support of Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">118</a> MOTION to File Amicus Brief. filed by The New York Times Co., The Hearst Corporation,, The Tribune Company,, Advance Publications, Inc., CBS Broadcasting, Inc., The E.W. Scripps Company,, NBC Universal, Inc., Reporters Committee for Freedom of the Press,, American Society of Newspaper Editors,, Investigative Reporters and Editors, Inc., The National Newspaper Association,, The Radio Television News Directors Association,, The Society of Professional Journalists,, The Newspaper Guild CWA,, CBS Broadcastings, Inc., <a href="#">86</a> Order,, <a href="#">103</a> Endorsed Letter,, <a href="#">87</a> Order, <a href="#">119</a> Order, <a href="#">88</a> Endorsed Letter, Set Motion and R&amp;R Deadlines/Hearings,,,,, <a href="#">165</a> Notice (Other) filed by Department of the Army,, Department of Defense,, <a href="#">18</a> Status Report, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, <a href="#">166</a> Notice of Appeal filed by Department of the Army,, Department of Defense,, <a href="#">19</a> Status Report, filed by Central Intelligence Agency,, <a href="#">20</a> Status Report, filed by Central Intelligence Agency,, <a href="#">64</a> Endorsed Letter,, <a href="#">65</a> Declaration in Support of Motion filed by Central Intelligence Agency,, <a href="#">43</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">66</a> Endorsed Letter,, <a href="#">44</a> Order,,,,, <a href="#">1</a> Complaint, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">145</a> Order,, <a href="#">45</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">120</a> Order on Motion to File Amicus Brief, <a href="#">121</a> Order,,,,, <a href="#">146</a> Declaration in Support of Motion filed by Department of Defense,, <a href="#">106</a> Order,, <a href="#">107</a> Order, Set Deadlines,,,,, <a href="#">147</a> Declaration in Support of Motion filed by Department of Defense,, <a href="#">122</a> Order,, <a href="#">89</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">90</a> Notice (Other) filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">67</a> Order,, <a href="#">91</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">70</a> Endorsed Letter,, <a href="#">124</a> MOTION to File Amicus Brief. filed by American Legion,, <a href="#">2</a> FIRST MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">47</a> MOTION for Summary Judgment . <i>Partial</i>. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">110</a> MOTION for Partial Summary Judgment <i>Supplemental Memorandum in Further Support</i>. filed by Department of Defense,, <a href="#">3</a> MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">111</a> Declaration in Support, filed by Department of Defense,, <a href="#">4</a> MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">112</a> Declaration in Support, filed by Department of Defense,, <a href="#">113</a> Declaration in Support, filed by Department of Defense,, <a href="#">92</a> Counter Statement to Rule 56.1 filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">71</a> Endorsed Letter,, <a href="#">72</a> MOTION for Summary Judgment. filed by Central Intelligence Agency,, Department of Defense,, <a href="#">73</a> Rule 56.1 Statement filed by Central Intelligence Agency,, Department of Defense,, <a href="#">74</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">5</a> Amended Complaint, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">48</a> MOTION for Partial Summary Judgment. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">150</a> Memorandum &amp; Opinion,, <a href="#">125</a> Memorandum of Law in Support of Motion filed by American Legion,, <a href="#">49</a> Endorsed Letter,, <a href="#">6</a> Endorsed Letter, Set Scheduling Order Deadlines,, <a href="#">126</a> Order,, <a href="#">50</a> Memorandum &amp; Opinion,, <a href="#">127</a> Memo Endorsement, <a href="#">128</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">114</a> Memorandum of Law in Support filed by Department of Defense,, <a href="#">115</a> Declaration in Support filed by Department of Defense,, <a href="#">21</a> Status Report, filed by Department of Defense,, <a href="#">22</a> Status Report, filed by Department of Defense,, <a href="#">23</a> Status Report, filed by Department of Defense,, <a href="#">24</a> Status Report, filed by Department of Defense,, <a href="#">25</a> Status Report, filed by Department of Defense,, <a href="#">75</a> Declaration in Support of Motion, filed by Central Intelligence Agency,, Department of Defense,, <a href="#">76</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">51</a> MOTION to Stay re: <a href="#">50</a></p>

		Memorandum & Opinion,, <i>Pending Consideration of Appeal</i> . filed by Central Intelligence Agency,, <a href="#">77</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">151</a> MOTION for Reconsideration re; <a href="#">150</a> Memorandum & Opinion,, filed by Central Intelligence Agency,, <a href="#">52</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">78</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">129</a> MOTION to Vacate <a href="#">106</a> Order, <i>and for Access to Papers Filed by the Government in Support of Summary Judgment</i> . filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">53</a> MOTION for Reconsideration re; <a href="#">50</a> Memorandum & Opinion,, filed by Central Intelligence Agency,, <a href="#">152</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">7</a> Answer to Amended Complaint, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">130</a> Memorandum of Law in Opposition to Motion filed by Department of Defense,, <a href="#">153</a> Order,, <a href="#">131</a> Reply Memorandum of Law in Support of Motion filed by Department of Defense,, <a href="#">26</a> Status Report, filed by Department of Defense,, <a href="#">27</a> Status Report, filed by Department of State,, <a href="#">28</a> Status Report, filed by Department of State,, <a href="#">29</a> Status Report, filed by Department Of Justice,, <a href="#">116</a> Declaration in Support filed by Department of Defense,, <a href="#">30</a> Status Report, filed by Department Of Justice,, <a href="#">117</a> Declaration in Support filed by Department of Defense,, <a href="#">93</a> Endorsed Letter,, <a href="#">94</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">79</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">95</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">54</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">80</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">154</a> Memorandum of Law in Opposition to Motion filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">8</a> Memorandum of Law in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">55</a> Declaration in Support of Motion filed by Central Intelligence Agency,, <a href="#">81</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">155</a> Order, <a href="#">132</a> Reply Affirmation in Support of Motion filed by Department of Defense,, <a href="#">56</a> Endorsed Letter,, <a href="#">9</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">156</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">57</a> Order on Motion to Stay, <a href="#">133</a> Endorsed Letter, <a href="#">134</a> Endorsed Letter,, <a href="#">31</a> Certificate of Service Other, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, <a href="#">32</a> Status Report, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, <a href="#">33</a> Status Report, filed by Department Of Justice, were transmitted to the U.S. Court of Appeals. (nd, ) (Entered: 11/29/2005)
12/06/2005	<a href="#">167</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Michael J. Garcia dated 12/5/05 re: plaintiffs second motion for partial summary judgment. Gov't opposition and any Cross Motions due by 12/21/2005. Plaintiffs' Replies and any opposition papers due by 1/18/06; Gov'ts reply brief due 2/1/2006. (Signed by Judge Alvin K. Hellerstein on 12/6/05) (pl, ) (Entered: 12/07/2005)
12/09/2005	<a href="#">168</a>	MOTION Order to Release Documents or Justify Exemption. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit)(Lewis, Megan) (Entered: 12/09/2005)
12/19/2005	<a href="#">169</a>	ORDER; accordingly, I rule as follows: 1) Plaintiff's motion to be relieved of my Opinion and Order dated 9/29/05, as supplemented by my Order dated 11/2/05, is denied. 2) Because of the public interest involved in this matter, and in light of this Order, both plaintiffs and defendant shall have the right to appeal from all, or any part, of my Opinion and Order dated 9/29/05, my Order dated 11/2/05, and this Order, notwithstanding any agreement made between them to the contrary. 3) The time of each party to notice an appeal, otherwise set as sixty days after the judgment or order appealed from is entered by Rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure, shall run an additional 30 days from this date, see Fed. R. App. P. 4(a)(4)(B)(ii), and shall be subject to all scheduling and stay orders heretofore entered by the Court of Appeals in this case. (Signed by Judge Alvin K. Hellerstein on 12/19/05) (sac, ) (Entered: 12/20/2005)
12/20/2005	<a href="#">170</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 12/20/05 re: a request for a revised briefing schedule as follows: Cross Motions due by 1/18/2006. Responses due by 2/15/2006. Replies due by 3/1/2006. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 12/20/05) (kco, ) (Entered: 12/21/2005)
01/03/2006	<a href="#">171</a>	NOTICE OF APPEAL from <a href="#">150</a> Memorandum & Opinion, <a href="#">169</a> Order. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. Filing fee \$ 255.00, receipt number E 565482. (tp, ) (Entered: 01/04/2006)
01/04/2006		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">171</a> Notice of Appeal. (tp, ) (Entered: 01/04/2006)
01/04/2006		Transmission of Notice of Appeal to the District Judge re: <a href="#">171</a> Notice of Appeal. (tp, ) (Entered: 01/04/2006)
01/04/2006		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">34</a> Certificate of Service Other filed by Department Of Justice,, <a href="#">96</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">97</a> Rule 56.1 Statement filed by Central Intelligence Agency,, Department of Defense,, <a href="#">82</a> Order, Set Hearings,,,,, <a href="#">98</a> Endorsed Letter,, <a href="#">10</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">158</a> Order,, <a href="#">159</a> SECOND MOTION for Partial Summary Judgment. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">11</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">160</a> Endorsed Letter,, <a href="#">58</a> Order, Set Motion and R&R Deadlines/Hearings, <a href="#">140</a> Endorsed Letter,, <a href="#">35</a> Order,,,,, <a href="#">59</a> Memorandum of Law in Opposition to

Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [37](#) Endorsed Letter,, [38](#) MOTION to Stay *the Court's September 15, 2004 Order*. filed by Central Intelligence Agency,, [100](#) Order,, [83](#) Order, [84](#) Endorsed Letter, [12](#) Reply Memorandum of Law in Support of Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [163](#) Order,, [85](#) Order, [13](#) Stipulation and Order, [14](#) Endorsed Letter,, [15](#) Endorsed Letter, [16](#) Memorandum & Opinion, Set Deadlines/Hearings,, [164](#) Order, [60](#) Order, [61](#) Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, [39](#) Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, [62](#) Endorsed Letter,, [40](#) Declaration in Support of Motion filed by Central Intelligence Agency,, [63](#) Endorsed Letter,, [142](#) Endorsed Letter, [41](#) Certificate of Service Other filed by Central Intelligence Agency,, [143](#) Reply Memorandum of Law in Support of Motion filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [144](#) Reply Memorandum of Law in Support of Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [118](#) MOTION to File Amicus Brief. filed by The New York Times Co., The Hearst Corporation,, The Tribune Company,, Advance Publications, Inc., CBS Broadcasting, Inc., The E.W. Scripps Company,, NBC Universal, Inc., Reporters Committee for Freedom of the Press,, American Society of Newspaper Editors,, Investigative Reporters and Editors, Inc., The National Newspaper Association,, The Radio Television News Directors Association,, The Society of Professional Journalists,, The Newspaper Guild CWA,, CBS Broadcastings, Inc., [86](#) Order,, [103](#) Endorsed Letter,, [87](#) Order, [119](#) Order, [88](#) Endorsed Letter, Set Motion and R&R Deadlines/Hearings,,,,, [165](#) Notice (Other) filed by Department of the Army,, Department of Defense,, [18](#) Status Report, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, [166](#) Notice of Appeal filed by Department of the Army,, Department of Defense,, [19](#) Status Report, filed by Central Intelligence Agency,, [20](#) Status Report, filed by Central Intelligence Agency,, [64](#) Endorsed Letter,, [65](#) Declaration in Support of Motion filed by Central Intelligence Agency,, [43](#) Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [66](#) Endorsed Letter,, [44](#) Order,,,,, [1](#) Complaint, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [145](#) Order,, [45](#) Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, [120](#) Order on Motion to File Amicus Brief, [121](#) Order,,,,, [146](#) Declaration in Support of Motion filed by Department of Defense,, [106](#) Order,, [107](#) Order, Set Deadlines,,,,, [147](#) Declaration in Support of Motion filed by Department of Defense,, [122](#) Order,, [89](#) Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [90](#) Notice (Other) filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [67](#) Order,, [91](#) Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [70](#) Endorsed Letter,, [124](#) MOTION to File Amicus Brief. filed by American Legion,, [2](#) FIRST MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [47](#) MOTION for Summary Judgment , *Partial*. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [110](#) MOTION for Partial Summary Judgment *Supplemental Memorandum in Further Support*. filed by Department of Defense,, [3](#) MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [111](#) Declaration in Support, filed by Department of Defense,, [4](#) MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [112](#) Declaration in Support, filed by Department of Defense,, [167](#) Endorsed Letter, Set Scheduling Order Deadlines,, [113](#) Declaration in Support, filed by Department of Defense,, [92](#) Counter Statement to Rule 56.1 filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [71](#) Endorsed Letter,, [72](#) MOTION for Summary Judgment. filed by Central Intelligence Agency,, Department of Defense,, [73](#) Rule 56.1 Statement filed by Central Intelligence Agency,, Department of Defense,, [74](#) Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, [5](#) Amended Complaint, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [48](#) MOTION for Partial Summary Judgment. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [150](#) Memorandum & Opinion,, [125](#) Memorandum of Law in Support of Motion filed by American Legion,, [49](#) Endorsed Letter,, [6](#) Endorsed Letter, Set Scheduling Order Deadlines,, [126](#) Order,, [50](#) Memorandum & Opinion,, [127](#) Memo Endorsement, [168](#) MOTION Order to Release Documents or Justify Exemption. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, [128](#) Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [114](#) Memorandum of Law in Support filed by Department of Defense,, [169](#) Order,,,,, [115](#) Declaration in Support filed by Department of Defense,, [21](#) Status Report, filed by Department of Defense,, [170](#) Endorsed Letter, Set Deadlines,, [22](#) Status Report, filed by Department of Defense,, [23](#) Status Report, filed by Department of Defense,, [24](#) Status Report, filed by Department of Defense,, [25](#) Status Report, filed by Department of Defense,, [75](#) Declaration in Support of Motion, filed by Central Intelligence Agency,, Department of Defense,, [76](#) Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, [51](#) MOTION to Stay re: [50](#) Memorandum & Opinion,, *Pending Consideration of Appeal*. filed by Central Intelligence Agency,, [77](#) Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, [151](#) MOTION for Reconsideration re: [150](#) Memorandum & Opinion,, filed by Central Intelligence Agency,, [52](#) Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, [78](#) Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, [129](#) MOTION to Vacate [106](#) Order, *and for Access to Papers Filed by the Government in Support of Summary Judgment*. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, [53](#) MOTION for Reconsideration re: [50](#) Memorandum & Opinion,, filed by Central Intelligence Agency,, [152](#) Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, [7](#) Answer to Amended Complaint, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, [130](#) Memorandum of Law in

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		Opposition to Motion filed by Department of Defense,, <a href="#">153</a> Order,, <a href="#">131</a> Reply Memorandum of Law in Support of Motion filed by Department of Defense,, <a href="#">171</a> Notice of Appeal, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">26</a> Status Report, filed by Department of Defense,, <a href="#">27</a> Status Report, filed by Department of State,, <a href="#">28</a> Status Report, filed by Department of State,, <a href="#">29</a> Status Report, filed by Department of Justice,, <a href="#">116</a> Declaration in Support filed by Department of Defense,, <a href="#">30</a> Status Report, filed by Department Of Justice,, <a href="#">117</a> Declaration in Support filed by Department of Defense,, <a href="#">93</a> Endorsed Letter,, <a href="#">94</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">79</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">95</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">54</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">80</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">154</a> Memorandum of Law in Opposition to Motion filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">8</a> Memorandum of Law in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">55</a> Declaration in Support of Motion filed by Central Intelligence Agency,, <a href="#">81</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">155</a> Order, <a href="#">132</a> Reply Affirmation in Support of Motion filed by Department of Defense,, <a href="#">56</a> Endorsed Letter,, <a href="#">9</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">156</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">57</a> Order on Motion to Stay, <a href="#">133</a> Endorsed Letter, <a href="#">134</a> Endorsed Letter,, <a href="#">31</a> Certificate of Service Other, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, <a href="#">32</a> Status Report, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, <a href="#">33</a> Status Report, filed by Department Of Justice, were transmitted to the U.S. Court of Appeals. (tp, ) (Entered: 01/04/2006)
01/10/2006	<a href="#">172</a>	ORDER: It is hereby ordered that DOD shall complete its processing of the FBI referrals by 2/15/2006, and the CIA referrals by 3/15/2006. All other rulings are set forth in this order. (Signed by Judge Alvin K. Hellerstein on 1/10/2006) (lb, ) (Entered: 01/10/2006)
01/10/2006	<a href="#">173</a>	ORDER OF FINAL JUDGMENT FOR IMMEDIATE APPEAL pursuant to Fed. R. Civ. P. 54(b). (Signed by Judge Alvin K. Hellerstein on 1/10/06) (Attachments: # <a href="#">1</a> Notice of Right to Appeal)(ml, ) (Entered: 01/11/2006)
01/13/2006	<a href="#">174</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 1/13/06; re: Government's opposition and any cross motion by 2/1/06; Plaintiffs' reply brief and any opposition papers by 3/1/06; Government's reply brief by 3/15/06. (Signed by Judge Alvin K. Hellerstein on 1/13/06) (sac, ) (Entered: 01/17/2006)
01/25/2006		USCA SCHEDULING ORDER as to <a href="#">166</a> Notice of Appeal filed by Department of the Army,, Department of Defense, USCA Case Number 05 6286 cv. Roseann B. MacKechnie, Clerk USCA. Appeal Record due by 2/15/2006. Appellant Brief due by 2/22/2006. Appellee Brief due by 3/24/2006. (nd, ) (Entered: 01/25/2006)
02/02/2006	<a href="#">175</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 1/31/06 re: Application GRANTED. Government's response and cross motion due 2/6/06; plaintiff's reply and opposition due 3/6/06; Government's reply due 3/20/06. (Signed by Judge Alvin K. Hellerstein on 2/2/06) (db, ) (Entered: 02/02/2006)
02/02/2006		Set/Reset Deadlines as to <a href="#">159</a> SECOND MOTION for Partial Summary Judgment. Responses due by 2/6/2006 Replies due by 3/6/2006. (db, ) (Entered: 02/02/2006)
02/02/2006		Set/Reset Deadlines: Cross Motions due by 3/6/2006. (db, ) (Entered: 02/02/2006)
02/06/2006	<a href="#">176</a>	MOTION for Summary Judgment. Document filed by Federal Bureau Of Investigation. Responses due by 3/6/2006 (McShain, Heather) (Entered: 02/06/2006)
02/06/2006	<a href="#">177</a>	RULE 56.1 STATEMENT. Document filed by Federal Bureau Of Investigation. (McShain, Heather) (Entered: 02/06/2006)
02/06/2006	<a href="#">178</a>	DECLARATION of Fourth Declaration of David M. Hardy in Support re: <a href="#">176</a> MOTION for Summary Judgment.. Document filed by Federal Bureau Of Investigation. (Attachments: # <a href="#">1</a> # <a href="#">2</a> )(McShain, Heather) (Entered: 02/06/2006)
02/06/2006	<a href="#">179</a>	MEMORANDUM OF LAW in Support re: <a href="#">176</a> MOTION for Summary Judgment. <i>and in Opposition to Plaintiffs' Second Motion for Partial Summary Judgment.</i> Document filed by Federal Bureau Of Investigation. (McShain, Heather) (Entered: 02/06/2006)
02/06/2006	<a href="#">180</a>	CERTIFICATE OF SERVICE of Notice of Motion, 56.1 Statement, Fourth Hardy Declaration and exhibits, FBI's Memorandum of Law in Opposition to Plaintiffs' Second Motion for Partial Summary Judgment and In Support of FBI's Cross Motion for Partial Summary Judgment served on Lawrence Lustberg, Esq. on February 6, 2006. Service was made by Federal Express. Document filed by Federal Bureau Of Investigation. (McShain, Heather) (Entered: 02/06/2006)
03/03/2006	<a href="#">181</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 2/23/2006 re: a request that paragraph 7 of the defendant FBI's Statement pursuant to Local Rule 56.1 be withdrawn. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 3/3/2006) (kco, ) (Entered: 03/06/2006)
03/03/2006	<a href="#">182</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Megan Lewis dated 3/1/2006 re: a request for additional time to respond to the motion for partial summary judgment. Responses due by 3/17/2006. Replies due by 3/31/2006. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 3/3/2006) (kco, ) (Entered: 03/06/2006)
03/13/2006	<a href="#">183</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Megan Lewis dated 3/10/06 re: the court awaits a

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		stipoulation providing a....schedule to completed briefing of the FBI summary judgment motion. (Signed by Judge Alvin K. Hellerstein on 3/10/06) (pl, ) (Entered: 03/13/2006)
04/10/2006	<a href="#">184</a>	ORDER: It is hereby ordered that on or before 4/25/2006, the Gov't shall file with the Court any declarations in support of its invocation of Exemptions 6,7(C) and or 7(F) as to the other responsive images. On or before 5/23/2006, plaintiffs will submit any declarations in response to the Gov'ts submission as to the other responsive images, and the Gov't will submit any additional declarations in reply within 10 calendar days of plaintiffs' submission. All other rulings are set forth in this order. (Signed by Judge Alvin K. Hellerstein on 4/10/2006) (lb, ) (Entered: 04/11/2006)
04/26/2006	<a href="#">185</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 4/25/06 re: granting requests; extending the Gov't's time until 4/26/06, to complete its declarations and submit them to the Court. (Signed by Judge Alvin K. Hellerstein on 4/25/06) (pl, ) Modified on 4/26/2006 (pl, ). (Entered: 04/26/2006)
04/26/2006	<a href="#">186</a>	DECLARATION of Carter F. Ham re: <a href="#">184</a> Order,.. Document filed by Department of the Army, Department of Defense. (Lane, Sean) (Entered: 04/26/2006)
04/26/2006	<a href="#">187</a>	DECLARATION of Richard B. Jackson re: <a href="#">184</a> Order,.. Document filed by Department of the Army, Department of Defense. (Lane, Sean) (Entered: 04/26/2006)
04/26/2006	<a href="#">188</a>	DECLARATION of Philip J. McGuire re: <a href="#">184</a> Order,.. Document filed by Department of the Army, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit Exhibit A# <a href="#">2</a> Exhibit Exhibit B# <a href="#">3</a> Exhibit Exhibit C)(Lane, Sean) (Entered: 04/26/2006)
05/08/2006	<a href="#">190</a>	MANDATE of USCA WITHDRAWING APPEAL (Certified Copy) as to <a href="#">166</a> Notice of Appeal filed by Department of the Army Department of Defense, USCA Case Number 05 6286 cv....that the appeal is hereby WITHDRAWN pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. Roseann B. MacKechnie, Clerk USCA. Certified: 4/3/2006. (nd, ) (Entered: 05/10/2006)
05/10/2006		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">190</a> USCA Mandate Withdrawing Appeal., (nd, ) (Entered: 05/10/2006)
05/19/2006	<a href="#">191</a>	BRIEF <i>pursuant to this Court's April 10, 2006 Order</i> . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Attachments: # <a href="#">1</a> Declaration of Michael E. Phenege# <a href="#">2</a> Declaration of Khaled Fahmy) (Lewis, Megan) (Entered: 05/19/2006)
05/30/2006	<a href="#">192</a>	BRIEF <i>in Reply</i> . Document filed by Department of the Army, Department of Defense. (Attachments: # <a href="#">1</a> Affidavit Fifth Declaration of Philip J. McGuire)(Lane, Sean) (Entered: 05/30/2006)
06/09/2006	<a href="#">193</a>	ORDER that the Government shall release, pursuant to my holdings set out in my Opinion and Order Granting in Part and Denying in Part Motions for Partial Summary Judgment dated September 29, 2005, 389 F. Supp. 2d 547, 568 79, the photographs marked exhibits GXB A 6,A 7,A 8,B 1,B 2,C 1,D 1,E 1,E 2,E 3,E 4,E 5,E 6,E 7,E 8,E 9,E 10,E 11,E 12,and E 13; and it is further Ordered that the Government shall redact identifying facial features from the photographs marked as exhibits GXB A 6,A 7,A 8,B 1,B 2,C 1,D 1,E 1,E 2,E 3,E 4,E 5,E 6,E 7,E 8,E 9,E 10,E 11,E 12,and E 13; and release them as redacted; and it further Ordered that the Governement is not required to release the photographs marked as exhibits GXA and GXB A 1,A 2,A 3,A 4,A 5,G 1,and G 2, as the Court has determined that these photographs are not responsive; and Judgment is reserved regarding F 1 and F 2. So Ordered. (Signed by Judge Alvin K. Hellerstein on 6/9/2006) (jmi, ) (Entered: 06/12/2006)
06/15/2006	<a href="#">194</a>	STIPULATION AND ORDER: It is hereby ordered that the two unreleased photographs F 1 and F 2 are to be shown by the Government to Megan Lewis Amrit Singh, attorney's of record for plaintiff, further ordered that Ms. Singh and Ms. Lewis are permitted to share details and information of these two photographs only with their co counsel working on this case but details and information about these two photographs shall not be shared by plaintiffs' counsel with their clients or with the public, other than information about these two photographs that already has been publicly released in this litigation, and it is further ordered that this order shall no tprejudice in any way DOD's right to object to the release of these two photographs under FOIA. (Signed by Judge Alvin K. Hellerstein on 6/14/06) (js, ) (Entered: 06/15/2006)
06/16/2006	<a href="#">195</a>	ENDORSED LETTER addressed to Judge Hellerstein from Sean Lane dated 6/15/06: the requested enlargement to 6/29/06, is granted. Plntf's objection is noted. (Signed by Judge Alvin K. Hellerstein on 6/16/06) (cd, ) (Entered: 06/16/2006)
06/21/2006	<a href="#">196</a>	SUPPLEMENTAL ORDER RELEASING PHOTOGROUPS that the Government shall release, pursuant to my holdings set out in my Opinion and Order Granting in Part and Denying in Part Motions for Partial Summary Judgment date September 29,2005, 389 F. Supp. 2d 547, 568 79, the photograph marked exhibit GXB F 1; and it is Further Ordered that the Government shall redact identifying facial features from the photograph marked as exhibit GXB F 1, and release it as redacted; and it is further Ordered that the Government is not required to release the photographs marked as exhibits GXA and GXB F 2, as parties have stipulated that plaintiffs do not object to the GOVERNMENT withholding photo F 2 in its entirety it is not responsive. (Signed by Judge Alvin K. Hellerstein on 6/21/2006) (jmi, ) (Entered: 06/22/2006)
06/30/2006	<a href="#">197</a>	NOTICE OF APPEAL from <a href="#">196</a> Order, <a href="#">193</a> Order. Document filed by Department of the Army, Department of Defense. (tp, ) (Entered: 07/05/2006)
06/30/2006		Appeal Remark as to <a href="#">197</a> Notice of Appeal filed by Department of the Army, Department of Defense. <b>NO FEE, USA.</b> (tp, ) (Entered: 07/05/2006)
07/05/2006		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">197</a> Notice of Appeal.

	(tp, ) (Entered: 07/05/2006)
07/05/2006	Transmission of Notice of Appeal to the District Judge re: <a href="#">197</a> Notice of Appeal. (tp, ) (Entered: 07/05/2006)
07/05/2006	<p>Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">131</a> Reply Memorandum of Law in Support of Motion filed by Department of Defense, <a href="#">119</a> Order, <a href="#">151</a> MOTION for Reconsideration re: <a href="#">150</a> Memorandum &amp; Opinion. filed by Central Intelligence Agency, <a href="#">18</a> Status Report, filed by Central Intelligence Agency, Department of State, Department Of Justice, Department of Defense, <a href="#">32</a> Status Report, filed by Central Intelligence Agency, Department of State, Department Of Justice, Department of Defense, <a href="#">158</a> Order, <a href="#">166</a> Notice of Appeal filed by Department of the Army, Department of Defense, <a href="#">75</a> Declaration in Support of Motion, filed by Central Intelligence Agency, Department of Defense, <a href="#">117</a> Declaration in Support filed by Department of Defense, <a href="#">107</a> Order, Set Deadlines, <a href="#">28</a> Status Report, filed by Department of State, <a href="#">58</a> Order, Set Motion and R&amp;R Deadlines/Hearings, <a href="#">142</a> Endorsed Letter, <a href="#">57</a> Order on Motion to Stay, <a href="#">85</a> Order, <a href="#">21</a> Status Report, filed by Department of Defense, <a href="#">19</a> Status Report, filed by Central Intelligence Agency, <a href="#">122</a> Order, <a href="#">194</a> Stipulation and Order, <a href="#">78</a> Declaration in Support of Motion filed by Central Intelligence Agency, Department of Defense, <a href="#">62</a> Endorsed Letter, <a href="#">125</a> Memorandum of Law in Support of Motion filed by American Legion, <a href="#">79</a> Declaration in Support of Motion filed by Central Intelligence Agency, Department of Defense, <a href="#">106</a> Order, <a href="#">15</a> Endorsed Letter, <a href="#">159</a> SECOND MOTION for Partial Summary Judgment filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">124</a> MOTION to File Amicus Brief. filed by American Legion, <a href="#">63</a> Endorsed Letter, <a href="#">177</a> Rule 56.1 Statement filed by Federal Bureau Of Investigation, <a href="#">176</a> MOTION for Summary Judgment. filed by Federal Bureau Of Investigation, <a href="#">27</a> Status Report, filed by Department of State, <a href="#">97</a> Rule 56.1 Statement filed by Central Intelligence Agency, Department of Defense, <a href="#">88</a> Endorsed Letter, Set Motion and R&amp;R Deadlines/Hearings, <a href="#">53</a> MOTION for Reconsideration re: <a href="#">50</a> Memorandum &amp; Opinion, filed by Central Intelligence Agency, <a href="#">154</a> Memorandum of Law in Oppisition to Motion filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">143</a> Reply Memorandum of Law in Support of Motion filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">127</a> Memo Endorsement, <a href="#">170</a> Endorsed Letter, Set Deadlines, <a href="#">35</a> Order, <a href="#">126</a> Order, <a href="#">51</a> MOTION to Stay re: <a href="#">50</a> Memorandum &amp; Opinion, <i>Pending Consideration of Appeal</i>. filed by Central Intelligence Agency, <a href="#">72</a> MOTION for Summary Judgment. filed by Central Intelligence Agency, Department of Defense, <a href="#">8</a> Memorandum of Law in Oppisition to Motion, filed by Central Intelligence Agency, Department of State, Department Of Justice, Department of Defense, Department Of Homeland Security, <a href="#">134</a> Endorsed Letter, <a href="#">67</a> Order, <a href="#">6</a> Endorsed Letter, Set Scheduling Order Deadlines, <a href="#">190</a> USCA Mandate Withdrawing Appeal, <a href="#">29</a> Status Report, filed by Department Of Justice, <a href="#">10</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency, Department of State, Department Of Justice, Department of Defense, Department Of Homeland Security, <a href="#">4</a> MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace, <a href="#">112</a> Declaration in Support, filed by Department of Defense, <a href="#">61</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency, <a href="#">150</a> Memorandum &amp; Opinion, <a href="#">55</a> Declaration in Support of Motion filed by Central Intelligence Agency, <a href="#">95</a> Declaration in Support of Motion filed by Central Intelligence Agency, Department of Defense, <a href="#">34</a> Certificate of Service Other filed by Department Of Justice, <a href="#">169</a> Order, <a href="#">128</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">103</a> Endorsed Letter, <a href="#">12</a> Reply Memorandum of Law in Support of Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace, <a href="#">77</a> Declaration in Support of Motion filed by Central Intelligence Agency, Department of Defense, <a href="#">147</a> Declaration in Support of Motion filed by Department of Defense, <a href="#">81</a> Declaration in Support of Motion filed by Central Intelligence Agency, Department of Defense, <a href="#">64</a> Endorsed Letter, <a href="#">80</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency, Department of Defense, <a href="#">44</a> Order, <a href="#">47</a> MOTION for Summary Judgment , <i>Partial</i>. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace, <a href="#">22</a> Status Report, filed by Department of Defense, <a href="#">132</a> Reply Affirmation in Support of Motion filed by Department of Defense, <a href="#">89</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">60</a> Order, <a href="#">33</a> Status Report, filed by Department Of Justice, <a href="#">98</a> Endorsed Letter, <a href="#">146</a> Declaration in Support of Motion filed by Department of Defense, <a href="#">41</a> Certificate of Service Other filed by Central Intelligence Agency, <a href="#">49</a> Endorsed Letter, <a href="#">40</a> Declaration in Support of Motion filed by Central Intelligence Agency, <a href="#">192</a> Brief filed by Department of the Army, Department of Defense, <a href="#">13</a> Stipulation and Order, <a href="#">187</a> Declaration filed by Department of the Army, Department of Defense, <a href="#">167</a> Endorsed Letter, Set Scheduling Order Deadlines, <a href="#">140</a> Endorsed Letter, <a href="#">2</a> FIRST MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace, <a href="#">96</a> Declaration in Support of Motion filed by Central Intelligence Agency, Department of Defense, <a href="#">180</a> Certificate of Service Other, filed by Federal Bureau Of Investigation, <a href="#">118</a> MOTION to File Amicus Brief. filed by The New York Times Co., The Hearst Corporation, The Tribune Company, Advance Publications, Inc., CBS Broadcasting, Inc., The E.W. Scripps Company, NBC Universal, Inc., Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, Investigative Reporters and Editors, Inc., The National Newspaper Association, The Radio Television News Directors Association, The Society of Professional Journalists, The Newspaper Guild CWA, CBS Broadcastings, Inc., <a href="#">114</a> Memorandum of Law in Support filed by Department of Defense, <a href="#">91</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">38</a> MOTION to Stay <i>the Court's September 15, 2004 Order</i>. filed by Central Intelligence Agency, <a href="#">65</a> Declaration in Support of Motion filed by Central Intelligence Agency, <a href="#">144</a> Reply Memorandum of Law in Support of Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">133</a> Endorsed Letter, <a href="#">182</a> Endorsed Letter, Set Deadlines, <a href="#">130</a> Memorandum of Law in Oppisition to Motion filed by Department of Defense, <a href="#">37</a> Endorsed Letter, <a href="#">156</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency, <a href="#">186</a> Declaration filed by Department of the Army, Department of Defense, <a href="#">116</a> Declaration in Support filed by Department of Defense, <a href="#">5</a> Amended Complaint, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace,</p>

		<p><a href="#">168</a> MOTION Order to Release Documents or Justify Exemption. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">39</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">43</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">129</a> MOTION to Vacate <a href="#">106</a> Order, <i>and for Access to Papers Filed by the Government in Support of Summary Judgment.</i> filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">71</a> Endorsed Letter,, <a href="#">86</a> Order,, <a href="#">92</a> Counter Statement to Rule 56.1 filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">26</a> Status Report, filed by Department of Defense,, <a href="#">76</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">111</a> Declaration in Support, filed by Department of Defense,, <a href="#">66</a> Endorsed Letter,, <a href="#">48</a> MOTION for Partial Summary Judgment. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">82</a> Order, Set Hearings,,,, <a href="#">11</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">110</a> MOTION for Partial Summary Judgment <i>Supplemental Memorandum in Further Support.</i> filed by Department of Defense,, <a href="#">83</a> Order, <a href="#">1</a> Complaint, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">23</a> Status Report, filed by Department of Defense,, <a href="#">155</a> Order, <a href="#">152</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">24</a> Status Report, filed by Department of Defense,, <a href="#">52</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">172</a> Order, <a href="#">197</a> Notice of Appeal filed by Department of the Army,, Department of Defense,, <a href="#">9</a> Declaration in Opposition to Motion, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">45</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">193</a> Order,, <a href="#">185</a> Endorsed Letter,, <a href="#">30</a> Status Report, filed by Department Of Justice,, <a href="#">100</a> Order,, <a href="#">175</a> Endorsed Letter,, <a href="#">171</a> Notice of Appeal, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">145</a> Order,, <a href="#">20</a> Status Report, filed by Central Intelligence Agency,, <a href="#">163</a> Order,, <a href="#">121</a> Order,, <a href="#">3</a> MOTION for Preliminary Injunction. filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">70</a> Endorsed Letter,, <a href="#">178</a> Declaration in Support of Motion filed by Federal Bureau Of Investigation,, <a href="#">153</a> Order,, <a href="#">7</a> Answer to Amended Complaint, filed by Central Intelligence Agency,, Department of State,, Department Of Justice,, Department of Defense,, Department Of Homeland Security,, <a href="#">59</a> Memorandum of Law in Oppisition to Motion, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace,, <a href="#">50</a> Memorandum &amp; Opinion,, <a href="#">173</a> Judgment, <a href="#">188</a> Declaration filed by Department of the Army,, Department of Defense,, <a href="#">183</a> Endorsed Letter,, <a href="#">179</a> Memorandum of Law in Support of Motion filed by Federal Bureau Of Investigation,, <a href="#">54</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, <a href="#">56</a> Endorsed Letter,, <a href="#">115</a> Declaration in Support filed by Department of Defense,, <a href="#">94</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">16</a> Memorandum &amp; Opinion, Set Deadlines/Hearings,, <a href="#">14</a> Endorsed Letter,, <a href="#">165</a> Notice (Other) filed by Department of the Army,, Department of Defense,, <a href="#">113</a> Declaration in Support, filed by Department of Defense,, <a href="#">25</a> Status Report, filed by Department of Defense,, <a href="#">87</a> Order, <a href="#">195</a> Endorsed Letter, <a href="#">164</a> Order, <a href="#">191</a> Brief, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, <a href="#">73</a> Rule 56.1 Statement filed by Central Intelligence Agency,, Department of Defense,, <a href="#">74</a> Declaration in Support of Motion filed by Central Intelligence Agency,, Department of Defense,, <a href="#">184</a> Order,, <a href="#">196</a> Order, <a href="#">181</a> Endorsed Letter, Set Deadlines, <a href="#">174</a> Endorsed Letter, Set Deadlines, <a href="#">90</a> Notice (Other) filed by Center for Constitutional Rights, Inc., American Civil Liberties Union, <a href="#">84</a> Endorsed Letter, <a href="#">160</a> Endorsed Letter, <a href="#">120</a> Order on Motion to File Amicus Brief, <a href="#">93</a> Endorsed Letter, <a href="#">31</a> Certificate of Service Other, filed by Central Intelligence Agency, Department of State, Department Of Justice, Department of Defense, were transmitted to the U.S. Court of Appeals. (tp, ) (Entered: 07/05/2006)</p>
07/07/2006	<a href="#">198</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">159</a> SECOND MOTION for Partial Summary Judgment. <i>and in Opposition to Defendant's Motion for Partial Summary Judgment.</i> Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc.. (Lustberg, Lawrence) (Entered: 07/07/2006)
08/01/2006	<a href="#">200</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 7/27/06 re: Request a nineteen day extension of the briefing schedule, with the government filing its reply on August 16, 2006. ENDORSEMENT: So Ordered, on consent. (Signed by Judge Alvin K. Hellerstein on 8/1/06) (js, ) (Entered: 08/01/2006)
08/17/2006	<a href="#">201</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 8/16/2006 re: requesting a 9 day extension of the briefing schedule, with the Government filing its reply on 8/25/2006 and to adjourn the oral argument scheduled on 8/17/2006 to sometime after 9/18/2006. ENDORSEMENT: The enlargement is granted. The date for oral argument is canceled, subject to being set upon completion of briefing. (Signed by Judge Alvin K. Hellerstein on 8/17/2006) (lb, ) (Entered: 08/17/2006)
08/28/2006	<a href="#">202</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 8/25/06 re: Request a two week extension of the briefing schedule, with the Government filing its reply on Friday, September 8, 2006. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 8/28/06) (js, ) (Entered: 08/28/2006)
09/07/2006	<a href="#">203</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">176</a> MOTION for Summary Judgment.. Document filed by Federal Bureau Of Investigation. (McShain, Heather) (Entered: 09/07/2006)
09/07/2006	<a href="#">204</a>	DECLARATION of Heather K. McShain in Support re: <a href="#">176</a> MOTION for Summary Judgment.. Document filed by Federal Bureau Of Investigation. (Attachments: # <a href="#">1</a> )(McShain, Heather) (Entered: 09/07/2006)
09/07/2006	<a href="#">205</a>	CERTIFICATE OF SERVICE of Federal Bureau of Investigation's Reply Brief in Further Support of its Cross Motion for Summary Judgment and McShain Declaration. Document filed by Federal Bureau Of Investigation. (McShain, Heather)

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		(Entered: 09/07/2006)
09/27/2006	<a href="#">206</a>	MANDATE of USCA (Certified Copy) as to <a href="#">171</a> Notice of Appeal, filed by Center for Constitutional Rights, Inc., American Civil Liberties Union,, Physicians for Human Rights,, Veterans for Common Sense,, Veterans for Peace, USCA Case Number 06 0205 cv. (1) the record of the appeal shall be amended to include the text of the September 6, 2006 remarks of President George W. Bush (Declaration of Peter M. Skinner, September 18, 2006, Exhibit A); (2) the judgment of the District Court is VACATED, and the case is REMANDED to the District Court for such further proceedings as may be appropriate in the circumstances. In the interests of judicial economy and expeditious resolution of the parties' claims, the Clerk of this Court shall refer any appeal from the District Court's further orders or judgments in this case to this panel. See United States v. Jacobson, 15 F.3d 19, 21 22 (1994). Roseann B. MacKechnie, Clerk USCA. Issued As Mandate: 9/25/2006. (nd, ) (Entered: 09/27/2006)
09/27/2006		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">206</a> USCA Mandate,,,. (nd, ) (Entered: 09/27/2006)
10/05/2006	<a href="#">207</a>	ORDER; the parties shall submit a Joint Proposal by 10/23/06. The parties shall confer on 11/1/2006 at 3:00 p.m. in Courtroom 14D. (Signed by Judge Alvin K. Hellerstein on 10/5/06) (kco, ) (Entered: 10/06/2006)
11/01/2006	<a href="#">208</a>	ENDORSED LETTER addressed to Judge Hellerstein from Sean Lane dated 11/1/06: re joint position that a conference tomorrow would be premature: the conference is canceled. (Signed by Judge Alvin K. Hellerstein on 10/31/06) (cd, ) (Entered: 11/02/2006)
11/06/2006	<a href="#">209</a>	TRUE COPY ORDER of USCA as to <a href="#">197</a> Notice of Appeal filed by Department of the Army,, Department of Defense, USCA Case Number 06 0205. IT IS HEREBY ORDERED THAT the mandate is recalled and, upon its recall, this Court's September 22, 2006 order shall be amended by agreement of the parties to read as follows: (1) the record of the appeal shall be amended to include the text of the September 6, 2006 remarks of President George W. Bush (Declaration of Peter M. Skinner, September 18, 2006, Exhibit A); (2) the portions of the District Court's judgment that were the subject of this appeal is VACATED, and the case is REMANDED to the District Court for such further proceedings as may be appropriate in the circumstances. In the interests of judicial economy and expeditious resolution of the parties' claims, the Clerk of this Court shall refer any appeal from the District Court's further orders or judgments in this case to this panel. See United States v. Jacobson, 15 F.3d 19, 21 22 (1994). Thomas Asreen, Acting Clerk USCA. Certified: 11/2/2006. (nd, ) (Entered: 11/06/2006)
11/06/2006		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">209</a> USCA Order,,,,. (nd, ) (Entered: 11/06/2006)
12/19/2006	<a href="#">210</a>	NOTICE OF APPEARANCE by Melanca Durham Clark on behalf of American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace (Clark, Melanca) (Entered: 12/19/2006)
12/28/2006	<a href="#">211</a>	STIPULATION AND ORDER, by and among the parties, that the Government shall provide its public Vaughn declaration as to the responsive CIA Documents to Plaintiffs on or before, January 5, 2007. SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 12/28/2006) (jmi, ) (Entered: 12/29/2006)
01/10/2007	<a href="#">212</a>	MANDATE of USCA (Certified Copy) as to <a href="#">197</a> Notice of Appeal filed by Department of the Army, Department of Defense, USCA Case Number 06 0205 cv. It is Ordered, Adjudged and Decreed that the judgment of the District Court is VACATED and REMANDED. Thomas Asreen, Acting Clerk USCA. Issued As Mandate: 1/9/07. (tp, ) (Entered: 01/10/2007)
01/10/2007		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">212</a> USCA Mandate,. (tp, ) (Entered: 01/10/2007)
02/02/2007	<a href="#">213</a>	ENDORSED LETTER addressed to Judge Hellerstein from Melanca Clark dated 1/31/07 re: Plaintiffs' moving brief to be served on or before March 2, 2007; Defendants' opposition brief to be served on or before April 13, 2007; Plaintiff's reply brief to be served on or before May 4, 2007; and Defendants' sur reply brief to be served on or before May 25, 2007. (Signed by Judge Alvin K. Hellerstein on 2/1/07) (dje) (Entered: 02/05/2007)
03/02/2007	<a href="#">214</a>	NOTICE OF CHANGE OF ADDRESS by Melanca Durham Clark on behalf of all plaintiffs. New Address: Gibbons P.C., One Gateway Center, Newark, New Jersey, 07102 5310, 973 596 4500. (Clark, Melanca) (Entered: 03/02/2007)
03/02/2007	<a href="#">215</a>	FILING ERROR DEFICIENT DOCKET ENTRY THIRD MOTION for Partial Summary Judgment. Document filed by American Civil Liberties Union.Responses due by 4/13/2007 (Attachments: # <a href="#">1</a> Memo of Law Part 2# <a href="#">2</a> Notice of Motion# <a href="#">3</a> Exhibit DOD A Part 1# <a href="#">4</a> Exhibit DOD A Part 2# <a href="#">5</a> Exhibit DOD A Part 3# <a href="#">6</a> Errata DOD A part 4# <a href="#">7</a> Errata DOD B D# <a href="#">8</a> Exhibit DOD E# <a href="#">9</a> Exhibit DOD F H# <a href="#">10</a> Exhibit CIA Part 1# <a href="#">11</a> Exhibit CIA A Part 2# <a href="#">12</a> Exhibit CIA A Part 3# <a href="#">13</a> Exhibit CIA A Part 4# <a href="#">14</a> Exhibit CIA A Part 5# <a href="#">15</a> Exhibit CIA B Part 1# <a href="#">16</a> Errata CIA B Part 2# <a href="#">17</a> Exhibit CIA B Part 3# <a href="#">18</a> Exhibit OLC A# <a href="#">19</a> Exhibit OLC B Part 1# <a href="#">20</a> Exhibit OLC B Part 2)(Clark, Melanca) Modified on 3/6/2007 (kkc). (Entered: 03/02/2007)
03/05/2007	<a href="#">216</a>	FILING ERROR ELECTRONIC FILING FOR NON ECF DOCUMENT NOTICE of Letter encl. Amended Memo of Law. Document filed by American Civil Liberties Union. (Clark, Melanca) Modified on 3/7/2007 (gf). (Entered: 03/05/2007)
03/05/2007	<a href="#">217</a>	FILING ERROR WRONG DOCUMENT TYPE SELECTED FROM MENU MOTION to Amend/Correct <a href="#">216</a> Notice (Other), <a href="#">215</a> THIRD MOTION for Partial Summary Judgment. (Amended Memo of Law reflecting changes made to Table of Contents and Table of Authorities). Document filed by American Civil Liberties Union.(Clark, Melanca) Modified on 3/6/2007 (KA). (Entered: 03/05/2007)
03/06/2007		***NOTE TO ATTORNEY TO RE FILE DOCUMENT DOCUMENT TYPE ERROR. Note to Attorney Melanca



		Durham Clark to RE FILE Document <a href="#">217</a> MOTION to Amend/Correct <a href="#">216</a> Notice (Other), <a href="#">215</a> THIRD MOTION for Partial Summary Judgment. (Amended Memo of Law reflecting changes made to Table of Contents and Table of Authorities). MOTION to Amend/Correct <a href="#">216</a> Notice (Other), <a href="#">215</a> THIRD MOTION for Partial Summary Judgment. (Amended Memo of Law reflecting changes made to Table of Contents and Table of Authorities). Use the document type Memorandum of Law in Support of Motion found under the document list Replies, Opposition and Supporting Documents. (KA) (Entered: 03/06/2007)
03/06/2007	<a href="#">218</a>	THIRD MOTION for Partial Summary Judgment. Document filed by American Civil Liberties Union.(Clark, Melanca) (Entered: 03/06/2007)
03/06/2007	<a href="#">219</a>	THIRD MEMORANDUM OF LAW in Support re: <a href="#">218</a> THIRD MOTION for Partial Summary Judgment.. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit DOD A Part 1# <a href="#">2</a> Exhibit DOD A Part 2# <a href="#">3</a> Exhibit DOD A Part 3# <a href="#">4</a> Exhibit DOD A Part 4# <a href="#">5</a> Exhibit DOD B D# <a href="#">6</a> Exhibit DOD E# <a href="#">7</a> Exhibit DOD F H# <a href="#">8</a> Exhibit CIA A Part 1# <a href="#">9</a> Exhibit CIA A Part 2# <a href="#">10</a> Exhibit CIA A Part 3# <a href="#">11</a> Exhibit CIA A Part 4# <a href="#">12</a> Exhibit CIA A Part 5# <a href="#">13</a> Exhibit CIA B Part 1# <a href="#">14</a> Exhibit CIA Part 2# <a href="#">15</a> Exhibit CIA B Part 3# <a href="#">16</a> Exhibit OLC A# <a href="#">17</a> Exhibit OLC B Part 1# <a href="#">18</a> Exhibit OLC B Part 2)(Clark, Melanca) (Entered: 03/06/2007)
03/07/2007		***NOTE TO ATTORNEY TO RE FILE DOCUMENT NON ECF DOCUMENT ERROR. Note to Attorney M. Clark to MANUALLY RE FILE Document No. <a href="#">216</a> LETTER. This document is not filed via ECF. (gf) (Entered: 03/07/2007)
04/12/2007	<a href="#">220</a>	ENDORSED LETTER addressed to Judge Hellerstein from Stan Lane dated 4/9/07 re confirming that the parties' second set of cross motions for partial summary judgment relating to documents of the FBI has been resolved: so ordered, the motion and cross motion are both denied as moot. (Signed by Judge Alvin K. Hellerstein on 4/12/07) (cd) (Entered: 04/13/2007)
04/13/2007	<a href="#">221</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 4/12/07 re: Counsel writes to request a three week extension of the summary judgment briefing scheduled as follows: opposition/cross motion for summary judgment brief to be served on or before 5/4/07; reply/opposition brief to be served on or before 5/25/07; reply brief to be served on or before 6/15/07. So Ordered. (Signed by Judge Alvin K. Hellerstein on 4/13/07) (jco) (Entered: 04/16/2007)
05/07/2007	<a href="#">222</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 5/4/07 re: Plaintiff's objections DENIED. No further extensions will be granted. (Signed by Judge Alvin K. Hellerstein on 5/7/07) (db) (Entered: 05/08/2007)
06/04/2007	<a href="#">223</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 5/31/2007 re: request a four day extension of time, for the Government to file its response to plts third motion for partial summary judgment. Endorsement: Motion granted. Set Deadlines/Hearing as to <a href="#">218</a> THIRD MOTION for Partial Summary Judgment: Responses due by 6/8/2007 (Signed by Judge Leonard B. Sand (Part 1 Judge) on 6/1/2007) (jar) Modified on 6/5/2007 (Rivera, Jazmin). (Entered: 06/05/2007)
06/08/2007	<a href="#">224</a>	THIRD MOTION for Summary Judgment. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense.(Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">225</a>	DECLARATION of Marilyn A. Dorn in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B) (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">226</a>	DECLARATION of Marilyn A. Dorn 8th in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">227</a>	DECLARATION of Marilyn A. Dorn 9th in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">228</a>	DECLARATION of Marilyn A. Dorn OLC in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B)(Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">229</a>	DECLARATION of Steven Bradbury in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit B part 2# <a href="#">4</a> Exhibit B part 3# <a href="#">5</a> Exhibit B part 4# <a href="#">6</a> Exhibit B part 5# <a href="#">7</a> Exhibit C# <a href="#">8</a> Exhibit D)(Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">230</a>	DECLARATION of William Huntington in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">231</a>	DECLARATION of Margaret Bestrain in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">232</a>	DECLARATION of Thomas Jansen in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">233</a>	DECLARATION of Wade Dennis in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">234</a>	DECLARATION of Jane Polcen in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by

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		Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">235</a>	DECLARATION of Samuel Morris in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Attachment 1# <a href="#">2</a> Attachment 2# <a href="#">3</a> Attachment 3# <a href="#">4</a> Attachment 4)(Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">236</a>	DECLARATION of Sean Lane in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A part 1# <a href="#">2</a> Exhibit A part 2# <a href="#">3</a> Exhibit A part 3# <a href="#">4</a> Exhibit A part 4# <a href="#">5</a> Exhibit A part 5# <a href="#">6</a> Exhibit B# <a href="#">7</a> Exhibit C# <a href="#">8</a> Exhibit D# <a href="#">9</a> Exhibit E)(Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">237</a>	DECLARATION of Stewart Aly 3rd in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3# <a href="#">4</a> Exhibit 4# <a href="#">5</a> Exhibit 5)(Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">238</a>	DECLARATION of Steven Lynch in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/08/2007	<a href="#">239</a>	MEMORANDUM OF LAW in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Skinner, Peter) (Entered: 06/08/2007)
06/27/2007	<a href="#">240</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 6/27/07 re: granting plaintiffs' requests for an extension of time within which to file their opposition to Dfts' Third Motion for Partial Summary Judgment an Reply in Support of Plaintiffs' Third Motion for Partial Summary Judgment. Plaintiffs seek permission to file their brief on 8/15/07. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 6/27/07) (pl) (Entered: 06/28/2007)
08/14/2007	<a href="#">241</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Lawrence Lustberg dated 8/13/07 re: counsel for plaintiffs seek an additional extension of time until 9/14/07 in which to file their reply to dfts' opposition to plaintiffs' third motion for partial summary judgment and dfts' third motion for partial summary judgment. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 8/13/07) (dle) (Entered: 08/15/2007)
09/14/2007	<a href="#">242</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">218</a> THIRD MOTION for Partial Summary Judgment. <i>and in Opposition to Defendants' Third Motion for Summary Judgment.</i> Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit I (DOD))(Clark, Melanca) (Entered: 09/14/2007)
10/09/2007	<a href="#">243</a>	ENDORSED LETTER addressed to Judge Hellerstein from Sean Lane dated 10/5/07 re: Request for an extension of time until 11/16/07 for the Govt to file its reply in support of the Government's third motion for partial summary judgment. ENDORSEMENT: So ordered. Set Deadlines/Hearing as to <a href="#">224</a> THIRD MOTION for Summary Judgment: Reply due by 11/16/2007. (Signed by Judge Alvin K. Hellerstein on 10/9/07) (cd) (Entered: 10/09/2007)
10/26/2007	<a href="#">244</a>	ORDER TO SHOW CAUSE: Defendant Office of Legal Counsel shall show cause as to why preliminary injunctive relief should not be granted. Show Cause Hearing set for 11/13/2007 at 04:00 PM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein. It is hereby ORDERED that Defendant, if opposed to Plaintiffs' application for a preliminary injunction, shall serve any and all papers in opposition by 11/5/07; and it is further ORDERED that Plaintiffs shall serve any and all additional papers in support of the within no later than 11/8/07. Security bond not required. (Signed by Judge Alvin K. Hellerstein on 10/26/07) (tro) (Entered: 10/29/2007)
10/29/2007	<a href="#">245</a>	MEMORANDUM OF LAW in Support re: <a href="#">244</a> Order to Show Cause,, <i>In Support of Preliminary Injunction.</i> Document filed by American Civil Liberties Union. (Clark, Melanca) (Entered: 10/29/2007)
10/29/2007	<a href="#">246</a>	AFFIDAVIT of Melanca D. Clark in Support re: <a href="#">244</a> Order to Show Cause,, Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C# <a href="#">4</a> Exhibit D# <a href="#">5</a> Exhibit E# <a href="#">6</a> Exhibit F# <a href="#">7</a> Exhibit G# <a href="#">8</a> Exhibit H# <a href="#">9</a> Exhibit I# <a href="#">10</a> Exhibit J# <a href="#">11</a> Exhibit K)(Clark, Melanca) (Entered: 10/29/2007)
11/05/2007	<a href="#">247</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">244</a> Order to Show Cause,, Document filed by Department Of Justice. (Skinner, Peter) (Entered: 11/05/2007)
11/05/2007	<a href="#">248</a>	DECLARATION of Paul P. Colborn in Opposition re: <a href="#">244</a> Order to Show Cause,, Document filed by Department Of Justice. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C# <a href="#">4</a> Exhibit D# <a href="#">5</a> Exhibit E# <a href="#">6</a> Exhibit F# <a href="#">7</a> Exhibit G# <a href="#">8</a> Exhibit H# <a href="#">9</a> Exhibit I)(Skinner, Peter) (Entered: 11/05/2007)
11/08/2007	<a href="#">249</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">244</a> Order to Show Cause,, Document filed by American Civil Liberties Union. (Clark, Melanca) (Entered: 11/08/2007)
11/08/2007	<a href="#">250</a>	AFFIDAVIT of Shayana Kadidal in Support re: <a href="#">244</a> Order to Show Cause,, Document filed by Center for Constitutional Rights, Inc.. (Clark, Melanca) (Entered: 11/08/2007)
11/14/2007	<a href="#">251</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 11/13/07 re: Counsel for U.S. Defendant(s) request an extension from November 16, 2007 until December 7, 2007 for the Government to file its reply brief in further support of its third motion for partial summary judgment. ENDORSEMENT: So ordered., Set Deadlines/Hearing as to <a href="#">224</a> THIRD MOTION for Summary Judgment: Replies due by 12/7/2007. (Signed by Judge Alvin K. Hellerstein on 11/14/07) (tro) (Entered: 11/14/2007)
12/06/2007	<a href="#">252</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean Lane dated 12/6/07 re: Request for an extension of time from 12/7 to 12/12/07, for the Govt to file a third motion for partial summary judgment.

		ENDORSEMENT: So ordered. Set Deadlines/Hearing as to <a href="#">224</a> THIRD MOTION for Summary Judgment:( Reply due by 12/12/2007.) (Signed by Judge Alvin K. Hellerstein on 12/6/07) (cd) (Entered: 12/07/2007)
12/07/2007	<a href="#">253</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 12/6/2007 re: Plaintiffs request that a hearing date be scheduled at the Court's earliest convenience. ENDORSEMENT: The motion will be heard 1/7/2008 at 3:30 p.m. before Judge Alvin K. Hellerstein. (Signed by Judge Alvin K. Hellerstein on 12/7/2007) (jar) (Entered: 12/07/2007)
12/12/2007	<a href="#">254</a>	MOTION for Contempt and Sanctions. Document filed by American Civil Liberties Union.(Clark, Melanca) (Entered: 12/12/2007)
12/12/2007	<a href="#">255</a>	MEMORANDUM OF LAW in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union. (Clark, Melanca) (Entered: 12/12/2007)
12/12/2007	<a href="#">256</a>	DECLARATION of Amrit Singh in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H)(Clark, Melanca) (Entered: 12/12/2007)
12/12/2007	<a href="#">257</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 12/11/2007 re: request a one day extension from 12/12/2007 to 12/13/2007, for the government to file its reply brief in further support of its third motion for partial summary judgment. ENDORSEMENT: So Ordered. (Reply is due by 12/13/2007.) (Signed by Judge Alvin K. Hellerstein on 12/12/2007) (jar) (Entered: 12/12/2007)
12/13/2007	<a href="#">258</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Lane, Sean) (Entered: 12/13/2007)
12/13/2007	<a href="#">259</a>	DECLARATION of Brian S. Kinsey in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Lane, Sean) (Entered: 12/13/2007)
12/13/2007	<a href="#">260</a>	DECLARATION of Paul P. Colborn in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Lane, Sean) (Entered: 12/13/2007)
12/13/2007	<a href="#">261</a>	DECLARATION of Stewart F. Aly in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A)(Lane, Sean) (Entered: 12/13/2007)
12/13/2007	<a href="#">262</a>	DECLARATION of Sean H. Lane in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency, Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B Part 1, # <a href="#">3</a> Exhibit B Part 2, # <a href="#">4</a> Exhibit C, # <a href="#">5</a> Exhibit D, # <a href="#">6</a> Exhibit E, # <a href="#">7</a> Exhibit F, # <a href="#">8</a> Errata G)(Lane, Sean) (Entered: 12/13/2007)
12/14/2007	<a href="#">263</a>	NOTICE OF APPEARANCE by Amrit Singh on behalf of American Civil Liberties Union (Singh, Amrit) (Entered: 12/14/2007)
12/17/2007	<a href="#">264</a>	NOTICE OF APPEARANCE by Judy Rabinovitz on behalf of American Civil Liberties Union (Rabinovitz, Judy) (Entered: 12/17/2007)
12/19/2007	<a href="#">265</a>	NOTICE OF APPEARANCE by Jameel Jaffer on behalf of American Civil Liberties Union (Jaffer, Jameel) (Entered: 12/19/2007)
12/19/2007	<a href="#">266</a>	SUPPLEMENTAL BRIEF re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Amrit Singh Declaration In Support of Supplement, # <a href="#">2</a> Exhibit I in Support of Amrit Singh Declaration, # <a href="#">3</a> Exhibit J in Support of Amrit Singh Declaration)(Singh, Amrit) (Entered: 12/19/2007)
01/03/2008	<a href="#">267</a>	NOTICE OF APPEARANCE by Alexa Rebecca Kolbi Molinas on behalf of American Civil Liberties Union (Kolbi Molinas, Alexa) (Entered: 01/03/2008)
01/07/2008	<a href="#">268</a>	SCHEDULING ORDER: Oral Argument set for 1/16/2008 at 03:00 PM before Judge Alvin K. Hellerstein. The parties will present their arguments in the following order: First, plaintiff's motion for a preliminary injunction with respect to three legal memorandum created by the Office of Legal Counsel regarding the Central Intelligence Agency use of interrogation techniques for terror detainees; second, the third cross motions for partrial summary judgment regarding the production of certain CIA documents that may be responsive to plaintiff's FOIA requests, and third, plaintiff's motion for contempt and sanctions against the CIA. SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 1/4/2008) (jmi) (Entered: 01/08/2008)
01/10/2008	<a href="#">269</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 01/10/2008)
01/10/2008	<a href="#">270</a>	DECLARATION of Peter M. Skinner in Opposition re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by Central Intelligence Agency. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E) (Skinner, Peter) (Entered: 01/10/2008)
01/10/2008	<a href="#">271</a>	DECLARATION of Constance E. Rea in Opposition re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by Central Intelligence Agency. (Attachments: # <a href="#">1</a> Exhibit 1)(Skinner, Peter) (Entered: 01/10/2008)
01/14/2008	<a href="#">272</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union. (Clark, Melanca) (Entered: 01/14/2008)

01/14/2008	<a href="#">273</a>	DECLARATION of Amrit Singh in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit K, # <a href="#">2</a> Exhibit L, # <a href="#">3</a> Exhibit M)(Clark, Melanca) (Entered: 01/14/2008)
01/15/2008		***DELETED DOCUMENT. Deleted document number <a href="#">274</a> ENDORSED LETTER. The document was incorrectly filed in this case. (ae) (Entered: 01/15/2008)
01/15/2008	<a href="#">274</a>	BRIEF re: <a href="#">254</a> MOTION for Contempt and Sanctions. <i>Supplemental Submission</i> . Document filed by American Civil Liberties Union.(Clark, Melanca) (Entered: 01/15/2008)
01/15/2008	<a href="#">275</a>	DECLARATION of Amrit Singh in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit O)(Clark, Melanca) (Entered: 01/15/2008)
01/16/2008	<a href="#">276</a>	DECLARATION of Amrit Singh in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit O (revised))(Clark, Melanca) (Entered: 01/16/2008)
01/16/2008		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Oral Argument held on 1/16/2008. (jar) (Entered: 02/07/2008)
01/17/2008		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Oral Argument held on 1/17/2008. (jar) (Entered: 02/07/2008)
01/28/2008	<a href="#">277</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 1/25/08 re: Counsel requests that the Court adjourn the in camera review scheduled for Tuesday, 1/29/08 as to a sample of documents of the Department of Defense. ENDORSEMENT: The conf. is adjourned to a date to be fixed, upon application by either side. (Signed by Judge Alvin K. Hellerstein on 1/28/08) (tro) (Entered: 01/28/2008)
02/15/2008	<a href="#">278</a>	DECLARATION of Amrit Singh in Support re: <a href="#">218</a> THIRD MOTION for Partial Summary Judgment.. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C Part 1, # <a href="#">4</a> Exhibit C part 2, # <a href="#">5</a> Exhibit C part 3, # <a href="#">6</a> Exhibit D, # <a href="#">7</a> Exhibit E, # <a href="#">8</a> Exhibit F, # <a href="#">9</a> Exhibit G)(Clark, Melanca) (Entered: 02/15/2008)
02/15/2008	<a href="#">279</a>	MEMORANDUM OF LAW in Support re: <a href="#">218</a> THIRD MOTION for Partial Summary Judgment. <i>Supplemental Brief</i> . Document filed by American Civil Liberties Union. (Clark, Melanca) (Entered: 02/15/2008)
02/20/2008	<a href="#">280</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Melanca D. Clark dated 2/15/2008 re: Plaintiff's write this letter to request that the following three attorneys be removed from the above referenced docket listing plaintiffs' counsel and from the ECF electronic mail notification system: Demetrios C. Batsides no longer works on this matter; and, Jennifer Ching and Megan E. Lewis have both left the Gibbons firm. Thank you for your kind attention. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 2/20/2008) (jmi) (Entered: 02/21/2008)
02/21/2008	281	TRANSCRIPT of proceedings held on 1/17/08 before Judge Alvin K. Hellerstein. (jbe) (Entered: 02/21/2008)
02/21/2008	282	TRANSCRIPT of proceedings held on 1/16/08 before Judge Alvin K. Hellerstein. (jbe) (Entered: 02/21/2008)
02/29/2008	<a href="#">283</a>	ORDER REGULATING CIA & DOD DOCUMENT PRODUCTION, the DoD documents selected for sampling in camera shall be produced in my chambers, Rm 1050, USDC SDNY, 500 Pearl St., NY NY, on 3/17/08, 11 am. The CIA shall have until 3/31/08: (a) to complete its review of its documents identified in its Vaughn Declaration, and as further set forth in this document. With regard to any claimed exemptions, the Court will schedule a hearing to address same, also to be held within 10 days. (Signed by Judge Alvin K. Hellerstein on 2/28/08) (cd) (Entered: 02/29/2008)
03/03/2008	<a href="#">284</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 2/29/08 re: Counsel for defendant requests an extension of time until March 31, 2008 to respond to the Supplemental Brief filed by Plaintiffs in the above captioned case on February 15, 2008. ENDORSEMENT: So Ordered. A date for in camera review, if requires will be scheduled. So Ordered. (Signed by Judge Alvin K. Hellerstein on 3/3/08) (js) (Entered: 03/03/2008)
03/31/2008	<a href="#">285</a>	SUPPLEMENTAL MEMORANDUM OF LAW in Opposition re: <a href="#">218</a> THIRD MOTION for Partial Summary Judgment.. Document filed by Central Intelligence Agency. (Skinner, Peter) (Entered: 03/31/2008)
04/03/2008	<a href="#">286</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean Lane, Peter Skinner dated 4/2/08 re: counsel for the Government requests that the in camera review take place, at the Court's convenience on one of the following dates: 4/15, 4/16, 4/18, 4/22, 4/23, 4/24, 4/25. ENDORSEMENT: The DOD in camera review will take place on 4/15/08 at 2:00 p.m. in chambers. (Signed by Judge Alvin K. Hellerstein on 4/3/08) (dle) (Entered: 04/03/2008)
04/04/2008	<a href="#">287</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Melanca D. Clark dated 4/3/08 re: Plaintiff's request until April 18, 2008, to submit a reply to the Government's March 31, 2008 response to Plaintiffs' supplemental brief, dated February 15, 2008. The Government has no objection to this deadline. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 4/4/08) (js) (Entered: 04/04/2008)
04/15/2008	<a href="#">288</a>	DECLARATION of Fifth Declaration of Stewart F. Aly in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department of the Army, Department of Defense. (Lane, Sean) (Entered: 04/15/2008)
04/18/2008	<a href="#">289</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">218</a> THIRD MOTION for Partial Summary Judgment. <i>Supplemental Submission</i> . Document filed by American Civil Liberties Union. (Clark, Melanca) (Entered: 04/18/2008)
04/28/2008	290	TRANSCRIPT of proceedings held on 4/15/2008 before Judge Alvin K. Hellerstein. (ama) (Entered: 04/28/2008)
04/30/2008	<a href="#">291</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 4/29/08 re: DOD respectfully

		requests a short extension of time of four business day, until Monday 5/5/08, to provide the Court with a final answer on this question; at that time, the Government will either publicly release CITF 199 or provide the Court with a declaration explaining any additional factual information relevant to the Court's consideration of that document. ENDORSEMENT: I approve the actions taken, as requested in this letter and grant the four day enlargement requested in paragraph "third". (Signed by Judge Alvin K. Hellerstein on 4/30/08) (pl) (Entered: 04/30/2008)
05/08/2008	<a href="#">292</a>	ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION: I have read the materials submitted by the plaintiffs, and realize that I did not give sufficient consideration either to Nat'l Counsel of La Raza v. Dep't of Justice, 411 F.3d 350, or to the evidence submitted by plaintiffs to the effect that all or parts of Item 29 may have been incorporated into official practice and policy, or as justification of the same. Accordingly, I grant plaintiffs' motion for reconsideration. The Government shall produce Item 29 for in camera review, along with the selected sample documents, at the previously scheduled CIA documents in camera review on 5/12/2008, at 11 a.m. in my chambers, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, Room 1050, New York, NY 10007. The protocol for the in camera review shall be in the format previously described to the parties during the 2/6/08 conference call. A copy of that protocol is attached to this order. (Signed by Judge Alvin K. Hellerstein on 5/8/2008) (tve) (Entered: 05/08/2008)
05/08/2008		Set Deadlines/Hearings: In Camera Hearing set for 5/12/2008 at 11:00 AM before Judge Alvin K. Hellerstein. (tve) (Entered: 05/08/2008)
05/29/2008	<a href="#">295</a>	ORDER RELEASING TRANSCRIPTS AND REGULATING PROCEEDINGS, In accordance with Judge Hellerstein's rulings during the January 16 17, 2008, oral argument on plaintiffs pending motions in this case, Judge Hellerstein conducted two in camera reviews of classified Department of Defense (DOD) and Central Intelligence Agency (CIA) documents, on April 15, 2008 and May 12, 2008, respectively. On April 15, 2008, Judge Hellerstein conducted an in camera review of 30 classified DOD documents. The documents were composed of samples chosen by plaintiffs from a list provided by defendants. The purpose of the review was to determine whether the documents should properly be withheld under exemptions to the Freedom of Information Act (FOIA), as declared by the Government. A court reporter was present and a transcript with unclassified comments was produced. Judge Hellerstein reviewed both the publicly filed Vaughn declaration describing each classified document, and then examined the document itself. The transcript provides Judge Hellerstein's rulings on each of the documents in the sample, including the document marked CITF 99, which was released in full by the Government to the plaintiffs on May 5, 2008. Judge Hellerstein have completed consideration of all DOD related documents in this case of a sample chosen by plaintiffs, using the same procedures as with the DOD documents, and, in addition, three documents from the Office of Legal Counsel ("OLC") to the CIA, also chosen by plaintiffs, and item 61, which is the presidential authorization for the CIA interrogation and detention program. The protocol for review, as attached to the order granting plaintiffs' motion for reconsideration, was followed. The released transcript provides some of Judge Hellerstein's preliminary rulings. On June 17, 2008 at 2 p.m., Judge Hellerstein will hold another in camera review, and consider supplementary classified declarations to be submitted by the government. Judge Hellerstein expects then to make final rulings concerning the CIA documents. The parties will be advised of his rulings. (Signed by Judge Alvin K. Hellerstein on 5/28/08) (mme) (rw). (Entered: 05/29/2008)
06/24/2008	<a href="#">296</a>	DECLARATION of John Durham in Support re: <a href="#">224</a> THIRD MOTION for Summary Judgment.. Document filed by Department Of Justice. (Skinner, Peter) (Entered: 06/24/2008)
07/21/2008	<a href="#">298</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 7/17/08 re: Counsel for defendant request a three business day extension of the stay until July 22, 2008. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 7/18/08) (js) (Entered: 07/21/2008)
07/22/2008	<a href="#">299</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 7/21/08 re: Request for a conference. ENDORSEMENT: The issue of a stay (paragraph 2, below) and the status of any and all remaining issues in this litigation will be discussed at conference to be held 8/6/08 at 11:00 a.m. and any necessary schedules will then be determined. (Status Conference set for 8/6/2008 at 11:00 AM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 7/22/08) (db) (Entered: 07/22/2008)
07/22/2008	<a href="#">300</a>	ORDER: The second through fifth words of the second line of the second paragraph of OLC Document No. 70 are properly withheld from disclosure under the Freedom of Information Act. (Signed by Judge Alvin K. Hellerstein on 7/22/08) (db) (Entered: 07/22/2008)
07/25/2008	<a href="#">301</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Melanca D. Clark dated 7/24/2008 re: Requesting that the portions of the transcript of the in camera proceedings in this matter held on June 17, 2008, be unsealed and placed on the docket. ENDORSEMENT: So ordered as to the unsealing and as to conference. (Signed by Judge Alvin K. Hellerstein on 7/25/2008) (jpo) (Entered: 07/28/2008)
07/30/2008	<a href="#">302</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Melanca D. Clark dated 7/29/2008 re: Counsel for plaintiff writes to respectfully seek an extension of time to file an appeal until 8/15/2008. ENDORSEMENT: The issue will be discussed at the forthcoming conference, 8/12/2008 at 4:00 pm. Meanwhile, the extension to 8/15/2008 is granted. (Signed by Judge Alvin K. Hellerstein on 7/29/2008) (tve) (Entered: 07/30/2008)
08/14/2008	<a href="#">303</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Melanca D. Clark dated 8/14/08 re: Request that the time for plaintiffs' appeal be extended. ENDORSEMENT: Plaintiffs are granted an extension of ten days until after the 8/18/08 conference to appeal, or to a date to be announced at the conference. (Signed by Judge Alvin K. Hellerstein on 8/14/08) (db) (Entered: 08/14/2008)
08/20/2008	<a href="#">305</a>	ORDER REGULATING PROCEEDINGS: After hearing argument on plaintiff's contempt motion on 1/16 17/2008, and 8/18/2008, I defer any findings of contempt by defendant CIA at this time. I find the facts before me insufficient to justify

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		a holding of civil contempt. I find there has yet to be any such "clear and convincing evidence" of noncompliance on the CIA's part. Accordingly, as stated at the conference, I order the Government to submit a supplemental declaration from Special Prosecutor, John H. Durham, who is leading the criminal investigation into the destruction of the videotapes. The declaration is to be submitted by 9/10/2008. SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 8/20/2008) (tve) (Entered: 08/20/2008)
08/28/2008	<a href="#">306</a>	ORDER GRANTING PRELIMINARY INJUNCTION IN PART AND DENYING IN PART: For reasons further set forth in said Order, the defendants are either to produce the 3 OLC Opinions to plaintiffs, or, if defendants believe that the opinions are covered by specific FOIA exemptions, defendants are to produce a detailed Vaughn declaration identifying each document and the exemptions being claimed. Defendants' response will be due 10/3/08. In all other aspects, including plaintiffs' request for a temporal cut off date of 6/30/05, rather than the 1/31/05 date used by the defendants, plaintiffs' motion is denied. The Clerk shall note that the Motion (Doc. #244) is now terminated. (Signed by Judge Alvin K. Hellerstein on 8/28/08) (db) (Entered: 08/28/2008)
09/02/2008	<a href="#">307</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean Lane dated 8/29/08 re: Request that the parties be permitted to submit the proposed order on or before Friday, 9/5/08. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 9/2/08) (cd) (Entered: 09/02/2008)
09/05/2008	308	TRANSCRIPT of proceedings held on 8/18/08 before Judge Alvin K. Hellerstein. (ama) (Entered: 09/05/2008)
09/16/2008	<a href="#">309</a>	ORDER DEFERRING CONSIDERATION OF PLAINTIFF'S MOTION TO CITE CIA FOR CONTEMPT: Accordingly, compliance with my Order of August 20, 2008 is deferred until December 24,2008. Plaintiff's motion to cite the CIA for contempt will remain on my docket. As requested by the Government, the Second Declaration of John H. Durham will be filed under seal. (Signed by Judge Alvin K. Hellerstein on 9/16/2008) (jfe) Modified on 10/10/2008 (jfe). (Entered: 09/16/2008)
09/16/2008		Transmission to Sealed Records Clerk. Transmitted re: <a href="#">309</a> Order,, to the Sealed Records Clerk for the sealing or unsealing of document or case. (jfe) (Entered: 09/16/2008)
09/19/2008	<a href="#">311</a>	ORDER GRANTING AND DENYING MOTIONS FOR PARTIAL SUMMARY JUDGMENT: IT IS HEREBY ORDERED, consistent with the Court's rulings at the OralArgument and during the in camera proceedings, 1. Plaintiffs' third partial summary judgment motion is granted to the extent that the Court has previously ordered the release of certain information, as set forth above; 2. The Court's disclosure rulings with respect to DOD documents shall be applied to other responsive DOD documents where the same rationale for release applies; 3. The Court's disclosure rulings with respect to the final version of OIG Other Document No.5 shall be applied within the class of documents consisting of records contained in closed OIG files to other documents where the same rationale for release applies; 4. The Court's disclosure rulings with respect to OLC Document Nos. 12 and70 shall be applied within the class of documents consisting of classified records that OLCreferred to CIA for processing to other documents where the same rationale for release applies;5. The Court's disclosure rulings with respect to Item 29 shall be applied toother documents addressed in the parties' third cross motions for summary judgment that are from OLC to CIA and that contain the same legal reasoning as Item 29; 6. The Court's disclosure rulings with respect to Item 29 are not applicable to the memoranda at issue in the OLC Motion, although Plaintiffs are not precluded from arguing in the future that Exemption 5 is inapplicable to those memoranda for the same reasons the Court held the exemption to be inapplicable to Item 29, and the Government is not precluded from opposing any such argument;7. Except as set forth in the disclosure orders described in the whereasclauses above, the Government's third motion for partial summary judgment is granted, as the Court concludes, based on its review of the Government's submissions and its in camera review, that the Government has satisfied its burden of establishing that the Government has released all reasonably segregable, nonexempt information. 8. The Court enters final judgment with respect to the rulings described in paragraph 7 above because there is no just reason for delay of any appeal of those rulings. See Fed. R. Civ. P. 54(b). 9. The Court retains jurisdiction over the pending CIA Motion and any further proceedings concerning the OLC Motion but otherwise dismisses this case as against all other remaining defendants, including: 1) the Department of Defense and its components; 2) the Department of Homeland Security; 3) the Department of State; and 4) the Department of Justice and its components other than OLC.. (Signed by Judge Alvin K. Hellerstein on 9/19/2008) (jfe) (Entered: 09/19/2008)
09/23/2008	<a href="#">312</a>	CLERK'S JUDGMENT in favor of American Civil Liberties Union against Advance Publications, Inc., Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation that plaintiff'sthird motion for summary judgment is granted pursuant to FRCP 54b since there is no just reason for delay (Signed by J. Michael McMahon, Clerk on 9/23/08) (jf) (Additional attachment(s) added on 9/24/2008: # <a href="#">1</a> notice of right to appeal) (jf). (Entered: 09/24/2008)
10/02/2008	<a href="#">313</a>	NOTICE OF APPEAL from <a href="#">312</a> Clerk's Judgment, <a href="#">311</a> Order on Motion for Partial Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. Filing fee \$ 455.00, receipt number E 664653. (nd) (Entered: 10/06/2008)
10/06/2008		Transmission of Notice of Appeal to the District Judge re: <a href="#">313</a> Notice of Appeal,. (nd) (Entered: 10/06/2008)
10/06/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">313</a> Notice of Appeal,. (nd) (Entered: 10/06/2008)
10/06/2008	<a href="#">314</a>	NOTICE OF APPEARANCE by Jennifer Brooke Condon on behalf of American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace (Condon, Jennifer) (Entered: 10/06/2008)
10/06/2008	<a href="#">315</a>	MOTION for Extension of Time <i>for Attorneys' Fees Motion</i> . Document filed by American Civil Liberties Union, Center

		for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Condon, Jennifer) (Entered: 10/06/2008)
10/06/2008	<a href="#">316</a>	AFFIDAVIT of Lawrence S. Lustberg in Support re: <a href="#">315</a> MOTION for Extension of Time <i>for Attorneys' Fees Motion</i> .. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 10/06/2008)
10/06/2008	<a href="#">317</a>	MEMORANDUM OF LAW in Support re: <a href="#">315</a> MOTION for Extension of Time <i>for Attorneys' Fees Motion</i> .. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 10/06/2008)
10/23/2008		***DELETED DOCUMENT. Deleted document number <a href="#">318</a> memo endorsed on Notice of Motion. The document was incorrectly filed in this case. (js) (Entered: 10/23/2008)
10/23/2008	<a href="#">318</a>	MEMO ENDORSED ON NOTICE OF MOTION FOR EXTENSION OF TIME TO FILE ATTORNEYS' FEES MOTION: ENDORSEMENT: Motion granted. Time is enlarged 90 days after resolution of all appeals. So Ordered. (Signed by Judge Alvin K. Hellerstein on 10/23/08) (js) (Entered: 10/23/2008)
10/29/2008	<a href="#">319</a>	ORDER DENYING MOTION FOR PARTIAL RECONSIDERATION: On September 12, 2008, Defendants filed a motion for partial reconsideration (in case 05cv9620 (AKH)) of my order of August 28, 2008, which granted Plaintiffs motion for preliminary injunctive relief in part by directing Defendants either to produce three Office of Legal Counsel (OLC) memoranda, two dated May 10, 2005 and one dated May 30, 2005, or to submit a Vaughn declaration describing and claiming exemptions for those documents. Because Defendants have presented no controlling decisions or facts overlooked by my order of August 28, 2008, and again on the merits, the motion for partial reconsideration is denied. The Clerk shall mark the motion (Doc. #18) in 05cv9620 (AKH) as terminated. Also filed in 05cv9620 (AKH). (Signed by Judge Alvin K. Hellerstein on 10/29/08) (db) (Entered: 10/29/2008)
10/31/2008	<a href="#">320</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 10/30/08 re: Counsel requests a short extension of time to 7 days, until November 7, 2008, to produce to plaintiffs the single remaining Army report, comprised of approximately 700 pages. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 10/30/08) (mme) (Entered: 10/31/2008)
12/12/2008	<a href="#">321</a>	FOURTH MOTION for Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. Responses due by 1/15/2009(Condon, Jennifer) (Entered: 12/12/2008)
12/12/2008	<a href="#">322</a>	MEMORANDUM OF LAW in Support re: <a href="#">321</a> FOURTH MOTION for Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 12/12/2008)
12/12/2008	<a href="#">323</a>	DECLARATION of Jennifer B. Condon in Support re: <a href="#">321</a> FOURTH MOTION for Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P)(Condon, Jennifer) (Entered: 12/12/2008)
12/12/2008	<a href="#">324</a>	FILING ERROR WRONG EVENT TYPE SELECTED FROM MENU (Rule 56.1 Statement) AFFIRMATION of Plaintiffs' Rule 56.1 Statement of Material Facts in Support re: <a href="#">321</a> FOURTH MOTION for Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) Modified on 12/15/2008 (jar). (Entered: 12/12/2008)
12/12/2008		***NOTE TO ATTORNEY TO RE FILE DOCUMENT EVENT TYPE ERROR. Note to Attorney Jennifer Condon to RE FILE Document <a href="#">324</a> Affirmation in Support of Motion. Use the event type Rule 56.1 Statement found under the event list Other Answers. (jar) (Entered: 12/15/2008)
12/15/2008	<a href="#">325</a>	RULE 56.1 STATEMENT. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 12/15/2008)
01/06/2009	<a href="#">326</a>	ORDER DEFERRING CONSIDERATION OF PLAINTIFFS' MOTION TO CITE CIA FOR CONTEMPT: Accordingly, I defer compliance with my order of August 20, 2008 until February 28, 2009. Plaintiffs' motion to cite the CIA for contempt will remain on my docket. An unredacted version of the December 22, 2008 Declaration of John H. Durham shall be filed under seal. A version of the declaration, as redacted by Mr. Durham, shall be filed publicly. (Signed by Judge Alvin K. Hellerstein on 1/6/2009) (rw) Modified on 1/7/2009 (rw). (Entered: 01/06/2009)
01/15/2009	<a href="#">327</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 1/14/2009 re: Requesting a thirty day extension, until February 13, 2009, of the Government's time to file its opposition to plaintiffs' fourth motion for summary judgment and the Government's cross motion. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 1/15/2009) (jpo) Modified on 2/8/2009 (jpo). (Entered: 01/15/2009)
02/17/2009	<a href="#">328</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 2/11/2009 re: Requesting a 90 day extension of time, from February 13, 2009 until May 14, 2009, to file the Government's opposition to plaintiffs' fourth motion for summary judgment and the Government's cross motion. ENDORSEMENT: The parties shall appear for an on the record hearing on February 18, 2009 at 3 p.m., to establish the necessity of any extension of time beyond 14 days. (Signed by Judge Denise L. Cote Part I on 2/13/2009) (jpo) Modified on 2/24/2009 (jpo). (Entered: 02/17/2009)

02/17/2009		Set Deadlines/Hearings: Status Conference set for 5/14/2009 at 03:00 PM before Judge Alvin K. Hellerstein. (jpo) Modified on 2/24/2009 (jpo). (Entered: 02/24/2009)
02/18/2009	<a href="#">329</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 2/17/09 re: Counsel suggests that the hearing currently scheduled for tomorrow at 3 p.m. be canceled. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 2/17/09) (mme) (Entered: 02/18/2009)
03/03/2009	<a href="#">330</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 3/2/2009 re: Counsel expects that the Court will enter an order requiring the production of the information contemplated in the August 20, 2008 Order Regulating Proceedings namely set forth within. ENDORSEMENT: The Court defers issuing its Order until after it reviews the schedule for production produced by the government. The Court expects that schedule to recommend tight, binding dates, reflecting minimal delays. (Signed by Judge Alvin K. Hellerstein on 3/3/2009) (jfe) Modified on 3/19/2009 (jfe). (Entered: 03/03/2009)
03/10/2009	<a href="#">331</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Amrit Singh dated 3/9/2009 re: Accordingly, plaintiff's request that this Court that this Court conduct an independent in camera review of of that material and any other material the the CIA redacts in connection with the pending contempt motion with a view to determining whether such material should be publicly disclosed. ENDORSEMENT: Both this letter, and the government's letter of March 6, 2009 shall be docketed. A procedure for in camera review shall be established and confirmed by separate order. (Signed by Judge Alvin K. Hellerstein on 3/9/2009) (jpo) (Entered: 03/10/2009)
03/10/2009	<a href="#">332</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Amrit Singh dated 3/9/09 re: Request that this Court conduct an independent review to determine whether the redacted information is properly classified. ENDORSEMENT: Both this letter, and the gov't's letter of 3/6/09 (next docket entry) shall be docketed. A procedure for in camera review shall be established and confirmed by separate order. (Signed by Judge Alvin K. Hellerstein on 3/9/09) (cd) (Entered: 03/11/2009)
03/10/2009	<a href="#">333</a>	LETTER addressed to Amrit Singh and Jennifer Condon from Peter Skinner dated 3/6/09 re: Pages from the CIA Office of the Inspector General's Special Review Report that provide additional unredacted information re interrogation videotapes. Document filed by Central Intelligence Agency. (document docketed as requested in previous entry)(cd) (Entered: 03/11/2009)
03/16/2009	<a href="#">334</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 3/16/2009 re: We write respectfully to request an additional three days, from March 16, 2009 until March 19, 2009, to file the Government's opposition to plaintiffs' fourth motion for summary judgment and the Government's cross motion. Plaintiffs have consented to the proposed extension of time. ENDORSEMENT: SO ORDERED., ( Responses due by 3/19/2009) (Signed by Judge Alvin K. Hellerstein on 3/16/2009) (jmi) Modified on 4/6/2009 (jmi). (Entered: 03/17/2009)
03/24/2009	<a href="#">335</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 3/19/09 re: Counsel requests an additional two weeks, from March 19, 2009 until April 2, 2009, to file the Governments opposition to plaintiffs' fourth motion for summary judgment and the Governments cross motion. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 3/20/09) (mme) (Entered: 03/24/2009)
03/27/2009	<a href="#">336</a>	ORDER REGULATING PROCEEDINGS: By memo endorsement dated March 9, 2009, I proposed to review, in camera, documents and information produced by the CIA in response to my Order of August 20, 2008, and to confirm the procedure of such review by separate order. On March 26, 2009, I reviewed, ex parte and in camera, representative documents and information produced by the CIA relating to the destroyed videotapes that are the subject of Plaintiffs' pending motion for contempt and sanctions. I ordered the Government to create a work plan for production of this material to Plaintiffs, beginning with a Vaughn index within thirty days of my in camera review and production on a rolling basis thereafter, and to file this plan by April 9, 2009 for my approval. (Signed by Judge Alvin K. Hellerstein on 3/27/09) (tro) (Entered: 03/27/2009)
04/03/2009	<a href="#">337</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 4/2/2009 re: Counsel respectfully request an additional 20 days from April 2, 2009 until April 22, 2009 to file the Government's opposition to plaintiff's fourth motion for summary judgment and the Government's cross motion. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 4/3/2009) (jfe) (Entered: 04/03/2009)
04/03/2009		Set/Reset Deadlines: Cross Motions due by 4/22/2009. (jfe) (Entered: 04/03/2009)
04/20/2009	<a href="#">339</a>	ORDER REGULATING GOVERNMENT'S PROPOSED WORKPLAN: By memo endorsement dated March 9, 2009, I proposed to review, in camera, documents and information produced by the CIA in response to my Order of August 20, 2008, and to confirm the procedure of such review by separate order. On March 26, 2009, I reviewed, ex parte and in camera, representative documents and information produced by the CIA relating to the destroyed videotapes that are the subject of Plaintiffs' pending motion for contempt and sanctions. I ordered the Government to create a work plan for production of this material to Plaintiffs, beginning with a Vaughn index within thirty days of my in camera review and production on a rolling basis thereafter, and to file this plan by April 9, 2009 for my approval. (Signed by Judge Alvin K. Hellerstein on 4/20/2009) (jmi) Modified on 5/1/2009 (jmi). (Entered: 04/24/2009)
04/21/2009	<a href="#">338</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 4/21/09 re: Counsel requests an additional one week, until April 29, 2009, to file the Governments opposition to plaintiffs fourth motion for summary judgment and the governments cross motion. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 4/21/09) (mme) (Entered: 04/22/2009)
04/21/2009		Set/Reset Deadlines: Cross Motions due by 4/29/2009. (mme) (Entered: 04/22/2009)



04/28/2009	<a href="#">340</a>	MANDATE of USCA (Certified Copy) as to <a href="#">197</a> Notice of Appeal filed by Department of Defense, Department of the Army USCA Case Number 06 3140 cv. Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED in accordance with the opinion of this court. Catherine O'Hagan Wolfe, Clerk USCA. Issued As Mandate: 4/27/2009. (nd) (Entered: 04/28/2009)
04/28/2009		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">340</a> USCA Mandate., (nd) (Entered: 04/28/2009)
04/30/2009	<a href="#">341</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 4/28/09 re: Request for an additional ten days, from 4/29/09 until 5/8/09 to file the Government's opposition to plaintiffs' fourth motion for summary judgment and the Government's cross motion. ENDORSEMENT: So ordered. Set Deadlines/Hearing as to <a href="#">321</a> FOURTH MOTION for Summary Judgment. ( Responses due by 5/8/2009) (Signed by Judge Alvin K. Hellerstein on 4/28/09) (cd) (Entered: 04/30/2009)
04/30/2009	<a href="#">342</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 4/28/09 re: Counsel requests a one day extension of the deadline to submit the joint letter. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 4/20/09) (mme) (Entered: 04/30/2009)
05/05/2009	<a href="#">343</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 5/1/2009 re: The Government and plaintiffs have exchanged revised proposals in connection with the proposed schedule for the production of the information contemplated by the Court's Order of April 20, 2009. In order to allow the parties time to finalize their positions and reach agreement on as many issues as possible, the Government respectfully requests until Monday, May 4, 2009, to submit a joint letter to the Court. Plaintiffs consent to this request. The parties have previously asked for a total of two days additional time to submit the joint letter. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 5/4/2009) (jmi) (Entered: 05/05/2009)
05/07/2009	<a href="#">344</a>	ORDER REGULATING PROPOSED WORK PLAN: On April 9, 2009, the Government submitted a work plan for producing to Plaintiffs documents concerning certain videotapes destroyed by the CIA. On April 20, 2009, I ordered the parties to make changes to the plan, and to submit a joint letter containing either a new plan on which they agree, or a description of their differences. The parties submitted such a letter on May 5, 2009. The letter contains a joint proposal and schedule for producing the documents contemplated by paragraph 3 of my April 20, 2009 order, that is, documents that relate to the content of the videotapes. I approve, and hereby order, the parties' joint proposal and schedule with respect to producing these documents. However, the letter describes significant disagreement with respect to producing the documents contemplated by paragraph 4 of my April 20, 2009 order, that is, documents that relate to the destruction of the videotapes. The Government argues that producing these documents would interfere with the "active and ongoing" criminal investigation by John H. Durham into the destruction of the videotapes, but no declaration by Mr. Durham was supplied to show why that may be so. Plaintiffs argue that the Government may not "use Mr. Durham's investigation as a pretext for indefinitely postponing" its obligation to produce documents that I ordered to be produced, and which may be needed to resolve Plaintiffs' pending motion for contempt and sanctions. Plaintiffs further argue that, if postponement is warranted, the Government should immediately disclose at least the number and general nature of documents relating to the destruction of the videotapes. I decline to postpone the production required by paragraph 4 of my April 20, 2009 order, unless the Government makes a satisfactory justification for postponement. The circumstances in which the videotapes were destroyed are relevant to Plaintiffs' motion, as well as to the content of the videotapes themselves. Accordingly, by May 27, 2009, the Government shall submit papers and affidavits making the showing required by this order and prior orders. The showing may include also any reasons why the identity of persons involved in the destruction should not be disclosed, and proposals to substitute for any such non disclosures. The parties' joint letter of May 5, 2009 is being filed publicly with this order. (Signed by Judge Alvin K. Hellerstein on 5/7/09) (tro) (Entered: 05/07/2009)
05/08/2009	<a href="#">345</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 5/7/09 re: Counsel respectfully request an additional three business days, until 5/6/09, to file Government's opposition to plaintiffs' fourth motion for summary judgment and the Government's cross motion. ENDORSEMENT: So Ordered. Set Deadlines/Hearing as to <a href="#">321</a> FOURTH MOTION for Summary Judgment :( Responses due by 5/6/2009) (Signed by Judge Alvin K. Hellerstein on 5/8/09) (tro) (Entered: 05/08/2009)
05/08/2009		Set Deadlines/Hearings: Cross Motions due by 5/6/2009. (tro) (Entered: 05/08/2009)
05/08/2009	<a href="#">346</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 5/8/09 re: The Government respectfully writes to inform the Court that the Government mistakenly inserted an incorrect due date in its request to the Court dated 5/8/09 regarding opposition to plaintiffs' fourth motion for summary judgment and Government's cross motion. ENDORSEMENT: So ordered. Set Deadlines/Hearing as to <a href="#">321</a> FOURTH MOTION for Summary Judgment :( Responses due by 5/13/2009) (Signed by Judge Alvin K. Hellerstein on 5/8/09) (tro) (Entered: 05/08/2009)
05/08/2009		Set Deadlines/Hearings: Cross Motions due by 5/13/2009. (tro) (Entered: 05/08/2009)
05/13/2009	<a href="#">347</a>	FOURTH MOTION for Summary Judgment. Document filed by Department Of Justice, Central Intelligence Agency. Responses due by 6/12/2009(McShain, Heather) (Entered: 05/13/2009)
05/13/2009	<a href="#">348</a>	MEMORANDUM OF LAW in Support re: <a href="#">347</a> FOURTH MOTION for Summary Judgment. <i>And in opposition of Plaintiffs' Fourth Motion for Summary Judgment.</i> Document filed by Department Of Justice, Central Intelligence Agency. (McShain, Heather) (Entered: 05/13/2009)
05/13/2009	<a href="#">349</a>	DECLARATION of Wendy M. Hilton in Support re: <a href="#">347</a> FOURTH MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency. (McShain, Heather) (Entered: 05/13/2009)

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06/03/2009	<a href="#">350</a>	ORDER: I accept the Government's representation that three months are required, on condition that no further enlargements of time will be requested. I set a processing deadline for these documents at August 31, 2009. SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 6/3/2009) (tve) (Entered: 06/03/2009)
06/08/2009	<a href="#">351</a>	DECLARATION of Leon E. Panetta re: <a href="#">344</a> Order,,,,,,,,, Document filed by Central Intelligence Agency. (Attachments: # <a href="#">1</a> Index part 1, # <a href="#">2</a> Index part 2)(Skinner, Peter) (Entered: 06/08/2009)
06/08/2009	<a href="#">352</a>	DECLARATION of Leon E. Panetta re: <a href="#">344</a> Order,,,,,,,,, <i>CORRECTED</i> . Document filed by Central Intelligence Agency. (Attachments: # <a href="#">1</a> Index part 1, # <a href="#">2</a> Index part 2)(Skinner, Peter) (Entered: 06/08/2009)
06/12/2009	<a href="#">353</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">347</a> FOURTH MOTION for Summary Judgment., <a href="#">321</a> FOURTH MOTION for Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 06/12/2009)
06/12/2009	<a href="#">354</a>	AFFIDAVIT of Jennifer B. Condon in Support re: <a href="#">347</a> FOURTH MOTION for Summary Judgment., <a href="#">321</a> FOURTH MOTION for Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 06/12/2009)
06/15/2009	<a href="#">355</a>	DECLARATION of Jennifer B. Condon in Support re: <a href="#">347</a> FOURTH MOTION for Summary Judgment., <a href="#">321</a> FOURTH MOTION for Summary Judgment.. Document filed by Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit Part I (correct resolution), # <a href="#">2</a> Exhibit Part 2 (correct resolution), # <a href="#">3</a> Exhibit part 3 (correct resolution), # <a href="#">4</a> Exhibit part 4 (correct resolution), # <a href="#">5</a> Exhibit part 5 (correct resolution), # <a href="#">6</a> Exhibit part 6 (correct resolution), # <a href="#">7</a> Exhibit part 7 (correct resolution), # <a href="#">8</a> Exhibit part 8 (correct resolution))(Condon, Jennifer) (Entered: 06/15/2009)
06/15/2009	<a href="#">356</a>	TRUE COPY ORDER of USCA as to <a href="#">197</a> Notice of Appeal filed by Department of Defense, Department of the Army USCA Case Number 06 3140 cv. Upon due consideration of the motion filed on behalf of the Defendant Appellants Department of Defense, et al., seeking to have this Court recall the mandate that issued on April 27, 2009, and upon due consideration of the opposition thereto filed by the Plaintiff Appellees ACLU, et al., it is hereby ORDERED that the mandate is recalled and shall hereafter be stayed pending disposition of the Petition for Certiorari to be filed on behalf of the Defendant Appellants. An opinion will follow. Catherine O'Hagan Wolfe, Clerk USCA. Certified: 6/10/2009. (nd) (Entered: 06/15/2009)
06/15/2009		Appeal Remark as to <a href="#">197</a> Notice of Appeal filed by Department of Defense, Department of the Army USCA Case Number 06 3140 cv: <a href="#">340</a> USCA Mandate returned to the Court of Appeal pursuant to the <a href="#">356</a> USCA Order. (nd) (Entered: 06/15/2009)
06/26/2009	<a href="#">357</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 6/25/2009 re: Requesting an additional three weeks, until July 17,2009, to file Governments reply in support of its cross motion for summary judgment. ENDORSEMENT: Application granted. So ordered. (Signed by Judge P. Kevin Castel on 6/25/2009) (jpo) (Entered: 06/26/2009)
07/07/2009	<a href="#">358</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. lane, Peter M. Skinner and Heather K. McShain dated 6/24/09 re: Response to Plaintiff's 6/17/09 letter. ENDORSEMENT: The revised briefing schedule is approved. Pls' request to enlarge the Para.4 range is denied, withut prejudice to renewal upon a showing of cause, for such enlargement. The Government's proposed schedule as set forth in Para.'s 1 2 of this letter is approved. (Status Report due by 7/10/2009.) (Signed by Judge Alvin K. Hellerstein on 7/7/09) (db) (Entered: 07/07/2009)
07/07/2009	<a href="#">359</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane, Peter M. Skinner and Heather K. McShain dated 7/1/09 re: We write to request an extension of time until 7/2/09, to process the 35 "DOD" documents; and an extension of time until 7/10/09 to file its cross motion for summary judgment. ENDORSEMENT: So ordered as to both extensions. (Cross Motions due by 7/10/2009.) (Signed by Judge Alvin K. Hellerstein on 7/7/09) (db) (Entered: 07/07/2009)
07/08/2009	<a href="#">363</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Amrit Singh dated 7/1/09 re: Request for an order that the government produce the OIG' s report by no later than 7/6/09. ENDORSEMENT: The Court will meet with counsel, 7/15/09, 10:30 am, to discuss the issues described in this letter. The gov't will consider accelerating its schedule of production. ( Status Conference set for 7/15/2009 at 10:30 AM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 7/7/09) (cd) (Entered: 07/13/2009)
07/10/2009	<a href="#">360</a>	FIFTH MOTION for Summary Judgment. Document filed by Central Intelligence Agency. Responses due by 7/24/2009(McShain, Heather) (Entered: 07/10/2009)
07/10/2009	<a href="#">361</a>	MEMORANDUM OF LAW in Support re: <a href="#">360</a> FIFTH MOTION for Summary Judgment.. Document filed by Central Intelligence Agency. (McShain, Heather) (Entered: 07/10/2009)
07/10/2009	<a href="#">362</a>	DECLARATION of Heather McShain in Support re: <a href="#">360</a> FIFTH MOTION for Summary Judgment.. Document filed by Central Intelligence Agency. (Attachments: # <a href="#">1</a> Exhibit A)(McShain, Heather) (Entered: 07/10/2009)
07/15/2009		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Status Conference held on 7/15/2009. Oral argument set for 8/20/2009 at 3:00 p.m. (tro) (Entered: 08/05/2009)
07/17/2009	<a href="#">364</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">347</a> FOURTH MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency. (McShain, Heather) (Entered: 07/17/2009)

07/21/2009	<a href="#">365</a>	ORDER: IT IS HEREBY ORDERED consistent with the Court's rulings at the conference, as to the 319 documents of the Central Intelligence Agency ("CIA") that have been remanded to this Court from the Second Circuit, the Government shall complete its processing as to one of those documents, the CIA Office of Inspector General Report (the "Report"), by August 24, 2009 such that, on or before that date, the Government will produce to the plaintiffs any portions of the Report that are appropriate for release under FOIA. As to the remaining 318 remanded CIA documents, the Government shall complete its processing of those documents by August 31, 2009, such that, on or before that date, the Government shall produce to the plaintiffs any portions of those 318 documents that are appropriate for release under FOIA. The parties' fourth and fifth motions for partial summary judgment shall be argued before the Court on August 20, 2009 at 3p.m. (Signed by Judge Alvin K. Hellerstein on 7/20/2009) (jfe) (Entered: 07/21/2009)
07/24/2009	<a href="#">366</a>	FIFTH MOTION for Partial Summary Judgment <i>and Opposition to Defendants' Fifth Motion for Summary Judgment</i> . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. Responses due by 8/7/2009 Return Date set for 8/20/2009 at 03:00 PM. (Jaffer, Jameel) (Entered: 07/24/2009)
07/24/2009	<a href="#">367</a>	MEMORANDUM OF LAW in Support re: <a href="#">366</a> FIFTH MOTION for Partial Summary Judgment <i>and Opposition to Defendants' Fifth Motion for Summary Judgment</i> .. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Jaffer, Jameel) (Entered: 07/24/2009)
07/30/2009	<a href="#">368</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 7/28/2009 re: Counsel respectfully request an additional three days, until July 31, 2009, to submit the CIA's proposal with regard to the relevant paragraph 4 documents. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 7/29/2009) (jfe) (Entered: 07/30/2009)
07/30/2009	<a href="#">369</a>	MEMORANDUM AND ORDER: Accordingly, I held an ex parte, in camera hearing in chambers on July 29, 2009. It was attended by Mr. Durham, Assistant United States Attorney Edward Kang, CIA Information Review Officer Wendy Hilton, and Federal Bureau of Investigation Inspector David Johnson. Mr. Durham described the scope of his criminal investigation into the destruction of the videotapes, reported that it is ongoing, and described the vast extent of his document reviews. I accept Mr. Durhams representations, and find that the material issues of Plaintiffs contempt motion are subsumed by his criminal investigation. I also accept his concern that hearings that I might conduct on the contempt motion would interfere with his investigation. However, identification and production of non exempt documents from the more recent date range pursuant to my order of July 20, 2009, even if duplicating production to Mr. Durham under grand jury subpoenas, would not interfere. A Vaughn index with respect to exempt documents, and, if necessary, redaction of compromising Vaughn declarations, would completely protect Mr. Durham's grand jury investigation. Mr. Durham agreed and withdrew that aspect of his objection. At my invitation, Assistant United States Attorney Sean Lane appeared by telephone at the close of the hearing. I ordered the Government promptly to propose a schedule for identifying paragraph 4 documents, producing non exempt documents, and submitting a Vaughn index for exempt documents, in compliance with my orders of April 20, 2009 and July 20, 2009, as amended by this current order. A redacted version of the transcript of the July 29, 2009 hearing will be made available to the public. An unredacted version of the transcript will be filed under seal. (Signed by Judge Alvin K. Hellerstein on 7/30/2009) (jfe) (Entered: 07/30/2009)
07/31/2009	<a href="#">370</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Jameel Jaffer dated 7/31/09 re: Plaintiffs respectfully seek the Court's leave for Mr. Abdo to present argument on 8/20/09 on Plaintiffs' fifth motion for partial summary judgment. ENDORSEMENT: leave is granted. (Signed by Judge Alvin K. Hellerstein on 7/31/09) (tro) (Entered: 07/31/2009)
08/05/2009	375	TRANSCRIPT of proceedings held on 7/15/2009 before Judge Alvin K. Hellerstein. (dnd) (Entered: 08/13/2009)
08/10/2009	<a href="#">371</a>	MANDATE of USCA (Certified Copy) as to <a href="#">313</a> Notice of Appeal, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc. USCA Case Number 08 4912 cv. IT IS HEREBY ORDERED that the motion by Appellees' Department of Defenses and the CIA to remand the appeal is GRANTED. Catherine O'Hagan Wolfe, Clerk USCA. Issued As Mandate: 8/7/2009. (nd) (Entered: 08/10/2009)
08/10/2009		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">371</a> USCA Mandate., (nd) (Entered: 08/10/2009)
08/10/2009	372	SEALED DOCUMENT placed in vault.(jri) (Entered: 08/10/2009)
08/10/2009	<a href="#">373</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 7/31/09 re: Request for work plan schedule to be approved. ENDORSEMENT: The schedule for submission of the work plans is approved, without objection. SO ORDERED. (Signed by Judge Paul A. Crotty, part I on 8/10/09) (db) (Entered: 08/12/2009)
08/12/2009	<a href="#">374</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 8/7/09 re: Request for an extension of the reply brief of the fifth summary judgment motion and the 8/20/09 hearing date. ENDORSEMENT: The argument on the fourth and fifth motions for summary judgment is adjourned to October 1, 2009, at 3 pm. The Governments time to reply is extended to September 15, 2009. SO ORDERED. Set Deadlines/Hearing as to <a href="#">321</a> FOURTH MOTION for Summary Judgment. <a href="#">366</a> FIFTH MOTION for Partial Summary Judgment <i>and Opposition to Defendants' Fifth Motion for Summary Judgment</i> . <a href="#">360</a> FIFTH MOTION for Summary Judgment. <a href="#">347</a> FOURTH MOTION for Summary Judgment: (Motion Hearing set for 10/1/2009 at 03:00 PM before Judge Alvin K. Hellerstein. Replies due by 9/15/2009.) (Signed by Judge Paul A. Crotty, part I on 8/10/09) (db) Modified on 8/12/2009 (db). (Entered: 08/12/2009)
08/25/2009	<a href="#">376</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean Lane, Peter Skinner, Heather K. McShain

		dated 8/14/09 re: counsel for the government requests leave to provide to the Court by 8/31/09 a work plan for completing the manual line by line review of the responsive records and until approximately 11/30/09 to determine which of the 32,000 documents are responsive. ENDORSEMENT: Having considered this proposal and the ACLU comments in its letter of 8/21/09, processing shall be governed by the schedule noted herein. Approved provided that the final work plan should be submitted by 10/30/09. (Signed by Judge Alvin K. Hellerstein on 8/25/09) (dle) (Entered: 08/25/2009)
08/31/2009	<a href="#">377</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 8/28/09 re: defendants write respectfully to request a three week extension of time, until September 21, 2009, to file the Vaughn declarations in support of the withholdings made by the Department of Justice, Office of Legal Counsel ("OLC") and Central Intelligence Agency ("CIA") relating to the 181 classified documents contained in the OLC Vaughn that comprise a portion of the documents remanded to this Court from the Second Circuit. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 8/31/09) (pl) (Entered: 08/31/2009)
09/02/2009	<a href="#">378</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Peter M. Skinner dated 8/31/09 re: Given the sensitivity of the OIG records, the Agency estimates that it can complete the processing by 10/19/09. The Government proposes releasing any non exempt information from the documents at issue on that date and producing a Vaughn declaration justifying any withheld information by 10/27/09.. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 9/1/09) (sac) (Entered: 09/02/2009)
09/02/2009	<a href="#">379</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Jameel Jaffer dated 9/1/09 re: Plaintiffs request an extension until 9/25/09 to confer with the government regarding any further proceedings related to the remanded documents. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 9/1/09) (sac) (Entered: 09/02/2009)
09/11/2009	<a href="#">380</a>	SCHEDULING ORDER:The oral argument regarding the Fourth and fifth Motions for summary Judgment, presently scheduled to take place on October 1, 2009 at 3 p.m., shall take place instead on September 30, 2009 at 3 p.m. before Judge Alvin K. Hellerstein. (Signed by Judge Alvin K. Hellerstein on 9/10/09) (dj) (Entered: 09/11/2009)
09/17/2009	<a href="#">381</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 9/15/2009 re: Requesting a one week extension of time until September 22, 2009, to file the Government's reply brief on the parties' fifth motion for summary judgment. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 9/17/2009) (jpo) (Entered: 09/17/2009)
09/22/2009	<a href="#">382</a>	MOTION for Amrit Singh to Withdraw as Attorney. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Condon, Jennifer) (Entered: 09/22/2009)
09/22/2009	<a href="#">383</a>	DECLARATION of Amrit Singh in Support re: <a href="#">382</a> MOTION for Amrit Singh to Withdraw as Attorney.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 09/22/2009)
09/22/2009	<a href="#">384</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">360</a> FIFTH MOTION for Summary Judgment.. Document filed by Central Intelligence Agency. (Lane, Sean) (Entered: 09/22/2009)
09/22/2009	<a href="#">385</a>	DECLARATION of Leon E. Panetta in Support re: <a href="#">360</a> FIFTH MOTION for Summary Judgment.. Document filed by Central Intelligence Agency. (Lane, Sean) (Entered: 09/22/2009)
09/22/2009	<a href="#">386</a>	DECLARATION of Wendy M. Hilton in Support re: <a href="#">360</a> FIFTH MOTION for Summary Judgment.. Document filed by Central Intelligence Agency. (Lane, Sean) (Entered: 09/22/2009)
09/23/2009	<a href="#">387</a>	MEMO ENDORSEMENT on re: <a href="#">382</a> MOTION for Amrit Singh to Withdraw as Attorney. SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 9/23/09) (dj) (Entered: 09/23/2009)
09/29/2009	<a href="#">388</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Jamee Jaffer dated 9/25/2009 re: On September 1, 2009, Plaintiffs requested an extension until September 25, 2009 to confer with the government regarding any further proceedings related to the documents remanded to this Court for consideration by the Second Circuit, and to then notify the Court of how the parties proposed to address any additional challenges to the withholding or redaction of those documents. Plaintiffs request an extension until four weeks after the government furnishes Vaughn declarations and/or indices for the additional documents. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 9/29/2009) (jmi) (Entered: 09/29/2009)
10/13/2009	<a href="#">389</a>	ORDER RESOLVING FOURTH AND FIFTH SUMMARY JUDGMENT MOTIONS: I ruled that the CIA failed to satisfy its burden in three instances. The Agency has until October 14, 2009 to present a more persuasive justification to trigger an exemption from FOIA's disclosure requirements. The Clerk shall mark the motions (Doc. Nos. 321, 347, 360, and 366) terminated. ORDER terminating <a href="#">321</a> Motion for Summary Judgment; terminating <a href="#">347</a> Motion for Summary Judgment; terminating <a href="#">360</a> Motion for Summary Judgment; terminating <a href="#">366</a> Motion for Partial Summary Judgment. (Signed by Judge Alvin K. Hellerstein on 10/13/09) (db) (Entered: 10/13/2009)
10/16/2009	<a href="#">392</a>	TRANSCRIPT of proceedings held on September 30, 2009 at 4:30 pm before Judge Alvin K. Hellerstein. (rdz) (Entered: 11/06/2009)
10/27/2009	<a href="#">390</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Heather K. McShain dated 10/27/2009 re: Requesting a twenty four day extension, until November 20, 2009, to provide to plaintiffs the Central Intelligence Agency's Vaughn declaration for information withheld from responsive paragraph 4 documents located within the CIA Office of Inspector General. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 10/27/2009) (jpo) (Entered: 10/27/2009)

10/29/2009	<a href="#">391</a>	NOTICE OF APPEARANCE by Alexander Abraham Abdo on behalf of American Civil Liberties Union (Abdo, Alexander) (Entered: 10/29/2009)
11/16/2009	<a href="#">393</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Jennifer Condon dated 11/13/09 re: Request to extend time to file any motion for reconsideration. ENDORSEMENT: Time is extended to 1/15/10. ( Motions due by 1/15/2010.) (Signed by Judge Alvin K. Hellerstein on 11/16/09) (cd) (Entered: 11/16/2009)
11/17/2009	<a href="#">394</a>	ORDER REGULATING PROCEEDINGS: By Tuesday, 11/24/09, the Government shall show why it is not required to submit a Vaughn index for the four documents at issue. Plaintiffs may reply by Tuesday, 12/1/09. (Signed by Judge Alvin K. Hellerstein on 11/17/09) (tro) (Entered: 11/18/2009)
11/24/2009	<a href="#">395</a>	DECLARATION of John Durham in Support re: <a href="#">360</a> FIFTH MOTION for Summary Judgment.. Document filed by Department Of Justice. (McShain, Heather) (Entered: 11/24/2009)
12/22/2009	<a href="#">396</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alexander Abdo dated 12/18/09 re: Plaintiffs request until 1/22/09 (one week after any motion for reconsideration is due) to submit their proposal. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 12/22/09) (cd) (Entered: 12/22/2009)
12/28/2009	<a href="#">397</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean Lane, Peter Skinner, Heather K. McShain dated 12/23/09 re: counsel for the government requests additional time to complete its consultation with Congress regarding the information in the paragraph 4 documents and the government proposes that it provide an update to the Court regarding the status of these documents no later than 1/15/10. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 12/28/09) (dle) (Entered: 12/28/2009)
12/29/2009	<a href="#">398</a>	ORDER RESOLVING FOURTH AND FIFTH SUMMARY JUDGMENT MOTIONS: 1. With respect to the Withheld Information in the Second and Fourth OLC Memoranda, the Court does not defer to the Governments determination that this information should be withheld under Exemptions 1 and 3, and finds that the Withheld Information should be released for the reasons set forth. The Withheld Information should be released as follows: on page 5 (redaction on line 10 of first paragraph) and page 29 (redaction on line 8 of first full paragraph) of the Second OLC Memoranda and on page 4 (first full paragraph), page 5 (first sentence of the bottom paragraph) and page 7 (redaction made to lines 4 5 of second paragraph under the heading 2.) of the Fourth OLC Memoranda. In order to address the Governments national security concerns, however, the Court orders that specific words be inserted in brackets to replace the actual text of the documents in certain limited instances, with the inserted words used to preserve the meaning of the text. The Courts complete ruling on the Withheld Information is reflected in the transcripts of the in camera session that occurred on October 29, 2009, including the sealed exhibits to the transcript that consist of the two relevant OLC memoranda that were annotated during the session to reflect the Courts ruling. If the Government does not wish to insert in brackets the text set forth by the Court, the Government in the alternative must release the corresponding actual text in those specific parts of the documents. 2. With respect to documents 54, 56, 59a, and 60, to the extent the CIA has identified releasable information within these four documents, the Court defers to Special Prosecutor Durhams invocation of FOIA Exemption 7(A) to withhold the release of any information contained within the four documents while his investigation is pending. As to Ms. Durhams invocation of Exemption 7(A), and any other such 7(A) invocations, the Court further orders that Mr. Durham must renew his assertion, as appropriate, of Exemption 7(A) every six months and that, in any event, Mr. Durham should promptly advise the Court of any events that subsequently render his assertion of Exemption 7(A) inapplicable to the documents in question. 3. With respect to the Government's proposed redactions to the transcript of the in camera session that occurred on September 30, 2009, the Court defers to the Government's redactions except orders the release of additional information relating to the Withheld Information, that is the subject of the Court's ruling in paragraph 1 above, as follows: page 7, lines 1,4 7, 18 21; page 10, lines 6 12; page 11, lines 7 9, 15 16; page 12, lines 7 10, 19 20; page 18, line 9; page 20, lines 21 25; page 21, lines 1 5, 16 21; page 22, line 1; and, page 26, lines 24 25.4. The Government is granted a stay for 30 days to permit it time to determine whether it will appeal the Court's disclosure rulings set forth in numbered paragraphs 1 and 3 above. (Signed by Judge Alvin K. Hellerstein on 12/29/09) (db) (Entered: 12/29/2009)
01/15/2010	<a href="#">399</a>	MOTION for Reconsideration re; <a href="#">398</a> Order,,,,,,,,,,,,,. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Condon, Jennifer) (Entered: 01/15/2010)
01/15/2010	<a href="#">400</a>	MEMORANDUM OF LAW in Support re: <a href="#">399</a> MOTION for Reconsideration re; <a href="#">398</a> Order,,,,,,,,,,,,,. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 01/15/2010)
01/20/2010	<a href="#">401</a>	ENDORSED LETTER: addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 1/15/2010. re: Accordingly, the Government will inform plaintiffs and the Court by February 16, 2010, of the ultimate decision regarding whether information can be released from these three documents, Of Course, to the extent that a decision is made earlier as to these documents, we will inform the Court and the plaintiffs as soon as that decision has been made. ENDORSEMENT: Accepted. So Ordered (Signed by Judge Alvin K. Hellerstein on 1/20/2010) (js) (Entered: 01/20/2010)
01/26/2010	<a href="#">402</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alexander A. Abdo dated 1/22/10 re: Request for an extension of 3 weeks after the Court's resolution of the Motion for Reconsideration to propose how to proceed with respect to the remanded and newly discovered documents. ENDORSEMENT: The parties should raise this issue at oral argument on plaintiff's motion for reconsideration scheduled for March 11, 2010 at 2:30 pm. (Oral Argument set for 3/11/2010 at 02:30 PM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 1/26/10) (db) (Entered: 01/26/2010)
01/26/2010	<a href="#">403</a>	ORDER Granting <a href="#">399</a> Motion for Reconsideration. The Government's opposition will be due 2/18/10; Plaintiffs' reply, by

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		3/1/10. I will hear argument in courtroom 14D, on the public record, on 3/11/10 at 2:30 pm.. (Signed by Judge Alvin K. Hellerstein on 1/26/10) (cd) (Entered: 01/27/2010)
01/26/2010		Set/Reset Deadlines as to Response due by 2/18/2010 Reply due by 3/1/2010. Motion Hearing set for 3/11/2010 at 02:30 PM before Judge Alvin K. Hellerstein. (cd) (Entered: 01/27/2010)
01/29/2010	<a href="#">404</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 1/28/2010 re: Counsel respectfully request a two week extension of time until 2/12/2010 of the stay of the Government's obligation to comply with paragraphs 1 and 3 of this Court's order dated 12/29/2010. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 1/28/2010) (jfe) (Entered: 01/29/2010)
02/11/2010	<a href="#">405</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alexander A. Abdo dated 2/11/2010 re: The government has informed Plaintiffs' counsel that the Court would like to reschedule oral argument on Plaintiffs' Motion for Reconsideration to either March 8, 2010 or 3/24/2010, and that the Court would like the specific availabilities of counsel to be submitted to the Court. If the Court sets the hearing for 3/24/2010, Plaintiffs' counsel respectfully notes a preference for the hearing to begin at 10:00 a.m., if possible. ENDORSEMENT: Arguments will be held March 24th, 2010, at 10:30 a.m. (Signed by Judge Alvin K. Hellerstein on 2/11/2010) (tro) (Entered: 02/16/2010)
02/17/2010	<a href="#">406</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 2/16/2010 re: Counsel write to provide the Court and the plaintiffs with a status report regarding the remaining three documents being processed by the CIA in this case. Accordingly, the Government requires an additional week, until 2/23/2010, to determine its position regarding these remaining documents. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 2/16/2010) (tro) (Entered: 02/17/2010)
02/17/2010	<a href="#">407</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 2/12/10 re: counsel requests that the Court stay the Government's obligation to comply with paragraphs 1 and 3 of this Court's order, dated December 29, 2010 requiring the Government to disclose certain information withheld from two memoranda of the Department of Justice Office of Legal Counsel until some time after the Court decides the pending motion for reconsideration filed by the plaintiffs. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 2/17/10) (dj) (Entered: 02/17/2010)
02/18/2010	408	TRANSCRIPT of proceedings held on October 29, 2009 before Judge Alvin K. Hellerstein. (mro) (Entered: 02/18/2010)
02/18/2010	<a href="#">409</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane, Tara LaMorte and Amy Barcelo dated 2/18/2010 re: AUSA writes requesting an extension of time of 8 days, until 2/26/2010, to file the Government's opposition to plaintiffs' motion for reconsideration. The parties agree that, if the Court grants this request, then the due date for plaintiff's reply memorandum should be rescheduled to 3/12/2010. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 2/18/2010) (tve) (Entered: 02/19/2010)
02/24/2010	<a href="#">410</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 2/23/10 re: counsel requests a three day extension of time, from February 23, 2010 to February 26, 2010 to provide the Court and the plaintiffs with a status report regarding the remaining three documents being processed by the CIA in this case. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 2/23/10) (dje) (Entered: 02/24/2010)
03/01/2010	<a href="#">411</a>	DECLARATION of Sean Lane in Opposition re: <a href="#">399</a> MOTION for Reconsideration re; <a href="#">398</a> Order,,,,,,,,,,,, Document filed by Department Of Justice, Central Intelligence Agency. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C) (La Morte, Tara) (Entered: 03/01/2010)
03/01/2010	<a href="#">412</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">399</a> MOTION for Reconsideration re; <a href="#">398</a> Order,,,,,,,,,,,, Document filed by Department Of Justice, Central Intelligence Agency. (Barcelo, Amy) (Entered: 03/01/2010)
03/02/2010	<a href="#">413</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 3/1/10 re: Request for an extension of time until 3/5/10 to provide the Court and plaintiffs with a status report. ENDORSEMENT: So Ordered. (Status Report due by 3/5/2010.) (Signed by Judge Alvin K. Hellerstein on 3/2/10) (db) (Entered: 03/02/2010)
03/03/2010	<a href="#">414</a>	LETTER: addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 3/1/2010 Document filed by Central Intelligence Agency, Department of the Army, Federal Bureau Of Investigation. We write respectfully to inform the Court that we have filed today with Court Security Officer Michael Macisso a classified declaration from Wendy Hilton, CIA Associate information review Officer for the Central Intelligence Agency ("CIA") dated March 1, 2010 which describes new factual developments that took place this calendar year that are relevant to the CIA's basis for withholding the classified intelligence method contained in two memoranda of the Department of Justice Office of Legal Counsel This information was the subject of the parties' fourth motion for summary Judgment. Ms. Hilton's declaration provides a factual update to the declarations previously submitted by herself and Assistant to the President for. National Security and National Security Advisor James L. Jones in support of the Government's withholding. In light of these new factual developments, we write to request that, pursuant to Federal Rule of Civil Procedure 54(b), the Court consider this additional evidence. ENDORSEMENT: The Court shall enter this letter on the docket. So Ordered(js) (Entered: 03/03/2010)
03/12/2010	<a href="#">415</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">399</a> MOTION for Reconsideration re; <a href="#">398</a> Order,,,,,,,,,,,, Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Condon, Jennifer) (Entered: 03/12/2010)
04/14/2010	416	TRANSCRIPT of proceedings held on March 24, 2010 at 3:00 pm before Judge Alvin K. Hellerstein. (eef) (Entered: 04/16/2010)

04/14/2010	<a href="#">417</a>	TRANSCRIPT of proceedings held on March 24, 2010 3:00 p.m. before Judge Alvin K. Hellerstein. (ajc) (Entered: 04/21/2010)
05/12/2010	<a href="#">418</a>	DECLARATION of Wendy M. Hilton in Support re: <a href="#">347</a> FOURTH MOTION for Summary Judgment.. Document filed by Department Of Justice, Central Intelligence Agency. (Barcelo, Amy) (Entered: 05/12/2010)
07/07/2010	<a href="#">419</a>	MANDATE of USCA (Certified Copy) as to <a href="#">197</a> Notice of Appeal filed by Department of Defense, Department of the Army USCA Case Number 06 3140 cv. Having received and considered the parties' responses to our order of February 16, 2010, we hereby ORDER: in accord with the mandate received from the United States Supreme Court in ACLU v. Department of Defense, No. 09 160, docketed in this Court on January 13, 2010, vacating our decision ACLU v. Department of Defense, we vacate judgment of the US District Court for the Southern District of New York and remand for further proceedings "in light of Section 565 of the Department of Homeland Security Appropriations Act, 2010, and the certification by the Security of Defense pursuant to that provision." Catherine O'Hagan Wolfe, Clerk USCA. Issued As Mandate: 07/06/2010. (nd) (Entered: 07/07/2010)
07/07/2010		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">419</a> USCA Mandate,,,. (nd) (Entered: 07/07/2010)
07/15/2010	<a href="#">420</a>	ORDER AND OPINION DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION: FOIA EXEMPTION THREE APPLIES DESPITE CLAIMS THAT UNDERLYING INTELLIGENCE SOURCES OR METHODS VIOLATE THE CONSTITUTION OR STATUTES OF THE UNITED STATES: #99213 For the reasons stated, I adhere to the rulings expressed in my previous orders resolving the fourth and fifth cross motions for summary judgment. The Clerk shall mark the motion (Doc. No. 399) terminated. (Signed by Judge Alvin K. Hellerstein on 7/15/2010) (jfe) Modified on 7/26/2010 (ajc). (Entered: 07/15/2010)
08/12/2010	<a href="#">421</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Sean H. Lane dated 8/10/2010 re: Requesting a stay through September 13, 2010, of the Government's obligation to disclose an intelligence method contained in two memoranda from the Department of Justice Office of Legal Counsel. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 8/12/2010) (jpo) (Entered: 08/12/2010)
09/03/2010	<a href="#">422</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Amy A. Barcelo dated 8/31/2010 re: requests an additional two week stay of its disclosure obligation through 9/27/2010, to permit the Government sufficient time to reach a decision regarding whether to appeal the disclosure order. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 9/3/2010) (jar) (Entered: 09/03/2010)
09/03/2010	<a href="#">423</a>	NOTICE OF APPEARANCE by Tara Marie La Morte on behalf of Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation (La Morte, Tara) (Entered: 09/03/2010)
09/03/2010	<a href="#">424</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Amy A. Barcelo dated 8/31/2010 re: request an additional two week stay of its disclosure obligation through 9/27/2010, to permit the Government sufficient time to reach a decision regarding whether to appeal the disclosure order. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 9/3/2010) (jar) (Entered: 09/16/2010)
09/24/2010	<a href="#">425</a>	JOINT MOTION for Entry of Judgment under Rule 54(b). Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Joint Motion for Entry of Final Judgment, # <a href="#">2</a> Text of Proposed Order)(Abdo, Alexander) (Entered: 09/24/2010)
09/27/2010	<a href="#">426</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated 9/24/2010 re: Counsel respectfully request a stay of the Government's disclosure obligation pending the Court's consideration of the Motion, and for 21 days after the Court's ruling on the Joint Rule 54(b) in the event that the Court denies such motion. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 9/27/2010) (jfe) (Entered: 09/27/2010)
10/01/2010	<a href="#">427</a>	FINAL JUDGMENT pursuant to Fed. R. Civ. P. 54(b) granting in part and denying in part the parties fourth cross motions for partial summary judgment, denying plaintiffs' fifth motion for partial summary judgment, and granting the government's fifth motion for partial summary judgment. (Signed by Judge Alvin K. Hellerstein on 10/1/10) (Attachments: # <a href="#">1</a> notice of right to appeal)(ml) (Entered: 10/04/2010)
10/08/2010	<a href="#">428</a>	NOTICE OF APPEARANCE by Amy Ann Barcelo on behalf of Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation (Barcelo, Amy) (Entered: 10/08/2010)
10/15/2010	<a href="#">429</a>	ORDER REGULATING PROCEDURES RAISED IN JOINT LETTER OF OCTOBER 6, 2010: The appeal described in § 1 of the joint letter should be filed timely pursuant to FRAP 4. The stipulation described in § 2 of the joint letter should be filed by October 22, 2010. I am willing to defer consideration of open items regarding "Paragraph 4 documents" until the appeals are determined, or sooner notice from either party requesting earlier determination. I favor litigating the issues arising from the September 17, 2001 presidential directive currently. The parties should tender a briefing schedule by October 22, 2010. Plaintiffs should describe why they believe the Secretary's certification regarding the withheld photographs is deficient by October 28, 2010. I shall advise defendants if opposition is necessary. (Signed by Judge Alvin K. Hellerstein on 10/8/2010) (jpo) (Entered: 10/15/2010)
10/21/2010	<a href="#">431</a>	NOTICE OF APPEAL from <a href="#">427</a> Judgment. Document filed by Central Intelligence Agency, Department Of Justice. (tp) (Entered: 10/22/2010)
10/21/2010		Appeal Remark as to <a href="#">431</a> Notice of Appeal filed by Department Of Justice, Central Intelligence Agency. NO FEE. USA. (tp) (Entered: 10/22/2010)

10/22/2010	<a href="#">430</a>	ORDER that litigation of the 9/17/01 presidential directive is stayed pending resolution of the parties' appeals of the 10/1/10 order. (Signed by Judge Alvin K. Hellerstein on 10/21/10) (cd) (Entered: 10/22/2010)
10/22/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">431</a> Notice of Appeal. (tp) (Entered: 10/22/2010)
10/22/2010		Transmission of Notice of Appeal to the District Judge re: <a href="#">431</a> Notice of Appeal. (tp) (Entered: 10/22/2010)
10/22/2010		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">38</a> MOTION to Stay <i>the Court's September 15, 2004 Order</i> . filed by Central Intelligence Agency, <a href="#">284</a> Endorsed Letter, <a href="#">57</a> Order on Motion to Stay, <a href="#">313</a> Notice of Appeal, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">345</a> Endorsed Letter, Set Motion and R&R Deadlines/Hearings,, <a href="#">301</a> Endorsed Letter, <a href="#">379</a> Endorsed Letter, <a href="#">327</a> Endorsed Letter, Set Motion and R&R Deadlines/Hearings,, <a href="#">114</a> Memorandum of Law in Support filed by Department of Defense, <a href="#">385</a> Declaration in Support of Motion filed by Central Intelligence Agency, <a href="#">186</a> Declaration filed by Department of Defense, Department of the Army, <a href="#">246</a> Affidavit in Support, filed by American 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(tp) (Entered: 10/22/2010)</p>
10/22/2010	<a href="#">432</a>	<p>CONSENT MOTION for Extension of Time. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Abdo, Alexander) (Entered: 10/22/2010)</p>
10/26/2010	<a href="#">433</a>	<p>ORDER AND JOINT STIPULATION: It is hereby Stipulated and agreed that Defendants have withheld the "paragraph 4" records on the basis of FOIA Exemptions 1 and 3, among others. The legal issues raised by Defendants' invocation of Exemptions 1 and 3 overlap with the legal issues resolved by the Court in its judgment of October 1, 2010 (dkt. no. 427), and the underlying orders incorporated therein. The Court has certified its judgment of October 1, 2010 as final and appealable pursuant to Federal Rule of Civil Procedure 54(b). Defendants have filed a Notice of Appeal from that judgment, and Plaintiffs intend to appeal from that judgment. The parties agree that the ultimate disposition on appeal of the legal issues addressed by the Court's judgment of October 1, 2010 will conclusively determine those same legal issues as are presented by Defendants' withholding of the "paragraph 4" records. Depending on the resolution of the appeal, Plaintiffs may have additional challenges to Defendants' withholding of the "paragraph 4" records. Litigation of the "paragraph 4" records is stayed pending resolution of the appeal of the Court's judgment of October 1, 2010. With respect to the "remand" documents, which are described in the parties' joint letter of October 6, 2010, the parties hereby stipulate that: Defendants have withheld the "remand" documents on the basis of FOIA Exemptions 1 and 3, among others. The</p>

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		legal issues raised by Defendants' invocation of Exemptions 1 and 3 overlap with the legal issues resolved by the Court in its judgment of October 1, 2010 (dkt. no. 427), and the underlying orders incorporated therein. The Court has certified its judgment of October 1, 2010 as final and appealable pursuant to Federal Rule of Civil Procedure 54(b). Defendants have filed a Notice of Appeal from that judgment, and Plaintiffs intend to appeal from that judgment. The parties agree that the ultimate disposition on appeal of the legal issues addressed by the Court's judgment of October 1, 2010 will conclusively determine those same legal issues as are presented by Defendants' withholding of the "remand" documents. With respect to all but two of the "remand" documents the presidential directive September 17, 2001, and the Special Review of the CIA's Office of the Inspector General Plaintiffs have no additional challenges to assert beyond those at issue in the upcoming appeal. Accordingly, the parties agree that the Court should reinstate the pre remand disposition of those documents as to all withholdings except those described in paragraphs 4 and 5 above. Litigation of the "remand" documents, including the documents described in footnote 1 below, is stayed pending resolution of the appeal of the Court's judgment of October 1, 2010. (Signed by Judge Alvin K. Hellerstein on 10/26/2010) (jfe) (Entered: 10/26/2010)
10/28/2010	<a href="#">434</a>	First Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal for <a href="#">431</a> Notice of Appeal filed by Department Of Justice, Central Intelligence Agency USCA Case Number 10 4290, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (tp) (Additional attachment(s) added on 10/29/2010: # <a href="#">1</a> Part 2) (nd). (Entered: 10/28/2010)
10/29/2010	<a href="#">435</a>	ORDER EXTENDING TIME plaintiffs' 10/22/10 motion for an extension of time is granted. Plaintiffs shall describe why they believe the Secretary's certification regarding the withheld photographs is deficient on or before 11/30/10. (Signed by Judge Alvin K. Hellerstein on 10/28/10) (cd) (Entered: 11/01/2010)
11/01/2010	<a href="#">436</a>	MOTION for Jennifer Brooke Condon to Withdraw as Attorney. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) (Entered: 11/01/2010)
11/01/2010	<a href="#">437</a>	AFFIDAVIT of Jennifer B. Condon in Support re: <a href="#">436</a> MOTION for Jennifer Brooke Condon to Withdraw as Attorney.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) (Entered: 11/01/2010)
11/02/2010	<a href="#">438</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alicia L. Bannon dated 11/1/10 re: Counsel for plaintiffs have enclosed a courtesy copy of Plaintiffs' motion to withdraw Jenny Brooke Condon as counsel in this case, as well as Ms. Condon's accompanying affidavit. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 11/2/10) (mro) (Entered: 11/02/2010)
11/12/2010	<a href="#">439</a>	NOTICE OF APPEAL from <a href="#">427</a> Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. Filing fee \$ 455.00, receipt number E 921286. (nd) (Entered: 11/15/2010)
11/15/2010		Transmission of Notice of Appeal to the District Judge re: <a href="#">439</a> Notice of Appeal,. (nd) (Entered: 11/15/2010)
11/15/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">439</a> Notice of Appeal,. (nd) (Entered: 11/15/2010)
11/15/2010		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">433</a> Stipulation and Order, Set Deadlines/Hearings, <a href="#">435</a> Order, Set Deadlines/Hearings,, <a href="#">432</a> CONSENT MOTION for Extension of Time. filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">439</a> Notice of Appeal, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">437</a> Affidavit in Support of Motion, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">436</a> MOTION for Jennifer Brooke Condon to Withdraw as Attorney. filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">438</a> Endorsed Letter, <a href="#">434</a> Supplemental ROA Sent to USCA Index, <a href="#">38</a> MOTION to Stay the Court's September 15, 2004 Order. filed by Central Intelligence Agency, <a href="#">284</a> Endorsed Letter, <a href="#">57</a> Order on Motion to Stay, <a href="#">313</a> Notice of Appeal, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">345</a> Endorsed Letter, Set Motion and R&R Deadlines/Hearings,, <a href="#">301</a> Endorsed Letter, <a href="#">379</a> Endorsed Letter, <a href="#">327</a> Endorsed Letter, Set Motion and R&R Deadlines/Hearings,, <a href="#">114</a> Memorandum of Law in Support filed by Department of Defense, <a href="#">385</a> Declaration in Support of Motion filed by Central Intelligence Agency, <a href="#">186</a> Declaration filed by Department of Defense, Department of the Army, <a href="#">246</a> Affidavit in Support, filed by American Civil Liberties Union, <a href="#">107</a> Order, Set Deadlines,, <a href="#">424</a> Endorsed Letter, <a href="#">140</a> Endorsed Letter, <a href="#">383</a> Declaration in Support of Motion, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">58</a> Order, Set Motion and R&R Deadlines/Hearings, <a href="#">172</a> Order, <a href="#">359</a> Endorsed Letter, Set Deadlines,, <a href="#">336</a> Order,, <a href="#">262</a> Declaration in Support of Motion, filed by Department of Defense, Department Of Justice, Central Intelligence Agency, <a href="#">252</a> Endorsed Letter, Set Motion and R&R Deadlines/Hearings,, <a href="#">5</a> Amended Complaint, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">152</a> Memorandum of Law in Support of Motion filed by Central Intelligence Agency, <a href="#">163</a> Order, <a href="#">34</a> Certificate of Service Other filed by Department Of Justice, <a href="#">292</a> Order,, <a href="#">86</a> Order,, <a href="#">13</a> Stipulation and Order, <a href="#">274</a> Brief filed by American Civil Liberties Union, <a href="#">70</a> Endorsed Letter, <a href="#">126</a> Order,, <a href="#">44</a> Order,, <a href="#">409</a> Endorsed Letter, Set Motion and R&R Deadlines/Hearings,, <a href="#">365</a> Order, Set Deadlines/Hearings,,,,, <a href="#">413</a> Endorsed Letter, Set Deadlines,, <a href="#">85</a> Order, <a href="#">335</a> Endorsed Letter, Set Deadlines, Set Motion and R&R Deadlines/Hearings,, <a href="#">61</a> Reply Memorandum of Law in Support of Motion filed by Central Intelligence Agency, <a href="#">289</a> Reply Memorandum of Law in Support of Motion filed by American Civil Liberties Union, <a href="#">362</a> Declaration in Support of Motion filed by Central Intelligence Agency, <a href="#">103</a> Endorsed Letter,

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11/22/2010	<a href="#">440</a>	NOTICE OF APPEARANCE by Alicia Lorraine Bannon on behalf of American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace (Bannon, Alicia) (Entered: 11/22/2010)
11/30/2010	<a href="#">441</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alexander A. Abdo dated 11/24/10 re: counsel for plaintiff writes that on October 15, 2010, the Court issued an order requiring Plaintiffs to "describe why they believe the Secretary's certification regarding the withheld photographs is deficient by October 28, 2010. The Court later extended that deadline to November 30, 2010 to accommodate Plaintiffs' counsel's schedule and to allow the parties to continue discussing a potential compromise of the dispute surrounding the withheld photographs. Since that time, the parties have negotiated in good faith and have made progress toward a potential resolution. Plaintiffs respectfully request a second extension of their filing deadline, to December 17, 2010, to allow for continued discussions. The government consents to this request. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 11/29/10) (pl) (Entered: 11/30/2010)
12/03/2010	<a href="#">442</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alexander A. Abdo dated 11/24/10 re: Request for a second extension of the filing deadline to December 17, 2010 to allow for continued discussions. The government consents to this request. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 12/2/10) (db) (Entered: 12/03/2010)
12/17/2010	<a href="#">443</a>	SIXTH MOTION for Partial Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Abdo, Alexander) (Entered: 12/17/2010)
12/17/2010	<a href="#">444</a>	MEMORANDUM OF LAW in Support re: <a href="#">443</a> SIXTH MOTION for Partial Summary Judgment.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit A)(Abdo, Alexander) (Entered: 12/17/2010)
12/21/2010	<a href="#">445</a>	ORDER SCHEDULING STATUS CONFERENCE, that the parties shall appear before me for a status conference on Wednesday, January 5, at 4:00 p.m. on the pending motions, with a view toward hearing and resolving, or dismissing, the pending motions. (Signed by Judge Alvin K. Hellerstein on 12/21/10) (pl) (Entered: 12/21/2010)
01/14/2011		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Status Conference held on 1/14/2011 on the record. (mro) (Entered: 01/21/2011)
01/20/2011	<a href="#">446</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alexander A. Abdo dated 1/19/2011 re: Requesting that Plaintiffs initiating brief be due 2/4/11, Defendant Central Intelligence Agency response due on 2/25/11 and Plaintiffs reply due on 3/4/11. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 1/20/2011) (jpo) (Entered: 01/20/2011)
01/31/2011	<a href="#">447</a>	TRANSCRIPT of proceedings held on 1/14/2011 before Judge Alvin K. Hellerstein. (ja) (Entered: 02/02/2011)
02/02/2011	<a href="#">448</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alicia L. Bannon, dated 2/2/2011, re: Counsel for Plaintiffs writes: In order so that we may provide the Court with the most helpful briefing possible, and because our schedules have become complicated by commitments in other cases, Plaintiffs respectfully request a short 11 day extension of time within which to file their initiating brief, making that brief due on February 15, 2011. The government has graciously consented to Plaintiffs' request for an 11 day extension of time, and to the following modified briefing schedule: Plaintiffs' initiating brief will be due February 15, 2011; Defendant Central Intelligence Agency's response will



		be due March 8, 2011; and Plaintiffs' reply will be due March 15, 2011. This is Plaintiffs' first request for an extension of time in connection with this motion. ENDORSEMENT: So Ordered. Set Deadlines/Hearing as to <a href="#">254</a> MOTION for Contempt and Sanctions: Responses due by 3/8/2011. Replies due by 3/15/2011. (Signed by Judge Alvin K. Hellerstein on 2/2/2011) (Inl) (Entered: 02/03/2011)
02/15/2011	<a href="#">449</a>	SUPPLEMENTAL MEMORANDUM OF LAW in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Bannon, Alicia) (Entered: 02/15/2011)
02/15/2011	<a href="#">450</a>	DECLARATION of Alicia L. Bannon in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2 (Part 1 of 2), # <a href="#">3</a> Exhibit 2 (Part 2 of 2), # <a href="#">4</a> Exhibit 3, # <a href="#">5</a> Exhibit 4, # <a href="#">6</a> Exhibit 5, # <a href="#">7</a> Exhibit 6, # <a href="#">8</a> Exhibit 7, # <a href="#">9</a> Exhibit 8, # <a href="#">10</a> Exhibit 9, # <a href="#">11</a> Exhibit 10, # <a href="#">12</a> Exhibit 11, # <a href="#">13</a> Exhibit 12, # <a href="#">14</a> Exhibit 13, # <a href="#">15</a> Exhibit 14, # <a href="#">16</a> Exhibit 15, # <a href="#">17</a> Exhibit 16, # <a href="#">18</a> Exhibit 17, # <a href="#">19</a> Exhibit 18, # <a href="#">20</a> Exhibit 19, # <a href="#">21</a> Exhibit 20, # <a href="#">22</a> Exhibit 21, # <a href="#">23</a> Exhibit 22, # <a href="#">24</a> Exhibit 23, # <a href="#">25</a> Exhibit 24, # <a href="#">26</a> Exhibit 25, # <a href="#">27</a> Exhibit 26, # <a href="#">28</a> Exhibit 27, # <a href="#">29</a> Exhibit 28, # <a href="#">30</a> Exhibit 29, # <a href="#">31</a> Exhibit 30, # <a href="#">32</a> Exhibit 31, # <a href="#">33</a> Exhibit 32, # <a href="#">34</a> Exhibit 33, # <a href="#">35</a> Exhibit 34, # <a href="#">36</a> Exhibit 35, # <a href="#">37</a> Exhibit 36, # <a href="#">38</a> Exhibit 37, # <a href="#">39</a> Exhibit 38, # <a href="#">40</a> Exhibit 39, # <a href="#">41</a> Exhibit 40, # <a href="#">42</a> Exhibit 41, # <a href="#">43</a> Exhibit 42, # <a href="#">44</a> Exhibit 43, # <a href="#">45</a> Exhibit 44, # <a href="#">46</a> Exhibit 45, # <a href="#">47</a> Exhibit 46, # <a href="#">48</a> Exhibit 47, # <a href="#">49</a> Exhibit 48, # <a href="#">50</a> Exhibit 49, # <a href="#">51</a> Exhibit 50, # <a href="#">52</a> Exhibit 51, # <a href="#">53</a> Exhibit 52)(Bannon, Alicia) (Entered: 02/15/2011)
02/25/2011	<a href="#">451</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Amy Barcelo dated 2/24/11 re: Briefing schedule for cross motions for summary judgment as follows. ENDORSEMENT: So Ordered. Cross Motion by government due by 4/1/2011. Response to plaintiffs' sixth motion due by 4/1/2011. Reply to plaintiff's motion and response to government's cross motion due by 4/29/2011. Government reply to its cross motion due by 5/13/11. (Signed by Judge Alvin K. Hellerstein on 2/25/11) (cd) (Entered: 02/25/2011)
03/04/2011	<a href="#">452</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Tara LaMorte dated 3/3/11 re: Counsel requests an extension of time of approximately six weeks until April 18, 2011, to file the Government's response to plaintiffs' supplemental memorandum of law in support of their motion for contempt and sanctions. ENDORSEMENT: Motion granted, but no further extensions will be granted. Time to oppose is enlarged to 4/18/11, time to reply is enlarged to May 4, 2011. (Signed by Judge Alvin K. Hellerstein on 3/3/11) (dj) Modified on 3/11/2011 (dj). (Entered: 03/04/2011)
03/04/2011		Set Deadlines/Hearings: Replies due by 5/4/2011. Responses due by 4/18/2011 (dj) (Entered: 03/04/2011)
03/11/2011	<a href="#">453</a>	MEMO ENDORSEMENT ON NOTICE OF MOTION. ENDORSEMENT: Motion denied. The outlook and experience of petitioner, as a professional engineer employed by the Dep't of Energy, does not suggest the likelihood of useful assistance with regard to the pending motion. (Signed by Judge Alvin K. Hellerstein on 3/11/2011) (Inl) (Entered: 03/11/2011)
04/01/2011	<a href="#">456</a>	SIXTH MOTION for Partial Summary Judgment. Document filed by Department of Defense, Department of the Army. (Barcelo, Amy) (Entered: 04/01/2011)
04/01/2011	<a href="#">457</a>	MEMORANDUM OF LAW in Support re: <a href="#">456</a> SIXTH MOTION for Partial Summary Judgment. <i>and in opposition to plaintiffs' sixth motion for partial summary judgment.</i> Document filed by Department of Defense, Department of the Army. (Barcelo, Amy) (Entered: 04/01/2011)
04/01/2011	<a href="#">458</a>	DECLARATION of Amy A. Barcelo in Support re: <a href="#">456</a> SIXTH MOTION for Partial Summary Judgment.. Document filed by Department of Defense, Department of the Army. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G)(Barcelo, Amy) (Entered: 04/01/2011)
04/18/2011	<a href="#">459</a>	SUPPLEMENTAL MEMORANDUM OF LAW in Opposition re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by Central Intelligence Agency. (La Morte, Tara) (Entered: 04/18/2011)
04/18/2011	<a href="#">460</a>	DECLARATION of Stephen W. Preston in Opposition re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by Central Intelligence Agency. (La Morte, Tara) (Entered: 04/18/2011)
04/18/2011	<a href="#">461</a>	DECLARATION of Tara M. La Morte in Opposition re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by Central Intelligence Agency. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D)(La Morte, Tara) (Entered: 04/18/2011)
04/29/2011	<a href="#">462</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">456</a> SIXTH MOTION for Partial Summary Judgment., <a href="#">443</a> SIXTH MOTION for Partial Summary Judgment. <i>and Opposition to Defendant's Sixth Motion for Partial Summary Judgment.</i> Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Abdo, Alexander) (Entered: 04/29/2011)
05/03/2011	<a href="#">463</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Alicia L. Bannon dated 5/2/11 Re: Plaintiffs respectfully request that they be permitted to file their reply brief on Friday, May 6, 2011. ENDORSEMENT: So ordered. (Replies due by 5/6/2011.) (Signed by Judge Alvin K. Hellerstein on 5/2/11) (rjm) (Entered: 05/03/2011)
05/06/2011	<a href="#">464</a>	SUPPLEMENTAL REPLY MEMORANDUM OF LAW in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Bannon, Alicia) (Entered: 05/06/2011)
05/06/2011	<a href="#">465</a>	DECLARATION of Alicia L. Bannon in Support re: <a href="#">254</a> MOTION for Contempt and Sanctions.. Document filed by

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		American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Exhibit 53, # <a href="#">2</a> Exhibit 54, # <a href="#">3</a> Exhibit 55)(Bannon, Alicia) (Entered: 05/06/2011)
05/13/2011	<a href="#">466</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">456</a> SIXTH MOTION for Partial Summary Judgment.. Document filed by Department of Defense, Department of the Army. (Barcelo, Amy) (Entered: 05/13/2011)
07/05/2011	<a href="#">467</a>	ORDER: The parties are required to appear for an Oral Argument (sixth motion for partial summary judgment) set for 7/20/2011 at 03:00 PM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein. It is ORDERED that counsel to whom this Order is sent is responsible for faxing a copy to all counsel involved in this case and retaining verification of such in the case file. Do not fax such verification to Chambers. (Signed by Judge Alvin K. Hellerstein on 7/5/2011) (ab) (Entered: 07/05/2011)
07/05/2011	<a href="#">468</a>	ORDER: The parties are required to appear for an Oral Argument (motion for contempt sanctions) set for 8/1/2011 at 03:00 PM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein. It is ORDERED that counsel to whom this Order is sent is responsible for faxing a copy to all counsel involved in this case and retaining verification of such in the case file. Do not fax such verification to Chambers. (Signed by Judge Alvin K. Hellerstein on 7/5/2011) (ab) (Entered: 07/05/2011)
07/21/2011	<a href="#">469</a>	SUMMARY ORDER GRANTING DEFENDANTS' SIXTH MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING PLAINTIFFS' SIXTH MOTION FOR PARTIAL SUMMARY JUDGMENT, For the reasons stated on the record of proceedings, I deny plaintiffs' sixth motion for partial summary judgment and grant defendants' sixth motion for partial summary judgment. The Clerk shall mark the motions (Doc. Nos. 443 and 456) terminated. (Signed by Judge Alvin K. Hellerstein on 7/21/11) (pl) Modified on 7/21/2011 (pl). (Entered: 07/21/2011)
10/03/2011	<a href="#">470</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 9/28/2011 re: Counsel for the Plaintiff writes in response to the Court's invitation to comment upon the CIA's summary of its new policies regarding document preservation, which the agency submitted to the Court on September 21, 2011. ENDORSEMENT: The Clerk will file this letter in the Court file. (Signed by Judge Alvin K. Hellerstein on 10/3/2011) (ab) (Entered: 10/03/2011)
10/05/2011	<a href="#">471</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Tara La Morte dated 8/18/2011 re: Counsel writes to notify the Court that the agency has finalized and adopted the protocols. ENDORSEMENT: The Clerk shall file this letter in the public record of this case. (Signed by Judge Alvin K. Hellerstein on 10/5/2011) (jfe) (Entered: 10/05/2011)
10/05/2011	<a href="#">472</a>	OPINION AND ORDER DENYING MOTION TO HOLD DEFENDANT CENTRAL INTELLIGENCE AGENCY IN CIVIL CONTEMPT re:#100885 <a href="#">254</a> MOTION for Contempt and Sanctions filed by American Civil Liberties Union: Because plaintiffs already have achieved substantial remedial relief and would be entitled to no further relief if I were to find the CIA in civil contempt, I deny plaintiffs' motion to hold the CIA in contempt. The Clerk shall mark the motion (Doc. No. 254) terminated. (Signed by Judge Alvin K. Hellerstein on 10/5/2011) (ab) Modified on 10/11/2011 (jab). (Entered: 10/05/2011)
10/06/2011	<a href="#">473</a>	SEALED DOCUMENT placed in vault.(mps) (Entered: 10/06/2011)
10/11/2011	<a href="#">474</a>	TRANSCRIPT of Proceedings re: Argument held on 7/20/2011 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Khristine Sellin, (212) 805 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/4/2011. Redacted Transcript Deadline set for 11/14/2011. Release of Transcript Restriction set for 1/12/2012.(McGuirk, Kelly) (Entered: 10/11/2011)
10/11/2011	<a href="#">475</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a Argument proceeding held on 7/20/11 has been filed by the court reporter/transcriber in the above captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 10/11/2011)
10/28/2011	<a href="#">476</a>	TRANSCRIPT of Proceedings re: Argument held on 8/1/2011 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Denise Richards, (212) 805 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/21/2011. Redacted Transcript Deadline set for 12/1/2011. Release of Transcript Restriction set for 1/29/2012.(McGuirk, Kelly) (Entered: 10/28/2011)
10/28/2011	<a href="#">477</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a Argument proceeding held on 8/1/11 has been filed by the court reporter/transcriber in the above captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 10/28/2011)
05/21/2012	<a href="#">478</a>	TRUE COPY OPINION of USCA as to <a href="#">439</a> Notice of Appeal, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">431</a> Notice of Appeal filed by Department Of Justice, Central Intelligence Agency USCA Case Number 10 4290 cv(L). The judgment of the District Court is hereby AFFIRMED in part, and REVERSED in part. We affirm the judgment of the District Court insofar as it sustained the Government's withholding of records relating to the CIA's use of waterboarding and the photograph of Abu Zubaydah. We reverse that part of the judgment that requires the Government either to disclose the

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		classified information in the OLC memoranda and the transcript of the District Court's ex parte, in camera proceeding, or to substitute language proposed by the District Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 05/21/2012. (nd) (Entered: 05/22/2012)
07/16/2012	<a href="#">479</a>	MANDATE of USCA (Certified Copy) as to <a href="#">439</a> Notice of Appeal, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">431</a> Notice of Appeal filed by Department Of Justice, Central Intelligence Agency USCA Case Number 10 4290(L), 10 4647(con), 10 4289(xap), 10 4668 (xap). Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED in part, REVERSED in part in accordance with the <a href="#">478</a> opinion of this Court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 07/16/2012. (nd) (Entered: 07/17/2012)
07/17/2012		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">479</a> USCA Mandate,, (nd) (Entered: 07/17/2012)
08/13/2012	<a href="#">480</a>	Costs Taxed as to <a href="#">479</a> USCA Mandate,, USCA Case Number 10 4290(L), 10 4647(con), 10 4289(xap), 10 4668 (xap).. in the amount of \$4,142.80. Docketed as Judgment #12,1492 on 8/13/2012 in favor of Department of Justice, and its component offices of Legal Counsel, Central Intelligence Agency against American Civil Liberties Union et al. (nd) (Entered: 08/14/2012)
09/28/2012	<a href="#">481</a>	ORDER CLOSING CASE: As all proceedings in this case have been completed, the Clerk shall mark the case closed, subject to restoration by any party within thirty days by filing an appropriate motion or otherwise showing good cause. (Signed by Judge Alvin K. Hellerstein on 9/28/2012) (jfe) (Entered: 09/28/2012)
10/19/2012	<a href="#">482</a>	STIPULATION AND ORDER: Plaintiffs the American Civil Liberties Union, Center for Constitutional Rights, Physicians for Human Rights, Veterans for Common Sense, and Veterans for Peace (collectively, "Plaintiffs") filed this suit pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking the release of certain information by, among others, the Central Intelligence Agency ("CIA" or the "Government"), in connection with an earlier administrative request for the same information. Endorsement: Counsel will appear before me on Friday, November 2, 2012, 10:00 a.m., to discuss procedures and briefing schedules for the issues of fees and allowances which plaintiffs seek to recover, and to identify any other issues not resolved in this case. (Signed by Judge Alvin K. Hellerstein on 10/19/2012, as amended.) (ja) Modified on 10/26/2012 (ja). (Entered: 10/19/2012)
10/19/2012		Set/Reset Hearings: Status Conference set for 11/2/2012 at 10:00 AM before Judge Alvin K. Hellerstein. (ja) (Entered: 10/19/2012)
11/15/2012	<a href="#">483</a>	ORDER: The status conference previously scheduled for November 2, 2012 is hereby adjourned> You are hereby notified that you are required to appear for a status conference on 12/4/2012 at 10:00 a.m. at the U.S. Courthouse, Southern District of New York, 500 Pearl street, Courtroom 14D, New York, New York 10007 ( Status Conference set for 12/4/2012 at 10:00 AM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 11/15/2012) (js) (Entered: 11/15/2012)
11/20/2012	<a href="#">484</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Amy A. Barcelo dated 11/20/2012 re: I am writing on behalf of the Government, and with plaintiffs' consent, to request an adjournment of the status conference currently scheduled for December 4, 2012. ENDORSEMENT: The status conf is adjourned to Dec. 14, 2012, 10:00 a.m., ( Status Conference set for 12/14/2012 at 10:00 AM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 11/20/2012) (lmb) (Entered: 11/20/2012)
12/10/2012	<a href="#">485</a>	NOTICE OF APPEARANCE by Michael J. Byars on behalf of Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation (Byars, Michael) (Entered: 12/10/2012)
12/14/2012		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Status Conference held on 12/14/2012. (ja) (Entered: 12/19/2012)
01/11/2013	<a href="#">486</a>	TRANSCRIPT of Proceedings re: CONFERENCE held on 12/14/2012 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Andrew Walker, (212) 805 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/4/2013. Redacted Transcript Deadline set for 2/14/2013. Release of Transcript Restriction set for 4/15/2013.(Rodriguez, Somari) (Entered: 01/11/2013)
01/11/2013	<a href="#">487</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 12/14/12 has been filed by the court reporter/transcriber in the above captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(Rodriguez, Somari) (Entered: 01/11/2013)
01/25/2013	<a href="#">488</a>	STATUS REPORT. <i>Based on December 14, 2012 status conference</i> Document filed by American Civil Liberties Union. (Lustberg, Lawrence) (Entered: 01/25/2013)
12/06/2013	<a href="#">489</a>	JOINT LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 12 06 13 re: American Civil Liberties Union, et al. v. Department of Defense, et al, 04 cv 4151. Document filed by American Civil Liberties Union. (Lustberg, Lawrence) (Entered: 12/06/2013)
12/09/2013	<a href="#">490</a>	MEMO ENDORSEMENT on re: <a href="#">489</a> Letter, filed by American Civil Liberties Union. ENDORSEMENT: The schedules for further proceedings are accepted, and so ordered. (Signed by Judge Alvin K. Hellerstein on 12/9/2013) (mro) (Entered: 12/10/2013)

12/09/2013		Set/Reset Deadlines: Cross Motions due by 2/11/2014. Motions due by 1/14/2014. Responses due by 3/4/2014 Replies due by 3/18/2014. (mro) (Entered: 12/10/2013)
01/14/2014	<a href="#">491</a>	<b>FILING ERROR - DEFICIENT DOCKET ENTRY - SEVENTH MOTION</b> for Partial Summary Judgment <i>by Plaintiffs</i> . Document filed by American Civil Liberties Union. Responses due by 2/11/2014 (Attachments: # <a href="#">1</a> Memorandum in Support of Plaintiffs' Seventh Motion for Partial Summary Judgment, # <a href="#">2</a> Exhibit Exhibit A)(Lustberg, Lawrence) Modified on 1/15/2014 (db). (Entered: 01/14/2014)
01/14/2014	<a href="#">492</a>	NOTICE OF APPEARANCE by Lawrence S. Lustberg on behalf of American Civil Liberties Union. (Lustberg, Lawrence) (Entered: 01/14/2014)
01/15/2014		<b>***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Lawrence S. Lustberg to RE-FILE Document <a href="#">491</a> SEVENTH MOTION for Partial Summary Judgment by Plaintiffs. ERROR(S): Supporting Documents are filed separately, each receiving their own document #.</b> (db) (Entered: 01/15/2014)
01/15/2014	<a href="#">493</a>	SEVENTH MOTION for Partial Summary Judgment <i>by Plaintiffs</i> . Document filed by American Civil Liberties Union. Responses due by 2/11/2014 Return Date set for 3/4/2014 at 11:59 PM.(Lustberg, Lawrence) (Entered: 01/15/2014)
01/15/2014	<a href="#">494</a>	MEMORANDUM OF LAW in Support re: <a href="#">493</a> SEVENTH MOTION for Partial Summary Judgment <i>by Plaintiffs</i> .. Document filed by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Exhibit Exhibit A for Memorandum of Law in Support of Plaintiffs' Seventh Motion for Partial Summary Judgment)(Lustberg, Lawrence) (Entered: 01/15/2014)
02/11/2014	<a href="#">495</a>	MOTION for Summary Judgment. Document filed by Department of Defense, Department of the Army.(Barcelo, Amy) (Entered: 02/11/2014)
02/11/2014	<a href="#">496</a>	MEMORANDUM OF LAW in Support re: <a href="#">495</a> MOTION for Summary Judgment. <i>and in opposition to Plaintiffs' Seventh Motion for Partial Summary Judgment</i> . Document filed by Department of Defense, Department of the Army. (Barcelo, Amy) (Entered: 02/11/2014)
02/11/2014	<a href="#">497</a>	DECLARATION of Amy A. Barcelo in Support re: <a href="#">495</a> MOTION for Summary Judgment.. Document filed by Department of Defense, Department of the Army. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F)(Barcelo, Amy) (Entered: 02/11/2014)
02/28/2014	<a href="#">498</a>	NOTICE OF APPEARANCE by Marcellene Elizabeth Hearn on behalf of American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Hearn, Marcellene) (Entered: 02/28/2014)
03/04/2014	<a href="#">499</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">493</a> SEVENTH MOTION for Partial Summary Judgment <i>by Plaintiffs</i> ., <a href="#">495</a> MOTION for Summary Judgment. <i>And Memorandum of Law in Opposition to Defendant's Seventh Motion for Partial Summary Judgment</i> . Document filed by American Civil Liberties Union. (Lustberg, Lawrence) (Entered: 03/04/2014)
03/06/2014	<a href="#">500</a>	STATUS REPORT. <i>Joint Letter addressed to the Honorable Alvin K. Hellerstein Requesting Extension for Resolution of Attorneys' Fees</i> . Document filed by American Civil Liberties Union.(Lustberg, Lawrence) (Entered: 03/06/2014)
03/17/2014	<a href="#">501</a>	FIRST LETTER MOTION for Extension of Time to File <i>reply brief in support of seventh motion for partial summary judgment</i> addressed to Judge Alvin K. Hellerstein from Amy A. Barcelo dated March 17, 2014. Document filed by Department of Defense.(Barcelo, Amy) (Entered: 03/17/2014)
03/18/2014	<a href="#">502</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">495</a> MOTION for Summary Judgment.. Document filed by Department of Defense. (Barcelo, Amy) (Entered: 03/18/2014)
03/18/2014	<a href="#">503</a>	ORDER granting <a href="#">501</a> Letter Motion for Extension of Time to File reply memorandum. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 3/18/2014) (ajs) Modified on 3/18/2014 (ajs). (Entered: 03/18/2014)
03/18/2014		Set/Reset Deadlines: Replies due by 3/19/2014. (ajs) (Entered: 03/18/2014)
03/18/2014	<a href="#">504</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 3/6/2014 re: The parties propose to file by May 7, 2014 either a stipulation of settlement or a proposed briefing schedule for resolution of any fees issues still in dispute. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 3/18/2014) (kgo) (Entered: 03/18/2014)
05/06/2014	<a href="#">505</a>	LETTER addressed to Judge Alvin K. Hellerstein from Tara LaMorte dated May 6, 2014 re: Extension of Time. Document filed by Central Intelligence Agency, Department of the Army, Federal Bureau Of Investigation.(La Morte, Tara) (Entered: 05/06/2014)
05/07/2014	<a href="#">506</a>	MEMO ENDORSEMENT on re: <a href="#">505</a> Letter filed by Federal Bureau Of Investigation, Department of the Army, Central Intelligence Agency. ENDORSEMENT: SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 5/7/2014) (ajs) (Entered: 05/07/2014)
05/28/2014	<a href="#">507</a>	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated May 28, 2014 re: Extension of Time. Document filed by American Civil Liberties Union.(Lustberg, Lawrence) (Entered: 05/28/2014)
05/30/2014	<a href="#">508</a>	MEMO ENDORSEMENT on re: <a href="#">507</a> Letter filed by American Civil Liberties Union. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 5/29/2014) (ajs) (Entered: 05/30/2014)

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06/03/2014	<a href="#">509</a>	MEMO ENDORSEMENT on re: <a href="#">507</a> Letter filed by American Civil Liberties Union. ENDORSEMENT: So Ordered. If no agreement, the parties, by counsel will meet with me on June 27, 2014, 10:30 a.m. (Signed by Judge Alvin K. Hellerstein on 6/3/2014) (ajs) (Entered: 06/03/2014)
06/24/2014	<a href="#">510</a>	CONSENT LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated June 24, 2014 re: Adjournment of Conference Scheduled for June 27, 2014. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation.(La Morte, Tara) (Entered: 06/24/2014)
06/25/2014	<a href="#">511</a>	MEMO ENDORSEMENT on re: <a href="#">510</a> Letter, filed by Federal Bureau Of Investigation, Department of Defense, Department Of Justice, Department Of Homeland Security, Department of State, Department of the Army, Central Intelligence Agency. ENDORSEMENT: The conf is adjourned to July 25, 2014, at 10:30 a.m. (Signed by Judge Alvin K. Hellerstein on 6/25/2014) (ajs) (Entered: 06/26/2014)
07/25/2014		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Status Conference held on 7/25/2014. (Jones, Brigitte) (Entered: 07/25/2014)
08/26/2014	<a href="#">512</a>	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg, Esq. dated August 26, 2014 re: Settlement with regard to attorneys' fees. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Attachments: # <a href="#">1</a> Text of Proposed Order Stipulation and Proposed Order)(Lustberg, Lawrence) (Entered: 08/26/2014)
08/27/2014	<a href="#">513</a>	ORDER AND OPINION GRANTING #104685, IN PART, PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT re: <a href="#">493</a> SEVENTH MOTION for Partial Summary Judgment <i>by Plaintiffs</i> filed by American Civil Liberties Union, <a href="#">495</a> MOTION for Summary Judgment filed by Department of Defense, Department of the Army. As set forth within, plaintiffs' motion is granted in part and the government's motion is denied. Counsel shall attend a conference at 3 p.m. on September 8, 2014. The Clerk mark the motions (Doc. Nos. 493 and 495) terminated. The case shall remain open for two issues: the issue discussed in this Order and Opinion and the issue of fees and allowances. SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 8/27/2014) (ajs) Modified on 9/5/2014 (ca). (Entered: 08/27/2014)
08/27/2014		Set/Reset Hearings: Status Conference set for 9/8/2014 at 03:00 PM before Judge Alvin K. Hellerstein. (ajs) (Entered: 08/27/2014)
08/27/2014	<a href="#">514</a>	STIPULATION AND ORDER: It is hereby stipulated and agreed, by and between the parties, as follows: 1. With the exception of litigation concerning the DOD Photos, as described above, Plaintiffs stipulate and agree to accept this Stipulation and Order in full settlement and satisfaction of any and all outstanding claims relating to attorneys' fees and costs in connection with the above captioned matters. 2. In consideration for the release of any and all of Plaintiffs' outstanding claims relating to attorneys' fees and costs as defined in paragraph 1, the Government shall pay to Plaintiffs the sum of \$1,250,000.00 in attorneys' fees and litigation costs, as set forth within. SO ORDERED. (See Order). (Signed by Judge Alvin K. Hellerstein on 8/27/2014) (ajs) (Entered: 08/28/2014)
09/03/2014	<a href="#">515</a>	LETTER MOTION to Adjourn Conference addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated 9/3/2014. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation.(La Morte, Tara) (Entered: 09/03/2014)
09/04/2014	<a href="#">516</a>	ORDER granting <a href="#">515</a> Letter Motion to Adjourn Conference: The conf is adjourned to Oct. 6, 2014, 10:30 a.m. Status Conference set for 10/6/2014 at 10:30 AM before Judge Alvin K. Hellerstein. (Signed by Judge Alvin K. Hellerstein on 9/4/2014) (tn) Modified on 9/5/2014 (tn). (Entered: 09/04/2014)
09/15/2014	<a href="#">517</a>	LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated September 15, 2014 re: Clarifying Case Status. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation.(La Morte, Tara) (Entered: 09/15/2014)
09/18/2014	<a href="#">518</a>	MEMO ENDORSEMENT on re: <a href="#">517</a> Letter, filed by Federal Bureau Of Investigation, Department of Defense, Department Of Justice, Department Of Homeland Security, Department of State, Department of the Army, Central Intelligence Agency. ENDORSEMENT: The application will be granted upon submission of a suitable consent order. (Signed by Judge Alvin K. Hellerstein on 9/17/2014) (ja) (Entered: 09/18/2014)
10/03/2014	<a href="#">519</a>	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated October 3, 2014 re: Adjournment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Lustberg, Lawrence) (Entered: 10/03/2014)
10/03/2014	<a href="#">520</a>	LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated October 3, 2014 re: Proposed Order Clarifying Docket. Document filed by Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation. (Attachments: # <a href="#">1</a> Text of Proposed Order)(La Morte, Tara) (Entered: 10/03/2014)
10/03/2014	<a href="#">521</a>	ORDER: that the following Defendants are terminated from the above captioned actions: the Department of Homeland Security; the Department of Justice, and its components Civil Rights Division, Criminal Division, Office of Information and Privacy, Office of Intelligence, Policy, and Review, Federal Bureau of Investigation, and Office of Legal Counsel; the Department of State; and the Central Intelligence Agency. Federal Bureau Of Investigation, Office of Legal Counsel,

		Central Intelligence Agency and Department of Justice (and its component Office of Legal Counsel) terminated. (Signed by Judge Alvin K. Hellerstein on 10/3/2014) (tn) (Entered: 10/03/2014)
10/06/2014	<a href="#">522</a>	MEMO ENDORSEMENT on re: <a href="#">519</a> Letter, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc. ENDORSEMENT: The status conf is adjourned to Oct. 14, 2014, 2:30 p.m. (Status Conference set for 10/14/2014 at 02:30 PM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 10/3/2014) (tn) (Entered: 10/06/2014)
10/07/2014	<a href="#">523</a>	ORDER, DROPPING CERTAIN DEFPTS FROM CAPTION: that the following Defendants are terminated from the above captioned actions: the Department of Homeland Security; the Department of Justice, and its components Civil Rights Division, Criminal Division, Office of Information and Privacy, Office of Intelligence, Policy, and Review, Federal Bureau of Investigation, and Office of Legal Counsel; the Department of State; and the Central Intelligence Agency. (Signed by Judge Alvin K. Hellerstein on 10/6/2014) (tn) (Entered: 10/07/2014)
10/14/2014	<a href="#">524</a>	ENDORSED LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 10/10/2014 re: counsel requests that the status conference be set for 10/15/2014 at 2:30 p.m. ENDORSEMENT: The Status Conference is adjourned until Oct. 21, 2014 @ 2:30 p.m. (Status Conference set for 10/21/2014 at 02:30 PM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 10/14/2014) (tn) (Entered: 10/14/2014)
10/21/2014		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Status Conference held on 10/22/2014, ( Oral Argument set for 1/15/2015 at 02:30 PM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein.). (Court Reporter Sabrina D'emidio) (Jones, Brigitte) Modified on 10/22/2014 (djc). (Entered: 10/22/2014)
10/22/2014	<a href="#">525</a>	SCHEDULING ORDER: that the government shall file its submissions by December 19, 2014. The plaintiff shall file its comments by January 9, 2015. I shall hear counsel on January 20, 2015, at 2:30 PM, and order such further proceedings as may be appropriate. Status Conference set for 1/15/2015 at 02:30 PM before Judge Alvin K. Hellerstein. (Signed by Judge Alvin K. Hellerstein on 10/21/2014) (tn) (Entered: 10/22/2014)
11/04/2014	<a href="#">526</a>	TRANSCRIPT of Proceedings re: conference held on 10/21/2014 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Denise Richards, (212) 805 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/1/2014. Redacted Transcript Deadline set for 12/8/2014. Release of Transcript Restriction set for 2/5/2015.(McGuirk, Kelly) (Entered: 11/04/2014)
11/04/2014	<a href="#">527</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a conference proceeding held on 10/21/2014 has been filed by the court reporter/transcriber in the above captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 11/04/2014)
12/19/2014	<a href="#">528</a>	SEVENTH MOTION for Summary Judgment <i>Renewed</i> . Document filed by Department of Defense. Responses due by 1/9/2015(La Morte, Tara) (Entered: 12/19/2014)
12/19/2014	<a href="#">529</a>	MEMORANDUM OF LAW in Support re: <a href="#">528</a> SEVENTH MOTION for Summary Judgment <i>Renewed</i> . . Document filed by Department of Defense. (La Morte, Tara) (Entered: 12/19/2014)
12/19/2014	<a href="#">530</a>	DECLARATION of Megan M. Weis in Support re: <a href="#">528</a> SEVENTH MOTION for Summary Judgment <i>Renewed</i> .. Document filed by Department of Defense. (Attachments: # <a href="#">1</a> Exhibit A General Allen Recommendation, # <a href="#">2</a> Exhibit B General Mattis Recommendation, # <a href="#">3</a> Exhibit C General Dempsey Recommendation)(La Morte, Tara) (Entered: 12/19/2014)
12/19/2014	<a href="#">531</a>	DECLARATION of Rear Admiral Sinclair M. Harris in Support re: <a href="#">528</a> SEVENTH MOTION for Summary Judgment <i>Renewed</i> .. Document filed by Department of Defense. (La Morte, Tara) (Entered: 12/19/2014)
12/19/2014	<a href="#">532</a>	NOTICE of Classified Filing re: <a href="#">531</a> Declaration in Support of Motion, <a href="#">528</a> SEVENTH MOTION for Summary Judgment <i>Renewed</i> .. Document filed by Department of Defense. (La Morte, Tara) (Entered: 12/19/2014)
01/09/2015	<a href="#">533</a>	RESPONSE in Opposition to Motion re: <a href="#">528</a> SEVENTH MOTION for Summary Judgment <i>Renewed</i> . . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) (Entered: 01/09/2015)
01/14/2015	<a href="#">534</a>	MOTION for Marcellene Elizabeth Hearn to Withdraw as Attorney . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Hearn, Marcellene) (Entered: 01/14/2015)
01/15/2015	<a href="#">535</a>	NOTICE OF APPEARANCE by Ana Isabel Munoz on behalf of American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Munoz, Ana) (Entered: 01/15/2015)
01/16/2015	<a href="#">536</a>	LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated January 16, 2015 re: SSCI Report. Document filed by Central Intelligence Agency, Department of Defense.(La Morte, Tara) (Entered: 01/16/2015)
01/16/2015	<a href="#">537</a>	ENDORSED LETTER addressed to Concerned Parties from Brigitte Jones dated 1/16/2015 re: The oral argument previously scheduled for 1/20/15 @ 2:30 p.m. is hereby adjourned. You are hereby notified that you are required to appear for an oral argument. ENDORSEMENT: So Ordered. (Oral Argument set for 1/20/2015 at 04:00 PM in Courtroom

		14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 1/16/2015) (tn) (Entered: 01/16/2015)
01/20/2015	<a href="#">538</a>	ENDORSED LETTER addressed to Concerned Parties from Brigitte Jones dated 1/20/2015 re: The oral argument previously scheduled for today @ 4:00 p.m. is hereby canceled. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 1/20/2015) (tn) (Entered: 01/20/2015)
01/20/2015	<a href="#">539</a>	ENDORSED LETTER addressed to Concerned Parties from Brigitte Jones dated 1/20/2015 re: You are hereby notified that you are required to appear for an oral argument on 2/3/2015 at 11:00 a.m. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 1/20/2015) (tn) (Entered: 01/20/2015)
01/20/2015		Set/Reset Hearings: Oral Argument set for 2/3/2015 at 11:00 AM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein. (tn) (Entered: 01/20/2015)
02/02/2015	<a href="#">540</a>	ENDORSED LETTER addressed to Concerned Parties from Brigitte Jones dated 2/2/2015 re: The status conf. previously scheduled for 2/3/15 is hereby adjourned. You are hereby notified that you are required to appear for a status conf. on 2/4/2015 at 4:00 p.m. ENDORSEMENT: So Ordered. (Status Conference set for 2/4/2015 at 04:00 PM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 2/2/2015) (tn) (Entered: 02/02/2015)
02/04/2015		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Oral Argument held on 2/4/2015 re: <a href="#">541</a> Letter filed by Department of Defense. (Jones, Brigitte) (Entered: 02/19/2015)
02/11/2015	<a href="#">541</a>	LETTER addressed to Judge Alvin K. Hellerstein from Tara La Morte dated February 11, 2015 re: Follow Up to February 4, 2015, Conference. Document filed by Department of Defense.(La Morte, Tara) (Entered: 02/11/2015)
02/13/2015	<a href="#">542</a>	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 2/13/15 re: Government's Follow up to February 4, 2015, Conference. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Lustberg, Lawrence) (Entered: 02/13/2015)
02/18/2015	<a href="#">543</a>	ORDER CLARIFYING INSTRUCTIONS FOR DEFENDANTS' SUBMISSIONS re: <a href="#">541</a> Letter filed by Department of Defense: that at the October 21, 2014 status conference, I ordered that "the Government must prove [its burden], item by item... [and] document by document." Doc. No. 526, at 12 13. I also said, "[y]our burden is to be specific, photograph by photograph." Id. The Government's subsequent submissions did not satisfy these criteria. The declaration did not indicate the criteria used to categorize the pictures or to select the samples from each category. It did not indicate how many pictures fell into each category, so there was no way to determine what proportion of the pictures the commanders had reviewed. It also did not indicate whether the Secretary himself had reviewed any of the pictures, let alone all of them. While I did not hold that there could be no delegation, the Secretary is required, at a minimum, to explain the terms of his delegation so it is the Secretary, and not any subordinate, who takes responsibility for his knowing and good faith Certification that release of a particular photograph would result in the harm envisioned. In order to make such a Certification, the Secretary must demonstrate knowledge of the contents of the individual photographs rather than mere knowledge of his commanders' conclusions. He may obtain such knowledge either by reviewing the photographs personally or having others describe their contents to him, but he may not rely on general descriptions of the "set" or "representative samples," as such aggregation is antithetical to individualized review without precise criteria for sampling. Further, the Certification must make the Secretary's factual basis for concluding that disclosure would endanger U.S. citizens, Armed Forces, or government employees clear to the Court. Without such a record, judicial review is impossible, and judicial review is fundamental to FOIA and the APA. See Bowen v. Mich. Academy of Family Physicians, 476 U.S. 667 (1986). A Vaughn index would satisfy this requirement, but there may be other ways for the Government to meet its burden as well. At minimum, the submission must describe the categories of objectionable content contained in the photographs, identify how many photographs fit into each category, and specify the type of harm that would result from disclosing such content. As before, these submissions may be filed under seal or exhibited to the Court in camera. The Government will have one more opportunity to satisfy these criteria. If, by March 17, 2015, proper certifications are not filed, judgment against the Government will be filed. (Signed by Judge Alvin K. Hellerstein on 2/17/2015) (tn) (Entered: 02/18/2015)
02/25/2015	<a href="#">544</a>	TRANSCRIPT of Proceedings re: conference held on 2/4/2015 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Patricia Nilsen, (212) 805 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015.(McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	<a href="#">545</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a conference proceeding held on 2/4/15 has been filed by the court reporter/transcriber in the above captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 02/25/2015)
02/26/2015	<a href="#">546</a>	NOTICE OF APPEARANCE by Sarah Sheive Normand on behalf of Central Intelligence Agency, Department Of Homeland Security, Department Of Justice, Department of Defense, Department of State, Department of the Army, Federal Bureau Of Investigation. (Normand, Sarah) (Entered: 02/26/2015)
03/17/2015	<a href="#">547</a>	LETTER addressed to Judge Alvin K. Hellerstein from Sarah S. Normand dated 03/17/2015 re: Response to February 18, 2015 Order. Document filed by Department of Defense.(Normand, Sarah) (Entered: 03/17/2015)

03/19/2015	<a href="#">548</a>	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence Lustberg dated 3/19/2015 re: Response to Government's Request for a Stay. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Lustberg, Lawrence) (Entered: 03/19/2015)
03/20/2015	<a href="#">549</a>	ORDER GRANTING JUDGMENT FOR PLAINTIFF: Accordingly, judgment is hereby entered in favor of Plaintiff. The Government is required to disclose each and all the photographs responsive to Plaintiff's FOIA request, unless it moves promptly to cure its failure to submit an individualized certification. The order is hereby stayed for 60 days, even though the Government has had ample time to evaluate its legal position and the desirability of an appeal. Any subsequent stays must be issued by the Court of Appeals. The parties shall settle the terms of judgment. Plaintiff shall serve its proposal on the Government by March 25, 2014, and then a composite form can be submitted to me by noon on March 27, 2015, showing whatever differences there may be in a single document. (Signed by Judge Alvin K. Hellerstein on 3/20/2015) (tn) (Entered: 03/20/2015)
03/27/2015	<a href="#">550</a>	LETTER addressed to Judge Alvin K. Hellerstein from AUSA Sarah S. Normand dated 03/27/2015 re: Proposed Order of Final Judgment. Document filed by Department of Defense.(Normand, Sarah) (Entered: 03/27/2015)
03/30/2015	<a href="#">551</a>	LETTER addressed to Judge Alvin K. Hellerstein from AUSA Emily E. Daughtry dated March 30, 2015 re: Order of Final Judgment (Revised). Document filed by Department of Defense. (Attachments: # <a href="#">1</a> Text of Proposed Order of Final Judgment (Revised))(Daughtry, Emily) (Entered: 03/30/2015)
04/01/2015	<a href="#">552</a>	ORDER OF FINAL JUDGMENT: IT IS HEREBY ORDERED, consistent with the Court's rulings referenced above, that 1. The Court enters final judgment in favor of plaintiffs with regard to all responsive photographs. 2. The judgment is stayed for 60 days from March 20, 2015. 3. After those 60 days have passed, and absent a further stay, DoD shall release any and all responsive photographs to the plaintiffs, redacted to mask identities. 4. The Clerk shall enter judgment accordingly. (Signed by Judge Alvin K. Hellerstein on 4/1/2015) (lmb) (Entered: 04/01/2015)
04/01/2015		Terminate Transcript Deadlines (lmb) (Entered: 04/01/2015)
05/15/2015	<a href="#">553</a>	NOTICE OF APPEAL from <a href="#">552</a> Judgment,,. Document filed by Department of Defense, Department of the Army. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Normand, Sarah) (Entered: 05/15/2015)
05/18/2015		Appeal Remark as to <a href="#">553</a> Notice of Appeal filed by Department of Defense, Department of the Army. (tp) (Entered: 05/18/2015)
05/18/2015		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">553</a> Notice of Appeal filed by Department of Defense, Department of the Army were transmitted to the U.S. Court of Appeals. (tp) (Entered: 05/18/2015)
05/18/2015	<a href="#">554</a>	ORDER of USCA (Certified Copy) as to <a href="#">553</a> Notice of Appeal filed by Department of Defense, Department of the Army. USCA Case Number 15 1606. The Government seeks an emergency stay of the district court's final judgment dated April 1, 2015, pending determination of this appeal. Appellees have filed opposition to the motion. IT IS HEREBY ORDERED that the motion and opposition are REFERRED to the next available motions panel. IT IS FURTHER ORDERED that a temporary stay of the district court's judgment is granted pending determination of the motion for a stay pending appeal by the panel. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 05/18/2015. (nd) (Entered: 05/19/2015)
06/02/2015	<a href="#">555</a>	ORDER of USCA (Certified Copy) as to <a href="#">553</a> Notice of Appeal filed by Department of Defense, Department of the Army. USCA Case Number 15 1606. Appellants move for a stay pending appeal. It is hereby ORDERED that Appellants' motion is GRANTED and the district court's order is STAYED for the duration of the appeal. <i>See In re World Trade Ctr. Disaster Site Litig.</i> , 503 F.3d 167, 170 (2d Cir. 2007). It is further ORDERED that the parties comply with the following expedited briefing schedule: Appellants' opening brief must be filed by July 2, 2015; Appellees' responding brief must be filed within 30 days after the filing of Appellants' opening brief; and Appellants' reply brief must be filed within 14 days after the filing of Appellees' responding brief. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 06/02/2015. (nd) (Entered: 06/02/2015)
07/22/2015	<a href="#">556</a>	ORDER terminating <a href="#">528</a> Motion for Summary Judgment; granting <a href="#">534</a> Motion to Withdraw as Attorney: The motion by Marcellene Elizabeth Hearn to withdraw as counsel is granted. The Clerk shall mark the following motions terminated: Doc. Nos. 528, 534. Attorney Marcellene Elizabeth Hearn terminated. (Signed by Judge Alvin K. Hellerstein on 7/21/2015) (tn) (Entered: 07/22/2015)
01/06/2016	<a href="#">557</a>	MANDATE of USCA (Certified Copy) as to <a href="#">553</a> Notice of Appeal filed by Department of Defense, Department of the Army USCA Case Number 15 1606. The Department of Defense seeks to remand this appeal on the basis of changed circumstances namely that the 2012 Certification, on which the present appeal is based, has been superseded by a 2015 Certification pursuant to the Protected National Security Documents Act of 2009 ("PNSDA"). The 2015 Certification does not bear upon every issue raised on appeal; Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 1/6/2016. (tp) (Entered: 01/06/2016)
01/06/2016		Transmission of USCA Mandate/Order to the District Judge re: <a href="#">557</a> USCA Mandate. (tp) (Entered: 01/06/2016)
01/06/2016	<a href="#">558</a>	CORRECTED MANDATE of USCA (Certified Copy) as to <a href="#">553</a> Notice of Appeal filed by Department of Defense, Department of the Army. USCA Case Number 15 1606. The Department of Defense seeks to remand this appeal on the basis of changed circumstances namely that the 2012 Certification, on which the present appeal is based, has been superseded by a 2015 Certification pursuant to the Protected National Security Documents Act of 2009 ("PNSDA"). The



		2015 Certification does not bear upon every issue raised on appeal; but it has the potential to obviate many of the issues cited by the district court in granting relief. It is therefore prudent to allow the district court to consider the 2015 Certification before we render any decision. Accordingly, the motion to remand is GRANTED and the judgment of the district court is VACATED and REMANDED so that the district court may consider the 2015 Certification.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 01/06/2016. (nd) (Entered: 01/07/2016)
01/22/2016	<a href="#">559</a>	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated January 22, 2016 re: Briefing Schedule. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Lustberg, Lawrence) (Entered: 01/22/2016)
01/28/2016	<a href="#">560</a>	LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated January 28, 2016 re: Anticipated Release of Photographs. Document filed by Department of Defense, Department of the Army.(La Morte, Tara) (Entered: 01/28/2016)
02/03/2016	<a href="#">561</a>	MEMO ENDORSEMENT on re: <a href="#">559</a> Letter, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc. ENDORSEMENT: The schedule is accepted. (Brief due by 2/19/2016. Reply to Response to Brief due by 3/25/2016. Responses to Brief due by 3/11/2016) (Signed by Judge Alvin K. Hellerstein on 2/3/2016) (tn) (Entered: 02/03/2016)
02/17/2016	<a href="#">562</a>	LETTER MOTION for Extension of Time addressed to Judge Alvin K. Hellerstein dated 02/17/2016. Document filed by Department of Defense.(Oestericher, Jeffrey) (Entered: 02/17/2016)
02/18/2016	<a href="#">563</a>	ORDER granting <a href="#">562</a> Letter Motion for Extension of Time. So ordered. Brief due by 2/26/2016. Reply to Response to Brief due by 4/1/2016. Responses to Brief due by 3/18/2016. (Signed by Judge Alvin K. Hellerstein on 2/17/2016) (lmb) (Entered: 02/18/2016)
02/26/2016	<a href="#">564</a>	EIGHTH MOTION for Summary Judgment . Document filed by Department of Defense, Department of the Army. Responses due by 3/18/2016(La Morte, Tara) (Entered: 02/26/2016)
02/26/2016	<a href="#">565</a>	MEMORANDUM OF LAW in Support re: <a href="#">564</a> EIGHTH MOTION for Summary Judgment . . Document filed by Department of Defense, Department of the Army. (La Morte, Tara) (Entered: 02/26/2016)
02/26/2016	<a href="#">566</a>	DECLARATION of Liam M. Apostol in Support re: <a href="#">564</a> EIGHTH MOTION for Summary Judgment .. Document filed by Department of Defense, Department of the Army. (Attachments: # <a href="#">1</a> Exhibit 1 (Carter Certification))(La Morte, Tara) (Entered: 02/26/2016)
02/26/2016	<a href="#">567</a>	DECLARATION of Tara M. La Morte in Support re: <a href="#">564</a> EIGHTH MOTION for Summary Judgment .. Document filed by Department of Defense, Department of the Army. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D)(La Morte, Tara) (Entered: 02/26/2016)
03/17/2016	<a href="#">568</a>	CROSS MOTION for Summary Judgment . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. Responses due by 4/1/2016(Lustberg, Lawrence) (Entered: 03/17/2016)
03/17/2016	<a href="#">569</a>	<b>FILING ERROR - DEFICIENT DOCKET ENTRY - MEMORANDUM OF LAW in Opposition re: <a href="#">564</a> EIGHTH MOTION for Summary Judgment . and in Support of Cross Motion for Summary Judgment <a href="#">568</a> .</b> Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) Modified on 3/18/2016 (db). (Entered: 03/17/2016)
03/18/2016		<b>***NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Notice to Attorney Lawrence S. Lustberg to RE-FILE Document <a href="#">569</a> Memorandum of Law in Opposition to Motion. ERROR(S): No signature or s/. (db)</b> (Entered: 03/18/2016)
03/18/2016	<a href="#">570</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">564</a> EIGHTH MOTION for Summary Judgment . and in Support of <a href="#">568</a> Cross Motion for Summary Judgment. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) (Entered: 03/18/2016)
04/01/2016	<a href="#">571</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">564</a> EIGHTH MOTION for Summary Judgment . and Opposition to Plaintiffs' cross motion for summary judgment. Document filed by Department of Defense, Department of the Army. (La Morte, Tara) (Entered: 04/01/2016)
04/06/2016	<a href="#">572</a>	ENDORSED LETTER addressed to Concerned Parties from Brigitte Jones dated 4/6/2016 re: You are hereby notified that you are required to appear for an oral argument on 5/11/2016 at 12:00 p.m. ENDORSEMENT: So Ordered. (Oral Argument set for 5/11/2016 at 12:00 PM in Courtroom 14D, 500 Pearl Street, New York, NY 10007 before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 4/6/2016) (tn) (Entered: 04/06/2016)
04/15/2016	<a href="#">573</a>	REPLY MEMORANDUM OF LAW in Support re: <a href="#">568</a> CROSS MOTION for Summary Judgment . . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace. (Lustberg, Lawrence) (Entered: 04/15/2016)
05/11/2016		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Oral Argument held on 5/11/2016 re: <a href="#">564</a> EIGHTH MOTION for Summary Judgment . filed by Department of Defense, Department of the Army. (Court Reporter Raquel Robles) (Jones, Brigitte) (Entered: 05/11/2016)
06/14/2016	<a href="#">574</a>	LETTER addressed to Judge Alvin K. Hellerstein from Ana Munoz dated 06/14/16 re: Withdrawing Appearance of

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		Counsel. Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Munoz, Ana) (Entered: 06/14/2016)
06/16/2016	<a href="#">575</a>	TRANSCRIPT of Proceedings re: Conference held on 5/11/2016 before Judge Alvin K. Hellerstein. Court Reporter/Transcriber: Raquel Robles, (212) 805 0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/11/2016. Redacted Transcript Deadline set for 7/21/2016. Release of Transcript Restriction set for 9/19/2016.(Grant, Patricia) (Entered: 06/16/2016)
06/16/2016	<a href="#">576</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a Conference proceeding held on 05/11/2016 has been filed by the court reporter/transcriber in the above captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(Grant, Patricia) (Entered: 06/16/2016)
06/16/2016	<a href="#">577</a>	MEMO ENDORSEMENT on re: <a href="#">574</a> Letter, filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc. ENDORSEMENT: So ordered. Attorney Ana Isabel Munoz terminated. (Signed by Judge Alvin K. Hellerstein on 6/16/2016) (tn) (Entered: 06/16/2016)
08/31/2016	<a href="#">578</a>	MOTION for Jameel Jaffer to Withdraw as Attorney . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Jaffer, Jameel) (Entered: 08/31/2016)
09/13/2016	<a href="#">579</a>	MEMO ENDORSEMENT granting <a href="#">578</a> Motion to Withdraw as Attorney. ENDORSEMENT: So Ordered. Attorney Jameel Jaffer terminated. (Signed by Judge Alvin K. Hellerstein on 9/13/2016) (tn) (Entered: 09/13/2016)
01/06/2017	<a href="#">580</a>	NOTICE OF APPEARANCE by Dror Ladin on behalf of American Civil Liberties Union. (Ladin, Dror) (Entered: 01/06/2017)
01/06/2017	<a href="#">581</a>	MOTION for Alexander Abdo to Withdraw as Attorney . Document filed by American Civil Liberties Union, Center for Constitutional Rights, Inc., Physicians for Human Rights, Veterans for Common Sense, Veterans for Peace.(Abdo, Alexander) (Entered: 01/06/2017)
01/18/2017	<a href="#">582</a>	ORDER AND OPINION GRANTING SUMMARY JUDGMENT TO PLAINTIFF #107007 re: <a href="#">568</a> CROSS MOTION for Summary Judgment filed by Veterans for Peace, Veterans for Common Sense, Physicians for Human Rights, American Civil Liberties Union, Center for Constitutional Rights, Inc., <a href="#">564</a> EIGHTH MOTION for Summary Judgment filed by Department of Defense, Department of the Army. For the foregoing reasons, plaintiffs' motion is granted and the Government's motion is denied. (Signed by Judge Alvin K. Hellerstein on 1/18/2017) (cla) Modified on 1/27/2017 (jwh). (Entered: 01/18/2017)
01/18/2017		Transmission to Judgments and Orders Clerk. Transmitted re: <a href="#">582</a> Memorandum & Opinion, to the Judgments and Orders Clerk. (cla) (Entered: 01/18/2017)
01/19/2017	<a href="#">583</a>	CLERK'S JUDGMENT: It is, ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order and Opinion dated January 18, 2017, Plaintiffs' motion is granted and the Government's motion is denied. (Signed by Clerk of Court Ruby Krajick on 1/19/2017) (Attachments: # <a href="#">1</a> Right to Appeal, # <a href="#">2</a> Right to Appeal)(km) (Entered: 01/19/2017)
01/19/2017		Terminate Transcript Deadlines (km) (Entered: 01/19/2017)
03/17/2017	<a href="#">584</a>	NOTICE OF APPEAL from <a href="#">583</a> Clerk's Judgment,. Document filed by Department of Defense, Department of the Army. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Torrance, Benjamin) (Entered: 03/17/2017)
03/17/2017		Appeal Fee Not Required for <a href="#">584</a> Notice of Appeal. Appeal filed by U.S. Government. (tp) (Entered: 03/20/2017)
03/20/2017		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">584</a> Notice of Appeal. (tp) (Entered: 03/20/2017)
03/20/2017		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <a href="#">584</a> Notice of Appeal filed by Department of Defense, Department of the Army were transmitted to the U.S. Court of Appeals. (tp) (Entered: 03/20/2017)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

.....x  
AMERICAN CIVIL LIBERTIES UNION,  
CENTER FOR CONSTITUTIONAL RIGHTS,  
PHYSICIANS FOR HUMAN RIGHTS,  
VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

ECF CASE

Plaintiffs,

No. 04 Civ. 4151 (AKH)

v.

DEPARTMENT OF DEFENSE, AND ITS  
COMPONENTS DEPARTMENT OF ARMY,  
DEPARTMENT OF NAVY, DEPARTMENT  
OF AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND  
SECURITY; DEPARTMENT OF JUSTICE,  
AND ITS COMPONENTS CIVIL RIGHTS  
DIVISION, CRIMINAL DIVISION, OFFICE  
OF INFORMATION AND PRIVACY, OFFICE  
OF INTELLIGENCE POLICY AND REVIEW,  
FEDERAL BUREAU OF INVESTIGATION;  
DEPARTMENT OF STATE; AND CENTRAL  
INTELLIGENCE AGENCY.

Defendants.  
.....x

**DECLARATION OF RICHARD B. MYERS**

Richard B. Myers, pursuant to 28 U.S.C. sec. 1746, declares as follows:

1. I am the Chairman of the Joint Chiefs of Staff. I serve as the senior military advisor to the President of the United States, the Secretary of Defense, and the National Security Council. I am the highest ranking uniformed officer in the United States Armed Forces. In performing my duties, I routinely confer with and obtain advice from combatant commanders regarding the operational requirements of their commands; I evaluate and synthesize this information; I advise and make recommendations to the Secretary of Defense with respect to these requirements; and, as appropriate, I

communicate the combatant commands' requirements to other elements of the Department of Defense.

2. Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with this civil action and with Plaintiffs' requests for information under the Freedom of Information Act. Further, I have reviewed the 87 photographic and video images that are identified in paragraph 6 of the Third Declaration of Philip J. McGuire (collectively referred to as the "responsive Darby Photos"). For the reasons set forth in this declaration, I have concluded that the official release of the images further identified below, even if redacted to obscure identifying information and, where applicable, the genitalia of those depicted, could reasonably be expected to:

- a. Endanger the lives and physical safety of the soldiers, sailors, airmen, and marines in the United States Armed Forces presently serving in Iraq and Afghanistan, as well as other U.S. officials, Coalition Forces allied with the United States, and contractors serving with these forces;
- b. Endanger the lives and physical safety of Iraqi civilians at large, and police and military personnel of the democratic Iraqi Transitional Government working in coordination with the United States and Coalition Forces in support of Operation IRAQI FREEDOM;
- c. Endanger the lives and physical safety of Afghani civilians at large, and police and military personnel of the Government of Afghanistan working in coordination with the United States and Coalition Forces operating in support of Operation ENDURING FREEDOM, NATO-led operations, and contractors serving with these forces;

- d. Aid the recruitment efforts and other activities of insurgent elements; weaken the new democratic governments of Iraq and Afghanistan, and add radical pressures on several of our regional allies and friends; and
- e. Increase the likelihood of violence against United States interests, personnel, and citizens worldwide.

### THE BASES FOR MY CONCLUSIONS

3. My conclusions are based upon my years of service and experience in the United States military: the assessments and evaluations of the U.S. Central Commander, General John P. Abizaid, and his immediate subordinate commander of the Multi-National Forces-Iraq, General George Casey; and intelligence reports and the assessments of Department of Defense subject-matter experts on the Middle-Eastern region, Arab culture, and the tenets of the Islamic religion. In formulating the advice I provide to the President, the Secretary of Defense, and the National Security Council in the ordinary course of my duties, I routinely rely on the views of our combat commanders, intelligence synthesis and reports, and the assessments of subject matter experts. In formulating my conclusions concerning the Darby Photos, I have used the same approach, types of resources, information, and experts. In particular:

- a. I have served in the United States Armed Forces for 40 years at various levels of command and staff. I have served as the Chairman of the Joint Chiefs of Staff since October 1, 2001. I served as the Vice-Chairman from March 2000 through September 2001. I have been the President's principal military advisor since shortly after the attacks on the World Trade Center and the Pentagon, including throughout the inception, planning, and execution of Operation ENDURING

FREEDOM and Operation IRAQI FREEDOM. I have intimate, extensive knowledge of our military forces and their capabilities, as well as of the conventional and unconventional forces and capabilities of the enemies arrayed against us. I daily receive and review intelligence analyses of current regional conditions, acute situations, and trends in operations and conditions relating to Operation ENDURING FREEDOM and Operation IRAQI FREEDOM from the Joint Staff, the Department of Defense, as well as from other intelligence sources within the Executive Branch. I routinely travel to the countries within the U.S. Central Command critical to these ongoing missions. I meet, receive information from, and provide information to, the senior political, civilian, and military leaders of Iraq, Afghanistan, and our other regional allies. Our senior field commanders brief me, and I routinely inspect the environment, conditions, and equipment of our soldiers, sailors, airmen, and marines in the combat theaters of operation.

c. With respect to this matter, I solicited the assessments and recommendations of the U.S. Central Commander, General John P. Abizaid, and the Multi-National Forces-Iraq Commander, General George Casey concerning their views of the military implications of release of the responsive Darby Photos. Both of them, by dint of their positions and responsibilities, have highly informed opinions that I have considered in this matter. General Abizaid is constantly engaged with senior political and civic leaders in the region. Moreover, General Abizaid has specialized knowledge of the Middle East: he is fluent in the Arabic language; he holds a Masters Degree in Middle Eastern Studies from Harvard University; he

was a Hoover Institution, Stanford University Fellow studying Middle Eastern affairs; and he was an Olmsted Scholar at the University of Jordan at Amman. Before his service as the Commander, U.S. Central Command, General Abizaid served under General Tommy Franks as his Deputy Commander (Forward) during Operation IRAQI FREEDOM. After the first Gulf War, he served in the Kurdish region of northern Iraq in Operation NORTHERN WATCH. During the course of his military career, he has served in other positions in the Middle East as well as in positions involving ethnic Muslim minorities in the Balkans. His staff assignments have included tours with the United Nations as operations officer for the Observer Group Lebanon, and he has also served on the Joint Staff as the Director of Strategic Plans and Policy.

d. As the Commander of Multi-National Forces – Iraq, General George Casey is constantly engaged with the senior political and civic leaders in Iraq. He travels extensively throughout the country, and regularly confers with commanders and service personnel at all levels of command and operations. In addition to his numerous Army command assignments, General Casey most recently served as the Vice-Chief of Staff of the Army; immediately before that he served under me, first as the Director of Strategic Plans and Policy, and then as the Director of the Joint Staff. His graduate and post-graduate degrees are in International Relations. General Casey has also served as a Senior Fellow on The Atlantic Council.

e. Both General Abizaid and General Casey agree with and support my conclusions.

f. As I indicated above, I have also considered and relied upon the analysis and assessments of DOD resident subject-matter experts on the Middle-Eastern region, the Arab culture, and the tenets of the Islamic religion.

**THE STATUS OF OPERATION ENDURING FREEDOM AND  
OPERATION IRAQI FREEDOM**

4. Following the attacks on the United States of September 11, 2001, the United States military, with the support of a worldwide coalition, launched Operation ENDURING FREEDOM to drive the oppressive Taliban regime – which provided comfort and support to al-Qaeda terrorists – from Afghanistan. As a result of that successful effort, the Taliban was removed from power, and on October 9, 2004, the Afghan people for the first time ever selected their head of state, the president of Afghanistan, by democratic vote. Similarly, Operation IRAQI FREEDOM was launched, again with the support of a worldwide coalition, to remove the dictatorial and murderous regime of Saddam Hussein from power, and succeeded in toppling that dictator and bringing freedom to Iraq. Following a brief period when Iraq was led by a Coalition Provisional Authority, sovereignty of Iraq was transferred to an interim government, and democratically elected representatives of the Iraqi people are in the process of completing work on a national constitution. There is, however, more work to do. Insurgent elements in both Afghanistan and Iraq continue to attack the process of democratic transition in those countries by mounting violent and deadly assaults against the multinational forces that remain posted in the region in order to protect and defend those countries as they take their steps toward freedom. As part of the multinational commitment to strengthening and defending these emerging democracies, more than 19,000 U.S. troops



remain on the ground in Afghanistan and over 140,000 U.S. troops are part of the ongoing mission in Iraq.

5. The situation on the ground in Iraq is dynamic and dangerous, in Baghdad and several other parts of the country. It changes from day to day, and it varies from region to region. With that in mind (and the caveat that numbers alone do not tell the complete story), I offer the following observations to provide the Court with some in-country context for the conclusion that official disclosure of the responsive Darby Photos described further below reasonably can be expected to endanger, in wartime, the lives and physical safety of U.S. military and other personnel, as well as the general public in Iraq and Afghanistan and elsewhere.

6. As General Abizaid testified to the Senate Armed Services Committee on June 23, 2005, the overall strength of the insurgency is about the same as it was six months ago, although he noted his belief that "there are more foreign fighters coming into Iraq than there were six months ago." Current estimates of the number of insurgents are in the range of 16,000 with perhaps 1,000 of that number being foreign fighters.

7. The number of insurgent attacks per day is approximately 70. As I have publicly stated, our assessments indicate that the lethality of the attacks is on average increasing.

8. Among the goals of the insurgency are to use violence against innocent civilians to undercut the mission of the U.S. and Coalition forces, as well as the Iraqi Transitional Government, and to stop the transition to democracy in that country. The insurgents will use any means necessary to incite violence and, specifically, will focus on perceived U.S. or Coalition mistreatment of Iraqi civilians and detainees as a propaganda and recruiting tool to aid their cause.

- a. Thus, for example, we have documented situations in which insurgents have falsely claimed that U.S. actions in Iraq, rather than their own terrorist attacks, have caused death and suffering. One organization, the Global Islamic Media Front, specializes in producing flash videos which typically feature dozens of images of women and children whose suffering is attributed to U.S. actions in Iraq as opposed to the acts of sabotage and violence perpetrated by the insurgents.
- b. Similarly, the insurgents rely on doctored photos and images to support their calls to violence. Last year DOD experts noted doctored images and videos that purported to document the rape of Iraqi women by U.S. soldiers – but which actually originated on a Hungarian pornography site – and that were distributed and presented on pro-Islamist and Arabic news web sites as actual examples of U.S. “barbarism.” In conducting Internet discussions regarding these images/videos on her websites, Iraq Patrol and Iraq Tunnel, Iraqi novelist and Middle East expert, Buthaina Al-Nasiri, noted, “You cannot imagine the kind of angry messages I receive every day from young Arab men vowing to avenge the Iraqi girls. . . .”
- c. Specific references to the so-called rape photos surfaced in subsequent Muslim sermons throughout the Middle East along with calls for retaliatory violence. For example, in response to similarly doctored rape images, purporting to depict the alleged rape of three Iraqi women at British-run prisons in Iraq, Sheik Abdul-Sattar al-Bahadli of Basra called for Jihad and offered \$350 for anyone capturing a British soldier, \$150 for killing one, and stated that “Any Iraqi who takes a female soldier (foreign) can keep her as a slave or gift to himself.”

d. We have noted other instances of insurgent attacks after the disclosure of images depicting alleged abuse of detainees. On January 21, 2005, three days after 22 photos of detainees in British custody were made public, an Iraqi insurgent suicide car bomber drove his vehicle toward the gate of a British base in southern Iraq. His vehicle detonated just as it was intercepted before reaching the gate, but the explosion still resulted in numerous, very serious British injuries. Al Qaeda leader Abu Musab al-Zarqawi described the attack as a "response to the harm inflicted by British occupation forces on our brothers in prison."

9. [SEALED] [REDACTED] documented near-term increases in the assassination of Iraqi government officials (52 in the three-month period ending June 27, 2005), as well as a recent uptick in insurgent attacks on senior diplomatic officials from regional neighbors of Iraq: the Egyptian envoy was abducted on July 4, 2005, and murdered; and, in separate incidents, the Bahrainian and Pakistani ambassadors' vehicle convoys were attacked on July 6, 2005 (the Bahrainian ambassador was wounded in the hand by automatic weapons fire; the Pakistani ambassador was uninjured, but has been ordered by his government out of the country as a temporary security measure).

10. While I believe that the overall trends in Iraq indicate improvement, attacks on the economic infrastructure in Iraq remain a constant problem, are significantly difficult to defend against (because of generally decrepit conditions and the nature of defending large facilities in diverse geographical locations), and present acute hardships, particularly to Baghdad residents during the summer season. Water, electrical, and oil infrastructure are the main insurgent targets.

11. The situation on the ground in Afghanistan also remains volatile, particularly as the Taliban-led insurgency attempts to derail the political process by increasing attacks in the run-up to the September 18<sup>th</sup> National Assembly elections. Violence has steadily risen since May, and levels of Taliban, al-Qaida, and Hezb-e Islami Gulbuddin (HIG) attacks against our military forces in June were the second highest in a single month since the Taliban fell in late 2001.

12. [SEALED]

**Redacted**

13. Insurgents in Afghanistan have a relatively sophisticated and aggressive information operations campaign. Taliban spokesmen respond quickly to claim credit when insurgents conduct successful attacks against Coalition or Afghan forces, and even claim tactical successes for incidents not related to the insurgency. The Taliban are also quick to spread disinformation about culturally sensitive issues such as the Coalition treatment of Afghan women as a means of turning public opinion against the United States and other Western countries.

14. While the Taliban is struggling to maintain popular support among Afghans, there are indications that their aggressive information operations campaign, combined with growing discontent with the Afghan government, could be fueling localized dissatisfaction with the continuing presence of Coalition and NATO forces. For example, the Taliban were quick to capitalize on the May 11-14 protests against the alleged desecration of the Koran at Guantanamo Bay (discussed in more detail below) and described the protests as, "...a firm reaction of the people of Afghanistan against the presence of U.S. forces ...and inhumane treatment with prisoners at detention centers .... showing disrespect to the Muslims' faith" in a 13 May press statement. Protests, some of which turned violent and deadly, occurred in 14 of the 34 provinces.

**RIOTING AND VIOLENCE FOLLOWING THE NEWSWEEK REPORT OF ALLEGED U.S. DESECRATIONS OF THE KORAN AT GUANTANAMO BAY**

15. On April 30, 2005, Newsweek reported that an unnamed U.S. official had seen a government report documenting desecration of the Koran at the U.S. facility at Guantanamo Bay, Cuba. On May 16, 2005, Newsweek retracted a statement in the article that the abuse had been uncovered in an "internal military investigation" after its source was unable to confirm where he had seen the purported information. Newsweek also offered further qualifications on the story in its May 23, 2005, issue.

16. The Koran's alleged desecration, as reported by Newsweek, was perceived as such an affront to the Islamic faith that massive anti-U.S. demonstrations quickly erupted in the Palestinian territories, Egypt, Sudan, Bangladesh, Pakistan, and Indonesia. Our intelligence assessments indicate that the volatile public sentiments in these Muslim countries were exploited by organized, anti-American extremists who succeeded in fomenting violent and deadly demonstrations.

17. In Afghanistan, in particular, where over 19,000 U.S. troops are currently serving in Operation ENDURING FREEDOM, violence erupted as a result of the Newsweek report. Demonstrations began in the eastern provinces and spread to the capital, Kabul. The United Nations, as a precautionary measure, withdrew its entire foreign staff from Jalalabad, where two of its guesthouses were attacked, government buildings and shops were targeted, and the offices of two international aid groups were destroyed. At least 17 deaths in Afghanistan were attributed to the reaction to the Koran story.

18. [SEALED] Despite Newsweek's published retraction, press reports [REDACTED] [REDACTED] **Redacted** [REDACTED] indicate that Muslims believe that U.S. personnel continue to desecrate the Koran in an effort to humiliate Muslims. For example, Al-Basaa'ir, the website of the Iraqi Sunni Clergymen Council, asserts that desecration of the Koran is a daily occurrence in Iraq under U.S. occupation and posted numerous photos of another alleged such incident. According to the website: "To humiliate the Koran in Iraq is a well-known tactic of the occupation and allied forces. The Koran has been desecrated by the Crusaders and the Jews. The latest incident of this happened when American soldiers raided the Al-Quds Mosque in . . . Al-Ramadi. . . The soldiers searched the entire mosque, tore the Koran, and beat the worshippers during the morning prayers."

19. The riots and violence that followed the Newsweek story had a significant impact on U.S. Central Command operations and intelligence assessments of conditions throughout both combat theaters, as well as regionally and beyond. Our intelligence and operations analysts evaluated the Koran incident in order to provide assessments and "lessons-learned" both to the combatant commanders and the Department of Defense. While I received and reviewed these assessments, my attention was first brought fully to

hear in the context of this case on June 17, 2005. On that day I was informed that disclosure of the Darby Photos could occur as early as June 30, 2005. In light of the nature of the photos, and the riots and violence that occurred after the Newsweek article, I contacted General Abizaid (who in turn contacted General Casey), apprised him of the situation, and asked for General Abizaid's military assessment of the implications of the release of the Darby Photos. General Abizaid and General Casey provided their assessments to me on June 20, 2005. They agreed with my determination that disclosure of the Darby Photos created the significant risks discussed in this declaration.

**(SEALED)THE REDACTED RESPONSIVE DARBY PHOTOS GRAPHICALLY DEPICT DETAINEE ABUSE AND MISTREATMENT**

20. [SEALED] I have personally reviewed the 87 responsive photographic and 4 video images that are identified in paragraph 6 of the Third Declaration of Philip J. McGuire.

[SEALED]

Redacted

21. [SEALED]

Redacted

22. [SEALED]

Redacted

The Department of Defense continues to believe that all of the Darby Photos are subject to Exemptions 6 and 7c

Redacted

**JA-75**

**Redacted**

23. [SEALED]

[SEALED]

24. [SEALED]



[SEALED] **CONCLUSIONS AFTER REVIEWING THE RESPONSIVE DARBY**

**PHOTOS**

25. [SEALED] While I have said this previously in countless forums, I condemn in the strongest terms the misconduct and abuse depicted in these images. It was illegal, immoral, and contrary to American values and character. The Department of Defense has spared no effort and will continue to press the investigation of, and full accountability for, these criminal acts. Based on my review, I believe that official release of the responsive Darby Photos described in paragraphs 21-24 will pose a clear and grave risk of inciting violence and riots against American troops and coalition forces. I also believe that release of the responsive Darby Photos will expose innocent Iraqi, Afghani, and American civilians to harm as a result of the insurgency's reaction, which will likely involve violence and rioting. It is probable that Al-Qaeda and other groups will seize upon these images and videos as grist for their propaganda mill which, will result in, besides violent attacks, increased terrorist recruitment, continued financial support, and exacerbation of tensions between the Iraqi and Afghani populaces and U.S. and Coalition Forces.

26. [SEALED] The recent vitriolic and violent reaction to Newsweek's Koran report described above – even following its retraction – made it clear that U.S. and allied troops and personnel and civilians in the Middle East will be subject to a likely, serious, and grave risk if the responsive Darby Photos described in paragraphs 21-24 are publicly released. Release of these images will be portrayed as part and parcel of the alleged, continuing effort of the United States to humiliate Muslims and, given the patterns of

violence observed there, will be used by the insurgents as propaganda to increase calls for violence against U.S. and Coalition personnel. I believe that if the responsive Darby Photos are released, riots, violence, and attacks by insurgents will result.

27. [SEALED]

**Redacted**

[SEALED]

**Redacted**

28. [SEALED]

**Redacted**

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2A separate addendum is attached that delineates the current status of disciplinary actions taken against those personnel who were involved in the abuse and misconduct depicted in the Darby Photos.

**JA-78**

**Redacted**

29. [SEALED]

**Redacted**

30. [SEALED]

**Redacted**

**JA-79**

**Redacted**

31. [SEALED]

**Redacted**

32. [SEALED]

**Redacted**

**Redacted**

33. [SEALED]

**Redacted**

According to Dr. Akbar Ahmed, the Chair of Islamic Studies and Professor of International Relations at American University, former High Commissioner of Pakistan to Great Britain, and advisor to Prince Charles, the release of genuine photos of detainee abuse would constitute a "recruiting poster" to incite radicals to attack the West.

[SEALED] Redaction of the Responsive Darby Photos Does Not Alter These Conclusions

34. [SEALED] Redaction of the responsive Darby Photos to obscure individuals' faces and identifying information and, where necessary, genitalia, does not change my opinion. Release of the photographs and videos, even in redacted form, will very likely lead to riots and violence across the Middle East, posing grave risk to both military forces and civilians.

35. [SEALED] This is because the privacy concerns of the detainees are separate and distinct from the inflammatory nature and offensiveness of the conduct depicted in the responsive Darby Photos— and thus the risk of harm to our personnel — which remains apparent despite redaction. Even with the images redacted, the abuses will be apparent. The official release of these graphic photos and videos depicting this type of behavior and

abuse by U.S. military personnel will very likely incite violence and result in casualties, and redaction of the photographs and videos will not alleviate or lessen this risk.

[SEALED]

**Redacted**

36. [SEALED]

**Redacted**

Redacted

[SEALED]

37. [SEALED]

Redacted

38. As an initial matter, the photographs that were previously leaked were not officially released. An official release by the United States Government lends an imprimatur – an official patina – that has never been attached to these photos.<sup>3</sup> As described above, many individuals in the Middle East will not understand that this official release is not an intentional effort to further ridicule and humiliate the individuals depicted, their culture, or their religion.

39. Before the Newsweek report of alleged Koran desecration, similar reports had been published by mainstream media publications. In particular, several media outlets previously reported that a Koran had allegedly been flushed down a toilet. Yet it was not until the Newsweek report cited a Government source, who appeared to confirm the reports, that the allegations touched off riots and death abroad. Similarly, official release of the responsive Darby Photos by the United States Government (even if some of the images had been leaked before to the press by unofficial sources) is bound to have a much different and more serious effect, different in kind from the prior unofficial release.

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<sup>3</sup> The United States Government has not previously released the responsive photos to the general public, but, as required by law, has provided relevant photos to civilian and military defense counsel in military courts-martial proceedings. Those disclosures have been subject to the requirements and proscriptions of the Military Rules of Evidence, the Rules for Courts-Martial, the Military Rules of Professional Conduct, and applicable military precedent.

40. [SEALED]

**Redacted**

41. In many of the paragraphs of this Declaration, I have provided you my professional military assessments of country-specific, regional, and international conditions, and trends. These are based both on my own experience, the assessments of our commanders, and the evaluations of Department of Defense subject matter experts. This information is very sensitive, is not the type we would voluntarily disclose due to its national security and intelligence value, and its disclosure could potentially have adverse diplomatic implications. For those reasons, I respectfully request the Court seal the following paragraphs: 9, 12, 18, (the captions above and) 20-37, 40.

42. In some of the paragraphs of this Declaration, I provide descriptions of the records that are the subject of this litigation. The disclosure of the descriptions could reasonably be expected to endanger the lives and physical safety of persons described in paragraph 2. above. For that reason, I respectfully request the Court seal the following paragraphs: (the captions above paragraphs and) 21-24.



CONCLUSION

In light of the knowledge and information described herein, and given the provocative and offensive nature of the Darby Photos, I believe that the Darby Photos that I have identified in this declaration must be withheld in order to protect the lives of: members of the United States Armed Forces, forces operating in cooperation with the United States, and contractors operating with those forces; U.S. officials; Iraqi and Afghani police and military personnel working in coordination with our government and military forces; as well to protect against the increased likelihood of violence against U.S. interests, personnel, and citizens world-wide.

I declare under penalty of perjury that the foregoing is true and correct.

  
RICHARD B. MYERS

Date: Washington, D.C.  
July 21, 2005

**Addendum to the Declaration of Richard B. Myers :**

**Current Status of Criminal Actions Taken Against Personnel Involved  
in the Abuse and Misconduct Depicted in the Darby Photos<sup>1</sup>**

**COURT-MARTIAL CASES**

**GENERAL AND SPECIAL COURTS-MARTIAL**

1. **SSG Ivan Fredrick**, 372<sup>nd</sup> Military Police Company

**Status:** Convicted, General Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

As a guard at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SSG Frederick was the NCO in charge of the night shift when he conspired with several other guards to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. Abusive acts included male detainees naked in the presence of female Soldiers; female detainees exposing themselves to male Soldiers; detainees performing indecent acts with each other in the presence of Soldiers; and photographs of Soldiers physically assaulting detainees while these Soldiers posed for the camera. SSG Frederick organized many of the acts of abuse and appeared in many of the photographs.

On 21 October 2004, SSG Frederick pled guilty at a General Court-Martial in Baghdad, Iraq to Conspiracy, Maltreatment, Simple Battery, and Indecent Acts. He was sentenced by the Military Judge to Reduction to E-1, Total Forfeitures, Confinement for 10 years, and a Dishonorable Discharge. His sentence will be capped at 8 years.

2. **SGT Javal Davis**, 372 Military Police Company

**Status:** Convicted, General Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

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<sup>1</sup> This addendum does not list the numerous adverse administrative actions and non-judicial punishments of the superiors and staff officers in the chain of command of the personnel listed here, e.g., the Commander of the 800<sup>th</sup> Military Police Brigade, the Commander of the 205<sup>th</sup> Military Intelligence Brigade, among several others.

Guards at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq allegedly conspired to maltreat detainees at Abu Ghraib Prison and then photograph their misconduct. The abuse occurred in October and November 2003. SGT Davis was present on a night of detainee abuse and participated in the acts.

On 1 February 2005, SGT Davis pled guilty at a General Court-Martial at Fort Hood, Texas to Battery, Dereliction of Duty and False Official Statement. He was sentenced by a Court-Martial panel including enlisted members to Reduction to E-1, Confinement for 6 months and a Bad Conduct Discharge.

**3. SPC Charles Graner, Jr., 372d Military Police Company**

**Status:** Convicted, General Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

As a guard at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, CPL Graner conspired with several other guards to maltreat detainees at Abu Ghraib Prison and then photograph their misconduct. The abuse occurred in October and November 2003.

On 7 January 2005, SPC Graner was tried at a contested General Court-Martial at Fort Hood, Texas and found guilty of Conspiracy, Dereliction of Duty, Maltreatment, and Assault Consummated by Battery. He was sentenced by a 10 member Court-Martial panel including enlisted members to Reduction to E-1, Total Forfeitures, Confinement for 10 years, and a Dishonorable Discharge.

**4. SPC Sabrina Harman, 372nd Military Police Company**

**Status:** Convicted, General Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

As a guard at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SPC Harman allegedly conspired with several other guards, to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. SPC Harman engaged in several acts of abuse, took several photographs of the abuse, and appeared in several photographs.

On 13 May 2005, SPC Harman was convicted at a contested General Court-Martial at Fort Hood, Texas by a Court-Martial panel including enlisted members of several charges

including Assault and Maltreatment of detainees. She was sentenced to Reduction to E-1, Confinement for 6 months, and a Bad Conduct Discharge.

5. **SPC Roman Krol**, 325<sup>th</sup> Military Intelligence Battalion

**Status:** Convicted, General Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

Investigation at Abu Ghraib Prison in January 2004 revealed photographs of MP and MI Soldiers involved in abusive or degrading acts upon detainees. Investigation revealed several acts included two male detainees handcuffed together on the prison floor in front of other detainees. Investigation established that SPC Krol was present during the abuse and directed several abusive acts.

On 1 February 2005, SPC Krol pled guilty before a Military Judge to Conspiracy and Maltreatment. He was sentenced to Reduction to E-1, Confinement for 10 months, and a Bad Conduct Discharge.

6. **SPC Jeremy Sivits**, 372<sup>nd</sup> Military Police Company

**Status:** Convicted, Special Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

At the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SPC Sivits conspired with several other guards to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. SPC Sivits photographed many of the acts of abuse.

On 19 May 2004, SPC Sivits pled guilty at a Special Court-Martial in Baghdad, Iraq to Conspiracy, Dereliction of Duty and Maltreatment. He was sentenced by the Military Judge to Reduction to E-1, Confinement for 12 months, and a Bad Conduct Discharge.

7. **SPC Armin Cruz**, 325<sup>th</sup> Military Intelligence Battalion

**Status:** Convicted, Special Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

Investigation at Abu Ghraib Prison revealed photographs of MP and MI Soldiers involved in abusive or degrading acts upon detainees. Several acts included two male detainees handcuffed together on the prison floor in front of other detainees. Investigation established that SPC Cruz was present during this abuse and directed several abusive acts.

On 11 September 2004, SPC Cruz pled guilty at a Special Court-Martial in Baghdad, Iraq to Conspiracy and Maltreatment. He was sentenced by the Military Judge to Reduction to E-1, Confinement for 8 months, and a Bad Conduct Discharge.

8. PFC Lynddie England, 372<sup>nd</sup> Military Police Company

Status: Pending, General Court-Martial

Jurisdiction: III Corps, Fort Hood, Texas

Date of Incident: October - November 2003

As a Company clerk at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, PFC England allegedly conspired with several MP guards, to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. It is alleged that PFC England took many of the photos and posed in several.

On 3 May 2005, PFC England entered a guilty plea at Fort Hood, Texas. A mistrial was ordered by the Military Judge when the Guilty Plea could not be accepted after testimony by PVT Graner in the presentencing was inconsistent with PFC England's plea. PFC England's case is now pending consideration of referral to a new Court-Martial at Fort Hood. PFC England is presumed by law to be innocent of the charges against her. She has been and will be afforded all rights under the Uniform Code of Military Justice (UCMJ).

9. SGT Santos A. Cardona, 42<sup>nd</sup> Military Police Detachment

Status: Pending, General Court-Martial

Jurisdiction: Military District of Washington, Fort McNair

Date of Incident: November 2003 - January 2004

As a military dog handler at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SGT Cardona allegedly maltreated detainees through alleged inappropriate use of dogs to unlawfully threaten and harass the detainees.

Charges against SGT Cardona were preferred on 2 June 2005 at Fort McNair, Washington D.C. for Maltreatment, Conspiracy, Dereliction of Duty, Assault, and False Official Statement. SGT Cardona is pending a UCMJ Article 32 hearing. SGT Cardona is presumed by law to be innocent of the charges against him. He will be afforded all rights under the UCMJ.

10. SGT Michael Smith, 523rd Military Police Detachment

Status: Pending, General Court-Martial

Jurisdiction: Military District of Washington, Fort McNair

Date of Incident: November 2003 - January 2004

As a military dog handler at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SGT Smith allegedly maltreated detainees through alleged inappropriate use of dogs to unlawfully threaten and harass the detainees.

Charges against SGT Smith were preferred on 2 June 2005 at Fort McNair, Washington D.C. for Maltreatment, Conspiracy, Dereliction of Duty, Assault, False Official Statement, and Indecent Acts. SGT Smith is pending a UCMJ Article 32 hearing. SGT Smith is presumed by law to be innocent of the charges against him. He will be afforded all rights under the UCMJ.

**SUMMARY COURTS-MARTIAL**

The following case was tried by a Summary Court-Martial (SCM). The policy of the Department of Defense under the Freedom of Information Act is not to disclose publicly the names of individuals prosecuted at SCM.

11. [Redacted] 372d Military Police Company

[Redacted] engaged in acts of abuse of Iraqi detainees at Abu Ghraib Prison in Iraq.

On 30 Oct 04, she pleaded guilty at Summary Court-Martial to Dereliction of Duty. Charges of Maltreatment, Conspiracy and Indecent Acts were dismissed. She was sentenced to Reduction to E-2 and Forfeiture of 1/2 pay for one month. She was later discharged under Army Regulation 635-200, Chapter 14-12c for Commission of a Serious Offense. She received an Other than Honorable Discharge.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, CENTER FOR  
CONSTITUTIONAL RIGHTS, PHYSICIANS FOR HUMAN  
RIGHTS, VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, AND ITS COMPONENTS  
DEPARTMENT OF ARMY, DEPARTMENT OF NAVY,  
DEPARTMENT OF AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND SECURITY;  
DEPARTMENT OF JUSTICE, AND ITS COMPONENTS  
CIVIL RIGHTS DIVISION, CRIMINAL DIVISION, OFFICE  
OF INFORMATION AND PRIVACY, OFFICE OF  
INTELLIGENCE, POLICY AND REVIEW, FEDERAL  
BUREAU OF INVESTIGATION; DEPARTMENT OF STATE;  
AND CENTRAL INTELLIGENCE AGENCY,

Defendants.

CIVIL ACTION  
DOCKET NO. 04-CV-4151 (AKH)

**DECLARATION OF**  
**MICHAEL E. PHENEGER**

Michael E. Pheneger, pursuant to 28 U.S.C. sec. 1746, declares as follows:

1. I am a retired U. S. Army Colonel who served 30 years on active duty as a Military Intelligence Officer. While on active duty from 1963 to 1993, I held a wide variety of assignments including: Commander, U. S. Army Intelligence School (Fort Devens), Director of Intelligence (J2), U. S. Special Operations Command; Deputy Director of Intelligence (D/J2), U. S. Central Command; Commander, 470<sup>th</sup> MI Group (Panama); Director of Operations, 66<sup>th</sup> MI Brigade (Germany); and G2, Second Infantry Division (Korea). During assignments with USSOCOM and USCENTCOM, I routinely provided intelligence support to those combatant commanders. During my tenure with Central Command, I made frequent trips to the Middle East as part of a team conducting bi-lateral military planning with counterparts in Bahrain, Kuwait, and (less frequently) Saudi Arabia. For three years, I taught combat intelligence subjects at the U. S. Army Intelligence School, Fort Huachuca, AZ and participated in the development of Army intelligence doctrine.

2. While I do not have current access to classified information, I routinely consult a wide variety of published sources about the status of on-going military and nation building activities in Iraq and Afghanistan. These include reporting in major newspapers and studies prepared by the Center for Strategic and International Studies, the Brookings Institution, and GlobalSecurity.org. I comment on military operations for local media outlets in Tampa, Florida,

and occasionally on the FOX News Network. General Richard B. Myers and I were classmates at the U. S. Army War College, Class of 1981. I have the greatest personal and professional respect for General Myers and Generals Abizaid and Casey who contributed their insights to General Myers' Declaration.

3. I am an active member of the American Civil Liberties Union (ACLU) that is a plaintiff in this case. I represent Florida on the ACLU's national board of directors and serve as Treasurer of the Florida affiliate.

4. At the request of the plaintiffs, I reviewed the redacted versions of the Declarations of Richard B. Myers, Chairman of the Joint Chiefs of Staff, and Ronald Schlicher, former Deputy Assistant Secretary of State and Coordinator for Iraq in the Bureau of Near Eastern Affairs, pertaining to the official release to the plaintiffs of 87 photos and four tapes of Abu Ghraib prisoners under the Freedom of Information Act. In making the following comments, note that I had access only to the government's publicly filed summary judgment memorandum and supporting declarations. Some material was redacted. Redacted portions of the Declarations appeared to address specific aspects of the photos and tapes that General Myers and Mr. Schlicher believe would be viewed as inflammatory in the Islamic world.

5. In their Declarations, General Myers and Mr. Schlicher rightly condemn the misconduct and abuse depicted in the images, but they oppose the release of the 87 photos and four videotapes in the belief they would provoke reactions that could result in the death of U.S., allied, Iraqi, and Afghani military, diplomatic and contractor personnel and local civilians. They cite the ongoing insurgencies in Iraq and Afghanistan, the reaction of the "Arab street" to previously released photos, and the Muslim reaction to a Newsweek article on the alleged desecration of the Koran in support of their conclusions. Mr. Schlicher discusses the potential use of the images to buttress the claims of extremists and hostile commentators and to damage the foreign relations of the United States. I am a professional soldier now retired. I value the lives of our soldiers, marines, airmen and sailors as highly as General Myers. I would never seek to put them unnecessarily at risk. The same applies to the military personnel of our allies in the war on terror, contractors, and to the civilian population in areas where we are conducting military operations. However, I believe General Myers' and Mr. Schlicher's conclusions about the threat posed by the release of these photos and tapes are misleading.

6. The actual threat to the lives and physical security U.S., allied, Iraqi, and Afghani military, diplomatic and contractor personnel and local civilians is from ongoing insurgencies in Iraq and Afghanistan and the actions of terrorist organizations like Al-Qaeda. These insurgent and terrorist organizations are conducting effective, well-organized and well-financed campaigns to halt the democratization of Iraq and Afghanistan, undermine their current governments, and force U.S. Forces to leave the Middle East. During a May 12, 2005 press conference, General Myers noted that we are involved in a "very violent insurgency" against a "thinking and adapting adversary." He suggested the insurgency could last from three to nine years. According to General Myers, Iraqi insurgents conduct 70 attacks a day against U.S., allied, and Iraqi forces and civilians in an intense, sophisticated campaign to accomplish their political and military objectives. Attacks on Iraqi government personnel, foreign diplomats and infrastructure targets are increasing in frequency and severity. General Myers reports that Taliban elements are accelerating attacks in Afghanistan in an attempt to disrupt scheduled September elections. Our



enemies seek to prevent the United States from achieving its objectives in the Middle East. They do not need specific provocations to justify their actions.

7. In support of his conclusion that release of the photos and tapes could result in attacks, General Myers quotes Al Qaeda leader Abu Musab al-Zarqawi's claim that a particular insurgent attack responded to the release of photos of British abuse of detainees. However, in asserting that this attack responded to a specific provocation (i.e. – the photos of British abuse of detainees) I believe General Myers mistakes propaganda for motivation. It is painfully clear those insurgents in Iraq and Afghanistan and terrorist organizations like Al-Qaeda will continue their effort in pursuit of their political and military objectives as long as they have the will and resources to do so. They have a sophisticated ability to orchestrate their responses. Insurgents may publicly cite photos or alleged "provocations" to justify their actions, but that reflects propaganda, not cause and effect. I do not underestimate the propaganda impact of the release of additional photos of the degradation of Iraqi prisoners in U. S. custody, but the photos will not be the real cause of subsequent attacks. Insurgents average 70 attacks a day regardless of provocation as part of their effort to achieve specific objectives. The attacks will continue regardless of whether the photos and tapes are released.

8. In support of their conclusions, General Myers and Mr. Schlicher cite the widespread violent reaction in the Islamic world to the April 30, 2005, Newsweek report on the desecration of the Koran at the U.S. facility at Guantanamo Bay. Newsweek printed a retraction after its single source withdrew his claim. It was widely reported that story provoked widespread anti-U.S. demonstrations through out the Islamic world and that rioting in Afghanistan resulted in the death of 17 people. However, during a news conference on May 12, 2005, General Myers stated that "it's a judgment of our commander in Afghanistan, General Eikenberry, that in fact the violence that we saw in Jalalabad was not necessarily the result of the allegations about disrespect for the Koran . . . but more tied up in the political process and the reconciliation process that President Karzai and his Cabinet is conducting in Afghanistan. So that's – that was his judgment today in an after-action of that violence. He didn't – he thought it was not at all tied to the article in the magazine." See Transcript, Defense Department News Briefing, May 12, 2005, available at <http://www.dod.gov/transcripts/2005/tr20050512-secdef2761.html>. This illustrates the fallacy of asserting cause and effect relationships in this context. Notably there did not appear to be a violent reaction just a few weeks after the Newsweek report when the press reported the results of BG Jay Hood's inquiry that revealed five instances of mishandling of the Koran at Guantanamo Bay.

9. In discussing the effect of the 2004 publication of Abu Ghraib photos, the Myers and Schlicher declarations focused principally on the adverse public relations impact of the release. Neither has shown that publication of those photos resulted in loss of life. Mr. Schlicher did claim that the photos supported the belief of many Iraqis that U.S. abuses at Abu Ghraib "impugned the dignity and honor of Iraqis at the personal, familial and/or national scale." The photos certainly undermined Iraqi support for the United States and its allies. Conceivably, they may even have motivated some individuals to join the insurgents, but the same could be said of myriad articles that critically report on the war and controversial U.S. policies and practices. This does not mean that such articles should not be published. In a democracy, we make a societal judgment that the long-term benefits of openness and freedom of information outweigh the short-term costs that the dissemination of any particular piece of information may impose. The initial

publication of the Abu Ghraib photos damaged the image and credibility of the United States and raised questions in the Islamic world about the legitimacy of our objectives, but I have seen no convincing evidence that their publication caused loss of life. Our insurgent and terrorist enemies use daily violence to achieve their political, military and social objectives regardless of provocation.

10. General Myers' Declaration addresses insurgent use of "doctored photos and images to support their calls for violence." Disinformation is part of warfare, but the fact that false photographs are proliferating is no reason to suppress accurate ones. Our insurgent and terrorist enemies conduct sophisticated, aggressive information warfare. Unfortunately, publication of the Abu Ghraib photos, the release of thousands of pages of government documents concerning alleged torture of prisoners in U.S. custody, press statements by prisoners released from Guantanamo Bay, and media coverage of our government's decisions to depart from our own long-standing policies and practices regarding the detention and interrogation of prisoners have combined to lend credibility to false claims by our enemies. In departing from our principles, we foolishly risked undermining our efforts to bring democratic societies to the Middle East.

11. General Myers argues that an "official release" would lend "an imprimatur – an official patina – that has never been attached to these photos." I doubt his conclusion that these photos would be uniquely incendiary. If these photos are released, it will be clear to everyone that the government went to considerable effort to prevent it. If individuals in the Middle East conclude that the photos "ridicule and humiliate the individuals depicted, their culture or their religion", it will be because that is what the photos depict. That American soldiers committed such acts is to be deeply regretted.


12. The Declarations of General Myers and Mr. Schlicher are remarkable. Each asserts that photos and tapes of the abuse of detainees by U.S. military personnel is so potentially damaging that releasing them would undermine the war effort and result in the death of U.S. government and contractor personnel, our allies and innocent civilians. Publication of the first set of Abu Ghraib photos and the release of thousands of pages of government documents pertaining to the abuse of prisoners in our custody did damage our reputation and made suspect the credibility of our purpose in Islamic communities around the world. They may have aided insurgent and terrorist recruiting. It is a self-inflicted wound. The Declarations of General Myers nor Mr. Schlicher do not prove that the release of the photos and videos in question "could reasonably be expected to endanger the life or physical safety of any individual." They have shown that the release will damage our image and credibility and that they will be of significant propaganda value to our enemies in the information war for men's minds.

13. This is a difficult declaration for a patriot and a career soldier. I supported military action in Iraq until I became convinced that the Administration had failed to commit sufficient resources to ensure stability after the defeat of the Iraqi army and provide the security necessary to create a democratic government. I take each loss of American life seriously. I believe that the conclusions of men I respect are incorrect. The release of these photos will certainly harm the reputation of the Army in which it was my honor to serve and the nation that I love. However, I believe we need a thorough public examination of the implications and effects of the Administration's decision to abandon long-standing policies and principles that were

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adopted to safeguard our own military, ensure compliance to treaties and International Law, and ensure that our behavior adheres to the principles that made us great and honorable nation. This cannot occur unless the public is fully informed. The Administration has portrayed the degradation of prisoners at Abu Ghraib as the actions of a few rogue reservists. Unfortunately, there is significant evidence that the administration elected to change the rules and approve interrogation techniques that the Army had long prohibited. The first step to abandoning practices that are repugnant to our laws and national ideals is to bring them into the sunshine and assign accountability.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



MICHAEL E. PHENEGER, Colonel, U.S. Army  
(Retired)

Date: Tampa, Florida  
August 7, 2005

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

.....x  
AMERICAN CIVIL LIBERTIES UNION,  
CENTER FOR CONSTITUTIONAL RIGHTS,  
PHYSICIANS FOR HUMAN RIGHTS,  
VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

ECF CASE

Plaintiffs,

No. 04 Civ. 4151 (AKH)

v.

DEPARTMENT OF DEFENSE, AND ITS  
COMPONENTS DEPARTMENT OF ARMY,  
DEPARTMENT OF NAVY, DEPARTMENT  
OF AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND  
SECURITY; DEPARTMENT OF JUSTICE,  
AND ITS COMPONENTS CIVIL RIGHTS  
DIVISION, CRIMINAL DIVISION, OFFICE  
OF INFORMATION AND PRIVACY, OFFICE  
OF INTELLIGENCE POLICY AND REVIEW,  
FEDERAL BUREAU OF INVESTIGATION;  
DEPARTMENT OF STATE; AND CENTRAL  
INTELLIGENCE AGENCY,

Defendants.  
.....x

**SECOND AMENDED DECLARATION OF RICHARD B. MYERS**

Richard B. Myers, pursuant to 28 U.S.C. sec. 1746, declares as follows:

1. I am the Chairman of the Joint Chiefs of Staff. I serve as the senior military advisor to the President of the United States, the Secretary of Defense, and the National Security Council. I am the highest ranking uniformed officer in the United States Armed Forces. In performing my duties, I routinely confer with and obtain advice from combatant commanders regarding the operational requirements of their commands; I evaluate and synthesize this information; I advise and make recommendations to the Secretary of Defense with respect to these requirements; and, as appropriate, I

communicate the combatant commands' requirements to other elements of the Department of Defense.

2. Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with this civil action and with Plaintiffs' requests for information under the Freedom of Information Act. Further, I have reviewed the 87 photographic and video images that are identified in paragraph 6 of the Third Declaration of Philip J. McGuire (collectively referred to as the "responsive Darby Photos"). For the reasons set forth in this declaration, I have concluded that the official release of the images further identified below, even if redacted to obscure identifying information and, where applicable, the genitalia of those depicted, could reasonably be expected to:

- a. Endanger the lives and physical safety of the Soldiers, Sailors, Airmen, and Marines in the United States Armed Forces presently serving in Iraq and Afghanistan, as well as other U.S. officials, Coalition Forces allied with the United States, and contractors serving with these forces;
- b. Endanger the lives and physical safety of Iraqi civilians at large, and police and military personnel of the democratic Iraqi Transitional Government working in coordination with the United States and Coalition Forces in support of Operation IRAQI FREEDOM;
- c. Endanger the lives and physical safety of Afghan civilians at large, and police and military personnel of the Government of Afghanistan working in coordination with the United States and Coalition Forces operating in support of Operation ENDURING FREEDOM, NATO-led operations, and contractors serving with these forces;

- d. Aid the recruitment efforts and other activities of insurgent elements, weaken the new democratic governments of Iraq and Afghanistan, and add radical pressures on several of our regional allies and friends; and
- e. Increase the likelihood of violence against United States interests, personnel, and citizens worldwide.

#### **THE BASES FOR MY CONCLUSIONS**

3. My conclusions are based upon my years of service and experience in the United States military; the assessments and evaluations of the U.S. Central Commander, General John P. Abizaid, and his immediate subordinate commander of the Multi-National Forces-Iraq, General George Casey; and intelligence reports and the assessments of Department of Defense subject-matter experts on the Middle-Eastern region, Arab culture, and the tenets of the Islamic religion. In formulating the advice I provide to the President, the Secretary of Defense, and the National Security Council in the ordinary course of my duties, I routinely rely on the views of our combat commanders, intelligence synthesis and reports, and the assessments of subject matter experts. In formulating my conclusions concerning the Darby Photos, I have used the same approach, types of resources, information, and experts. In particular:

- a. I have served in the United States Armed Forces for 40 years at various levels of command and staff. I have served as the Chairman of the Joint Chiefs of Staff since October 1, 2001. I served as the Vice Chairman from March 2000 through September 2001. I have been the President's principal military advisor since shortly after the attacks on the World Trade Center and the Pentagon, including throughout the inception, planning, and execution of Operation ENDURING

FREEDOM and Operation IRAQI FREEDOM. I have intimate, extensive knowledge of our military forces and their capabilities, as well as of the conventional and unconventional forces and capabilities of the enemies arrayed against us. I daily receive and review intelligence analyses of current regional conditions, acute situations, and trends in operations and conditions relating to Operation ENDURING FREEDOM and Operation IRAQI FREEDOM from the Joint Staff, the Department of Defense, as well as from other intelligence sources within the Executive Branch. I routinely travel to the countries within the U.S. Central Command critical to these ongoing missions. I meet, receive information from, and provide information to, the senior political, civilian, and military leaders of Iraq, Afghanistan, and our other regional allies. Our senior field commanders brief me, and I routinely inspect the environment, conditions, and equipment of our Soldiers, Sailors, Airmen, and Marines in the combat theaters of operation.

c. With respect to this matter, I solicited the assessments and recommendations of the U.S. Central Commander, General John P. Abizaid, and the Multi-National Forces-Iraq Commander, General George Casey, concerning their views of the military implications of release of the responsive Darby Photos. Both of them, by dint of their positions and responsibilities, have highly informed opinions that I have considered in this matter. General Abizaid is constantly engaged with senior political and civic leaders in the region. Moreover, General Abizaid has specialized knowledge of the Middle East: he is fluent in the Arabic language; he holds a Masters Degree in Middle Eastern Studies from Harvard University; he

was a Hoover Institution, Stanford University Fellow studying Middle Eastern affairs; and he was an Olmsted Scholar at the University of Jordan at Amman. Before his service as the Commander, U.S. Central Command, General Abizaid served under General Tommy Franks as his Deputy Commander (Forward) during Operation IRAQI FREEDOM. After the first Gulf War, he served in the Kurdish region of northern Iraq in Operation NORTHERN WATCH. During the course of his military career, he has served in other positions in the Middle East as well as in positions involving ethnic Muslim minorities in the Balkans. His staff assignments have included tours with the United Nations as operations officer for the Observer Group Lebanon, and he has also served on the Joint Staff as the Director of Strategic Plans and Policy.

d. As the Commander of Multi-National Forces – Iraq, General George Casey is constantly engaged with the senior political and civic leaders in Iraq. He travels extensively throughout the country, and regularly confers with commanders and service personnel at all levels of command and operations. In addition to his numerous Army command assignments, General Casey most recently served as the Vice Chief of Staff of the Army; immediately before that he served under me, first as the Director of Strategic Plans and Policy, and then as the Director of the Joint Staff. His graduate and post-graduate degrees are in International Relations. General Casey has also served as a Senior Fellow on The Atlantic Council.

e. Both General Abizaid and General Casey agree with and support my conclusions.



f. As I indicated above, I have also considered and relied upon the analysis and assessments of DOD resident subject-matter experts on the Middle-Eastern region, the Arab culture, and the tenets of the Islamic religion.

**THE STATUS OF OPERATION ENDURING FREEDOM AND  
OPERATION IRAQI FREEDOM**

4. Following the attacks on the United States of September 11, 2001, the United States military, with the support of a worldwide coalition, launched Operation ENDURING FREEDOM to drive the oppressive Taliban regime – which provided comfort and support to al-Qaeda terrorists – from Afghanistan. As a result of that successful effort, the Taliban was removed from power, and on October 9, 2004, the Afghan people for the first time ever selected their head of state, the president of Afghanistan, by democratic vote. Similarly, Operation IRAQI FREEDOM was launched, again with the support of a worldwide coalition, to remove the dictatorial and murderous regime of Saddam Hussein from power, and succeeded in toppling that dictator and bringing freedom to Iraq. Following a brief period when Iraq was led by a Coalition Provisional Authority, sovereignty of Iraq was transferred to an interim government, and democratically elected representatives of the Iraqi people are in the process of completing work on a national constitution. There is, however, more work to do. Insurgent elements in both Afghanistan and Iraq continue to attack the process of democratic transition in those countries by mounting violent and deadly assaults against the multinational forces that remain posted in the region in order to protect and defend those countries as they take their steps toward freedom. As part of the multinational commitment to strengthening and defending these emerging democracies, more than 19,000 U.S. troops

remain on the ground in Afghanistan and over 140,000 U.S. troops are part of the ongoing mission in Iraq.

5. The situation on the ground in Iraq is dynamic and dangerous, in Baghdad and several other parts of the country. It changes from day to day, and it varies from region to region. With that in mind (and the caveat that numbers alone do not tell the complete story), I offer the following observations to provide the Court with some in-country context for the conclusion that official disclosure of the responsive Darby Photos described further below reasonably can be expected to endanger, in wartime, the lives and physical safety of U.S. military and other personnel, as well as the general public in Iraq and Afghanistan and elsewhere.

6. As General Abizaid testified to the Senate Armed Services Committee on June 23, 2005, the overall strength of the insurgency is about the same as it was six months ago, although he noted his belief that "there are more foreign fighters coming into Iraq than there were six months ago." Current estimates of the number of insurgents are in the range of 16,000 with perhaps 1,000 of that number being foreign fighters.

7. The number of insurgent attacks per day is approximately 70. As I have publicly stated, our assessments indicate that the lethality of the attacks is on average increasing.

8. Among the goals of the insurgency are to use violence against innocent civilians to undercut the mission of the U.S. and Coalition forces, as well as the Iraqi Transitional Government, and to stop the transition to democracy in that country. The insurgents will use any means necessary to incite violence and, specifically, will focus on perceived U.S. or Coalition mistreatment of Iraqi civilians and detainees as a propaganda and recruiting tool to aid their cause.

- a. Thus, for example, we have documented situations in which insurgents have falsely claimed that U.S. actions in Iraq, rather than their own terrorist attacks, have caused death and suffering. One organization, the Global Islamic Media Front, specializes in producing flash videos which typically feature dozens of images of women and children whose suffering is attributed to U.S. actions in Iraq as opposed to the acts of sabotage and violence perpetrated by the insurgents.
- b. Similarly, the insurgents rely on doctored photos and images to support their calls to violence. Last year DOD experts noted doctored images and videos that purported to document the rape of Iraqi women by U.S. soldiers – but which actually originated on a Hungarian pornography site – and that were distributed and presented on pro-Islamic and Arabic news web sites as actual examples of U.S. “barbarism.” In conducting Internet discussions regarding these images/videos on her websites, Iraq Patrol and Iraq Tunnel, Iraqi novelist and Middle East expert, Buthaina Al-Nasiri, noted, “You cannot imagine the kind of angry messages I receive every day from young Arab men vowing to avenge the Iraqi girls. . . .”
- c. Specific references to the so-called rape photos surfaced in subsequent Muslim sermons throughout the Middle East along with calls for retaliatory violence. For example, in response to similarly doctored rape images, purporting to depict the alleged rape of three Iraqi women at British-run prisons in Iraq, Sheik Abdul-Sattar al-Bahadli of Basra called for Jihad and offered \$350 for anyone capturing a British soldier, \$150 for killing one, and stated that “Any Iraqi who takes a female soldier (foreign) can keep her as a slave or gift to himself.”

d. We have noted other instances of insurgent attacks after the disclosure of images depicting alleged abuse of detainees. On January 21, 2005, three days after 22 photos of detainees in British custody were made public, an Iraqi insurgent suicide car bomber drove his vehicle toward the gate of a British base in southern Iraq. His vehicle detonated just as it was intercepted before reaching the gate, but the explosion still resulted in numerous, very serious British injuries. Al Qaeda leader Abu Musab al-Zarqawi described the attack as a "response to the harm inflicted by British occupation forces on our brothers in prison."

9. There have been near-term increases in the assassination of Iraqi government officials (52 in the three-month period ending June 27, 2005), as well as a recent uptick in insurgent attacks on senior diplomatic officials from regional neighbors of Iraq: the Egyptian envoy was abducted on July 4, 2005, and murdered; and, in separate incidents, the Bahrainian and Pakistani ambassadors' vehicle convoys were attacked on July 6, 2005 (the Bahrainian ambassador was wounded in the hand by automatic weapons fire; the Pakistani ambassador was uninjured, but has been ordered by his government out of the country as a temporary security measure).

10. While I believe that the overall trends in Iraq indicate improvement, attacks on the economic infrastructure in Iraq remain a constant problem, are significantly difficult to defend against (because of generally decrepit conditions and the nature of defending large facilities in diverse geographical locations), and present acute hardships, particularly to Baghdad residents during the summer season. Water, electrical, and oil infrastructure are the main insurgent targets.

11. The situation on the ground in Afghanistan also remains volatile, particularly as the Taliban-led insurgency attempts to derail the political process by increasing attacks in the run-up to the September 18<sup>th</sup> National Assembly elections. Violence has steadily risen since May, and levels of Taliban, al-Qaida, and Hezb-e Islami Gulbuddin (HIG) attacks against our military forces in June were the second highest in a single month since the Taliban fell in late 2001.

12. In addition to increasing the quantity of attacks, insurgents are shifting their tactics. Bomb attacks in June were the highest on record, including a rise in suicide bombings: there have been eight suicide attacks thus far this year compared to four for all of 2004. The Taliban is now targeting candidates and electoral workers for the National Assembly elections (there have been at least 16 attacks recently), as well as pro-central government clerics (four have been assassinated since June 1, 2005). The incidents of the Taliban intimidating reform-minded Muslim clerics have also increased. There are, on average, approximately 40-45 insurgent-initiated attacks per week.

13. Insurgents in Afghanistan have a relatively sophisticated and aggressive information operations campaign. Taliban spokesmen respond quickly to claim credit when insurgents conduct successful attacks against Coalition or Afghan forces, and even claim tactical successes for incidents not related to the insurgency. The Taliban are also quick to spread disinformation about culturally sensitive issues such as the Coalition treatment of Afghan women as a means of turning public opinion against the United States and other Western countries.

14. While the Taliban is struggling to maintain popular support among Afghans, there are indications that their aggressive information operations campaign, combined

with growing discontent with the Afghan government, could be fueling localized dissatisfaction with the continuing presence of Coalition and NATO forces. For example, the Taliban were quick to capitalize on the May 11-14 protests against the alleged desecration of the Koran at Guantanamo Bay (discussed in more detail below) and described the protests as “a firm reaction of the people of Afghanistan against the presence of U.S. forces ... and inhumane treatment with prisoners at detention centers ... showing disrespect to the Muslims’ faith” in a 13 May press statement. Protests, some of which turned violent and deadly, occurred in 14 of the 34 provinces.

**RIOTING AND VIOLENCE FOLLOWING THE NEWSWEEK REPORT OF ALLEGED U.S. DESECRATION OF THE KORAN AT GUANTANAMO BAY**

15. On April 30, 2005, Newsweek reported that an unnamed U.S. official had seen a government report documenting desecration of the Koran at the U.S. facility at Guantanamo Bay, Cuba. On May 16, 2005, Newsweek retracted the statement in an article that the abuse had been uncovered in an “internal military investigation” after its source was unable to confirm where he had seen the purported information. Newsweek also offered further qualifications on the story in its May 23, 2005, issue.

16. The Koran’s alleged desecration, as reported by Newsweek, was perceived as such an affront to the Islamic faith that massive anti-U.S. demonstrations quickly erupted in the Palestinian territories, Egypt, Sudan, Bangladesh, Pakistan, and Indonesia. Our intelligence assessments indicate that the volatile public sentiments in these Muslim countries were exploited by organized, anti-American extremists who succeeded in fomenting violent and deadly demonstrations.

17. In Afghanistan, in particular, where over 19,000 U.S. troops are currently serving in Operation ENDURING FREEDOM, violence erupted as a result of the Newsweek

report. Demonstrations began in the eastern provinces and spread to the capital, Kabul. The United Nations, as a precautionary measure, withdrew its entire foreign staff from Jalalabad, where two of its guesthouses were attacked, government buildings and shops were targeted, and the offices of two international aid groups were destroyed. At least 17 deaths in Afghanistan were attributed to the reaction to the Koran story.

18. Despite Newsweek's published retraction, many Muslims still believe that U.S. personnel continue to desecrate the Koran in an effort to humiliate Muslims. For example, one Sunni website asserts that desecration of the Koran is a daily occurrence in Iraq under U.S. occupation and posted numerous photos of another such alleged incident. According to the website: "To humiliate the Koran in Iraq is a well-known tactic of the occupation and allied forces. The Koran has been desecrated by the Crusaders and the Jews. The latest incident of this happened when American soldiers raided the Al-Quds Mosque in . . . Al-Ramadi. . . The soldiers searched the entire mosque, tore the Koran, and beat the worshippers during the morning prayers."

19. The riots and violence that followed the Newsweek story had a significant impact on U.S. Central Command operations and intelligence assessments of conditions throughout both combat theaters, as well as regionally and beyond. Our intelligence and operations analysts evaluated the Koran incident in order to provide assessments and "lessons-learned" both to the combatant commanders and the Department of Defense. While I received and reviewed these assessments, my attention was first brought fully to bear in the context of this case on June 17, 2005. On that day I was informed that disclosure of the Darby Photos could occur as early as June 30, 2005. In light of the nature of the photos, and the riots and violence that occurred after the Newsweek article,

I contacted General Abizaid (who in turn contacted General Casey), apprised him of the situation, and asked for General Abizaid's military assessment of the implications of the release of the Darby Photos. General Abizaid and General Casey provided their assessments to me on June 20, 2005. They agreed with my determination that disclosure of the Darby Photos created the significant risks discussed in this declaration.

**THE REDACTED RESPONSIVE DARBY PHOTOS GRAPHICALLY DEPICT  
DETAINEE ABUSE AND MISTREATMENT**

20. I have personally reviewed the 87 responsive photographic and 4 video images that are identified in paragraph 6 of the Third Declaration of Philip J. McGuire.

Testimony Under Seal

21. [SEALED]

Testimony Under Seal

22. [SEALED]

Testimony Under Seal

23. [SEALED]

Testimony Under Seal



Testimony Under Seal

**CONCLUSIONS AFTER REVIEWING THE RESPONSIVE DARBY PHOTOS**

24. While I have said this previously in countless forums, I condemn in the strongest terms the misconduct and abuse depicted in these images. It was illegal, immoral, and contrary to American values and character. The Department of Defense has spared no effort and will continue to press the investigation of, and full accountability for, these criminal acts. Based on my review, I believe that official release of the responsive Darby Photos described in paragraphs 21-23 will pose a clear and grave risk of inciting violence and riots against American troops and coalition forces. I also believe that release of the responsive Darby Photos will expose innocent Iraqi, Afghan, and American civilians to harm as a result of the insurgency's reaction, which will likely involve violence and rioting. It is probable that Al-Qaeda and other groups will seize upon these images and videos as grist for their propaganda mill, which will result in, besides violent attacks, increased terrorist recruitment, continued financial support, and exacerbation of tensions between the Iraqi and Afghan populaces and U.S. and Coalition Forces.

25. The recent vitriolic and violent reaction to Newsweek's Koran report described above - even following its retraction - made it clear that U.S. and allied troops and

personnel and civilians in the Middle East will be subject to a likely, serious, and grave risk if the responsive Darby Photos described in paragraphs 21-23 are publicly released. Release of these images will be portrayed as part and parcel of the alleged, continuing effort of the United States to humiliate Muslims and, given the patterns of violence observed there, will be used by the insurgents as propaganda to increase calls for violence against U.S. and Coalition personnel. I believe that if the responsive Darby Photos are released, riots, violence, and attacks by insurgents will result.

26. I am also concerned that, while the photos and videos taken together are illustrative only of isolated activity by one military unit, the members of which have been the subject of criminal investigations, prosecutions, and convictions,<sup>1</sup> their graphic and offensive nature makes it easy to falsely generalize from those images and characterize the abuse as more widespread than it was, and to impugn the United States Armed Forces as a whole, thereby generating a more vehement – and violent – reaction. The offensiveness of these images will make it more difficult to counteract calls for violence against U.S. and Coalition Forces despite the United States Government's immediate and forceful denunciation of the conduct portrayed in these photos, the numerous investigations into the activities and personnel they depict, and the criminal and military prosecution of those confirmed to be involved.

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<sup>1</sup> A separate addendum is attached that delineates the current status of disciplinary actions taken against those personnel who were involved in the abuse and mistreatment of detainees at Abu Grhaib, some of which is depicted in the Darby photos.

The Effect of the Responsive Darby Photos on the Predominantly Muslim Populations of Iraq and Afghanistan.

27. Specifically, with respect to the video images described in paragraph 23, as common experience has shown and as viewing of the video clips has confirmed, video images are more powerful than still photographs. Video captures a continuum of action, shows cause-and-effect, and portrays the range of emotions of those depicted in a manner that a still photo – which is devoid of those dynamic qualities – fails to convey. The video images, thus, evoke a visceral and empathetic connection between the viewer and the person being victimized, and are much more likely to generate a violent reaction or be exploited by insurgents for violent ends.

28. Iraqi and foreign detainees have indicated that an important motivation for their fighting against the Coalition and U.S. forces is their perceived mistreatment of Iraqis at Abu Ghraib prison. Thus, for example, al Qaeda leader Abu Musab al-Zarqawi demanded the release of all female detainees as the sole condition for the release of American hostages Jack Hensley, Eugene Armstrong, and British hostage Kenneth Bigley, all of whom were subsequently beheaded. British hostage Margaret Hassan (who was also killed by her abductors) also pleaded in a video released by her captors for the release of female detainees.

29. Similarly, on February 28, 2005, a statement by the Media Wing of Abu-Mus'ab al Zarqawi-al-Qa'ida of Jihad Organization in the Land of the Two Rivers [Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn] was posted on various pro-Al-Qaeda Internet sites in which the group warned and reminded Muslims of the tactics of the enemies of Islam: “2. They have incarcerated our women in concentration camps, where they raped them and violated their honor... 3. They gave the rejectionists (Shi'a) access to our women,

and the Ministry of Interior jails can testify to the fact. They gave them access to our Mosques, and their impudence reached the point of writing on the Mosques' walls, 'Today [we take] your land, tomorrow [we will take] your honor, [rape your women].'"

Redaction of the Responsive Darby Photos Does Not Alter These Conclusions

30. Redaction of the responsive Darby Photos to obscure individuals' faces and identifying information and, where necessary, genitalia, does not change my opinion. Release of the photographs and videos, even in redacted form, will very likely lead to riots and violence across the Middle East, posing grave risk to both military forces and civilians.

31. This is because the privacy concerns of the detainees are separate and distinct from the inflammatory nature and offensiveness of the conduct depicted in the responsive Darby Photos – and thus the risk of harm to our personnel – which remains apparent despite redaction. Even with the images redacted, the abuses will be apparent. The official release of these graphic photos and videos depicting this type of behavior and abuse by U.S. military personnel will very likely incite violence and result in casualties, and redaction of the photographs and videos will not alleviate or lessen this risk.

Not Only the Responsive Darby Photos Themselves,  
But the Official Act of Releasing Them Could Lead to  
Harm to American Troops and Civilians

32. In my opinion, not only the images themselves, but also the official act of releasing the responsive Darby Photos could significantly harm U.S. interests and endanger U.S. personnel, as well as Iraqi and Afghan civilians, police, and military personnel working in coordination with Coalition and NATO forces. Our democratic idea of public accountability – the airing of misdeeds by government officials and

employees in order to hold government to the highest standards of conduct – is an idea that is misunderstood in other parts of the world. The insurgents likely will perceive and portray an official United States Government release of the Darby Photos as a deliberate tactic in the war and a conscious degradation to the dignity of Iraqis. While the acts of abuse were originally inflicted by rogue individuals acting illegally and contrary to U.S. policy, this official release will be perceived as the re-infliction of that degradation in full public view and under the full authority of the U.S. Government. Demagogues will be free to characterize the public disclosure of these images as further evidence of U.S. immorality and hypocrisy. Such a characterization by violent extremists will – in my opinion – put the lives of American troops and civilians in extreme danger. It also will fuel the efforts of extremists to generate or stimulate opposition to U.S. policies throughout the broader Middle East. It is likely to increase pressures on friendly governments in the region to distance themselves from the U.S. All this would be a serious setback to the U.S. Government's efforts to fight the War on Terrorism alongside mainstream Muslim allies and friends in the Middle East.

Release of Photographs That Were Previously Leaked to the Press  
Poses a Threat to the Safety of Troops and Civilians

33. As an initial matter, the photographs that were previously leaked were not officially released. An official release by the United States Government lends an imprimatur – an official patina – that has never been attached to these photos.<sup>2</sup> As described above, many individuals in the Middle East will not understand that this

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<sup>2</sup> The United States Government has not previously released the responsive photos to the general public, but, as required by law, has provided relevant photos to civilian and military defense counsel in military courts-martial proceedings. Those disclosures have been subject to the requirements and proscriptions of the Military Rules of Evidence, the Rules for Courts-Martial, the Military Rules of Professional Conduct, and applicable military precedent.

official release is not an intentional effort to further ridicule and humiliate the individuals depicted, their culture, or their religion.

34. Before the Newsweek report of alleged Koran desecration, similar reports had been published by mainstream media publications. In particular, several media outlets previously reported that a Koran had allegedly been flushed down a toilet. Yet it was not until the Newsweek report cited a Government source, who appeared to confirm the reports, that the allegations touched off riots and death abroad. Similarly, official release of the responsive Darby Photos by the United States Government (even if some of the images had been leaked before to the press by unofficial sources) is bound to have a much different and more serious effect, different in kind from the prior unofficial release.

35. In addition, some of the previously released photographs have not been widely circulated. An official release of these photos significantly increases the chances that they will receive much greater circulation through publicly available channels and thereby inflame public sentiments and exacerbate tensions in sensitive geographic areas.

Sealing Portions of This Declaration

36. In some of the paragraphs of this Declaration, I provide descriptions of the records that are the subject of this litigation. The disclosure of the descriptions could reasonably be expected to endanger the lives and physical safety of persons described in paragraph 2, above. For that reason, I respectfully request the Court seal the following paragraphs: (the captions above paragraphs and) 21-23.

**CONCLUSION**

In light of the knowledge and information described herein, and given the provocative and offensive nature of the Darby Photos, I believe that the Darby Photos that I have identified in this declaration must be withheld in order to protect the lives of: members of the United States Armed Forces, forces operating in cooperation with the United States, and contractors operating with those forces; U.S. officials; Iraqi and Afghan police and military personnel working in coordination with our government and military forces; as well as to protect against the increased likelihood of violence against U.S. interests, personnel, and citizens world-wide.

I declare under penalty of perjury that the foregoing is true and correct.



RICHARD B. MYERS

Date: Washington, D.C.  
August 25, 2005

**Addendum to the Declaration of Richard B. Myers:**

**Current Status of Criminal Actions Taken Against Personnel Involved  
in the Abuse and Misconduct Depicted in the Darby Photos<sup>1</sup>**

**COURT-MARTIAL CASES**

**GENERAL AND SPECIAL COURTS-MARTIAL**

1. **SSG Ivan Fredrick**, 372<sup>nd</sup> Military Police Company

**Status:** Convicted, General Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

As a guard at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SSG Frederick was the NCO in charge of the night shift when he conspired with several other guards to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. Abusive acts included male detainees naked in the presence of female Soldiers; female detainees exposing themselves to male Soldiers; detainees performing indecent acts with each other in the presence of Soldiers; and photographs of Soldiers physically assaulting detainees while these Soldiers posed for the camera. SSG Frederick organized many of the acts of abuse and appeared in many of the photographs.

On 21 October 2004, SSG Frederick pled guilty at a General Court-Martial in Baghdad, Iraq to Conspiracy, Maltreatment, Simple Battery, and Indecent Acts. He was sentenced by the Military Judge to Reduction to E-1, Total Forfeitures, Confinement for 10 years, and a Dishonorable Discharge. His sentence will be capped at 8 years.

2. **SGT Javal Davis**, 372 Military Police Company

**Status:** Convicted, General Court-Martial

**Jurisdiction:** III Corps, Fort Hood, Texas

**Date of Incident:** October - November 2003

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<sup>1</sup> This addendum does not list the numerous adverse administrative actions and non-judicial punishments of the superiors and staff officers in the chain of command of the personnel listed here, e.g., the Commander of the 800<sup>th</sup> Military Police Brigade, the Commander of the 205<sup>th</sup> Military Intelligence Brigade, among several others.



Guards at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq allegedly conspired to maltreat detainees at Abu Ghraib Prison and then photograph their misconduct. The abuse occurred in October and November 2003. SGT Davis was present on a night of detainee abuse and participated in the acts.

On 1 February 2005, SGT Davis pled guilty at a General Court-Martial at Fort Hood, Texas to Battery, Dereliction of Duty and False Official Statement. He was sentenced by a Court-Martial panel including enlisted members to Reduction to E-1, Confinement for 6 months and a Bad Conduct Discharge.

3. SPC Charles Graner, Jr., 372d Military Police Company

Status: Convicted, General Court-Martial

Jurisdiction: III Corps, Fort Hood, Texas

Date of Incident: October - November 2003

As a guard at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, CPL Graner conspired with several other guards to maltreat detainees at Abu Ghraib Prison and then photograph their misconduct. The abuse occurred in October and November 2003.

On 7 January 2005, SPC Graner was tried at a contested General Court-Martial at Fort Hood, Texas and found guilty of Conspiracy, Dereliction of Duty, Maltreatment, and Assault Consummated by Battery. He was sentenced by a 10 member Court-Martial panel including enlisted members to Reduction to E-1, Total Forfeitures, Confinement for 10 years, and a Dishonorable Discharge.

4. SPC Sabrina Harman, 372nd Military Police Company

Status: Convicted, General Court-Martial

Jurisdiction: III Corps, Fort Hood, Texas

Date of Incident: October - November 2003

As a guard at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SPC Harman allegedly conspired with several other guards, to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. SPC Harman engaged in several acts of abuse, took several photographs of the abuse, and appeared in several photographs.

On 13 May 2005, SPC Harman was convicted at a contested General Court-Martial at Fort Hood, Texas by a Court-Martial panel including enlisted members of several charges

including Assault and Maltreatment of detainees. She was sentenced to Reduction to E-1, Confinement for 6 months, and a Bad Conduct Discharge.

5. **SPC Roman Krol**, 325<sup>th</sup> Military Intelligence Battalion

**Status:** Convicted, General Court-Martial

Jurisdiction: III Corps, Fort Hood, Texas

Date of Incident: October - November 2003

Investigation at Abu Ghraib Prison in January 2004 revealed photographs of MP and MI Soldiers involved in abusive or degrading acts upon detainees. Investigation revealed several acts included two male detainees handcuffed together on the prison floor in front of other detainees. Investigation established that SPC Krol was present during the abuse and directed several abusive acts.

On 1 February 2005, SPC Krol pled guilty before a Military Judge to Conspiracy and Maltreatment. He was sentenced to Reduction to E-1, Confinement for 10 months, and a Bad Conduct Discharge.

6. **SPC Jeremy Sivits**, 372<sup>nd</sup> Military Police Company

**Status:** Convicted, Special Court-Martial

Jurisdiction: III Corps, Fort Hood, Texas

Date of Incident: October - November 2003

At the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SPC Sivits conspired with several other guards to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. SPC Sivits photographed many of the acts of abuse.

On 19 May 2004, SPC Sivits pled guilty at a Special Court-Martial in Baghdad, Iraq to Conspiracy, Dereliction of Duty and Maltreatment. He was sentenced by the Military Judge to Reduction to E-1, Confinement for 12 months, and a Bad Conduct Discharge.

7. **SPC Armin Cruz**, 325<sup>th</sup> Military Intelligence Battalion

**Status:** Convicted, Special Court-Martial

Jurisdiction: III Corps, Fort Hood, Texas

Date of Incident: October - November 2003

Investigation at Abu Ghraib Prison revealed photographs of MP and MI Soldiers involved in abusive or degrading acts upon detainees. Several acts included two male detainees handcuffed together on the prison floor in front of other detainees. Investigation established that SPC Cruz was present during this abuse and directed several abusive acts.

On 11 September 2004, SPC Cruz pled guilty at a Special Court-Martial in Baghdad, Iraq to Conspiracy and Maltreatment. He was sentenced by the Military Judge to Reduction to E-1, Confinement for 8 months, and a Bad Conduct Discharge.

8. PFC Lynddie England, 372<sup>nd</sup> Military Police Company

Status: Pending, General Court-Martial

Jurisdiction: III Corps, Fort Hood, Texas

Date of Incident: October - November 2003

As a Company clerk at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, PFC England allegedly conspired with several MP guards, to maltreat detainees at Abu Ghraib Prison and then photograph the misconduct. The abuse occurred in October and November 2003. It is alleged that PFC England took many of the photos and posed in several.

On 3 May 2005, PFC England entered a guilty plea at Fort Hood, Texas. A mistrial was ordered by the Military Judge when the Guilty Plea could not be accepted after testimony by PVT Graner in the presentencing was inconsistent with PFC England's plea. PFC England's case is now pending consideration of referral to a new Court-Martial at Fort Hood. PFC England is presumed by law to be innocent of the charges against her. She has been and will be afforded all rights under the Uniform Code of Military Justice (UCMJ).

9. SGT Santos A. Cardona, 42<sup>nd</sup> Military Police Detachment

Status: Pending, General Court-Martial

Jurisdiction: Military District of Washington, Fort McNair

Date of Incident: November 2003 - January 2004

As a military dog handler at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SGT Cardona allegedly maltreated detainees through alleged inappropriate use of dogs to unlawfully threaten and harass the detainees. The alleged misconduct of SGT Cardona is not part of the 87 responsive photos and four video files.

Charges against SGT Cardona were preferred on 2 June 2005 at Fort McNair, Washington D.C. for Maltreatment, Conspiracy, Dereliction of Duty, Assault, and False Official Statement. SGT Cardona is pending a UCMJ Article 32 hearing. SGT Cardona is presumed by law to be innocent of the charges against him. He will be afforded all rights under the UCMJ.

10. **SGT Michael Smith**, 523rd Military Police Detachment

**Status:** Pending, General Court-Martial

**Jurisdiction:** Military District of Washington, Fort McNair

**Date of incident:** November 2003 - January 2004

As a military dog handler at the Baghdad Central Confinement Facility in Abu Ghraib, Iraq, SGT Smith allegedly maltreated detainees through alleged inappropriate use of dogs to unlawfully threaten and harass the detainees. The alleged misconduct of SGT Smith is not part of the 87 responsive photos and four video files.

Charges against SGT Smith were preferred on 2 June 2005 at Fort McNair, Washington D.C. for Maltreatment, Conspiracy, Dereliction of Duty, Assault, False Official Statement, and Indecent Acts. SGT Smith is pending a UCMJ Article 32 hearing. SGT Smith is presumed by law to be innocent of the charges against him. He will be afforded all rights under the UCMJ.

#### **SUMMARY COURTS-MARTIAL**

11. **SPC Megan Ambuhl**, 372d Military Police Company

SPC Ambuhl engaged in acts of abuse of Iraqi detainees at Abu Ghraib Prison in Iraq.

On 30 Oct 04, she pleaded guilty at Summary Court-Martial to Dereliction of Duty. Charges of Maltreatment, Conspiracy and Indecent Acts were dismissed. She was sentenced to Reduction to E-2 and Forfeiture of 1/2 pay for one month. She was later discharged under Army Regulation 635-200, Chapter 14-12c for Commission of a Serious Offense. She received an Other than Honorable Discharge.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION, et al., :  
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 Plaintiffs, :  
 :  
 -against- :  
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 DEPARTMENT OF DEFENSE, et al., :  
 :  
 Defendants. :  
-----X

**OPINION AND ORDER**  
**GRANTING IN PART AND**  
**DENYING IN PART MOTIONS**  
**FOR PARTIAL SUMMARY**  
**JUDGMENT**

04 Civ. 4151 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

The American Civil Liberties Union and other plaintiffs have demanded that the government produce relevant documents concerning the “treatment of Detainees in United States custody,” the “death of Detainees in United States custody,” and the “rendition of Detainees and other individuals” to countries known to employ torture. Plaintiffs’ demands under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, were first made on October 7, 2003. The government, after being inattentive for many months to the obligations imposed on it by FOIA, see Am. Civil Liberties Union v. Dep’t of Def., 339 F. Supp. 2d 501 (S.D.N.Y. 2004) (“Opinion and Order of September 15, 2004”), has made large, but not complete, production, reviewing and turning over thousands of documents from various of its agencies. The present motions relate to documents claimed to be possessed by, or of concern to, two government agencies, the Department of Defense (“DOD”) and the Central Intelligence Agency (“CIA”).

More than one year ago, on August 16, 2004, in order to facilitate the government’s processing of documents, plaintiffs created a priority list of enumerated documents (the “August 16, 2004 List”). The priority list was a subset of previous demands that plaintiffs most wished to be produced and which, based on public references to such documents,

plaintiffs believed the government could readily process. The priority list focused on specifically identified records, such as records “provided by defendant agencies to Congress, members of Congress, or congressional committees,” or “discussed or identified in the media.” My Opinion and Order of September 15, 2004 set out an expedited procedure with respect to the August 16, 2004 List.<sup>1</sup> Specifically, the government was required to produce the documents responsive to the List, or provide a declaration showing that an exemption against production applied, see Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), following which there would be motions for partial summary judgment to resolve disputes regarding documents claimed to be exempt.

Initially, defendant CIA took the position that it did not have to search its operational files and identify responsive documents, claiming an exemption by statute. See CIA Information Act, 50 U.S.C. § 431. However, the CIA Information Act itself provides exceptions to the exemptions from FOIA that it affords the CIA, and I held that since the agency had already conducted a search pursuant to an investigation of its Inspector General into allegations of improprieties of CIA operatives in Iraq, the statute by its explicit terms no longer exempted the CIA from its obligations under FOIA to search. I ordered the CIA to search its investigative files for responsive documents, and either to produce them or show them to be exempt. See Am. Civil Liberties Union v. Dep’t of Def., 351 F. Supp. 2d 265 (S.D.N.Y. 2005) (Opinion and Order of February 2, 2005, modified, April 18, 2005).<sup>2</sup>

Against this backdrop, plaintiffs and defendants both moved for summary judgment on issues arising from plaintiffs’ priority list of August 16, 2004. “Summary

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<sup>1</sup> With respect to the remainder of plaintiffs’ outstanding requests, the Opinion and Order of September 15, 2004 required the government to produce responsive documents or identify them in a log to be publicly filed or examined ex parte and in camera.

<sup>2</sup> The CIA informed plaintiffs on April 15, 2005 that all Office of Inspector General (“OIG”) documents pertaining to ongoing investigations or law enforcement activities were exempt under FOIA. The CIA subsequently informed plaintiffs, in a letter dated July 15, 2005, that all responsive documents in the files of the OIG that no longer relate

judgment is the procedural vehicle by which most FOIA actions are resolved.” Jones-Edwards v. Appeal Bd. of the Nat’l Sec. Agency Cent. Sec. Agency, 352 F. Supp. 2d 420, 423 (S.D.N.Y. 2005) (citing Miscavige v. IRS, 2 F.3d 366, 369 (11th Cir. 1993) (“Generally, FOIA cases should be handled on motions for summary judgment, once the documents in issue are properly identified.”)).

This Opinion addresses five categories of issues that are disputed: (1) the DOD’s withholding of reports and documents relating to the International Committee of the Red Cross; (2) documents relating to the DOD’s interrogation activities; (3) the CIA’s refusal to confirm or deny the existence or possession of certain documents; (4) the CIA’s representation, with regard to documents relating to a request by former CIA Director Tenet to Secretary of Defense Rumsfeld that a certain Iraqi suspect be held at a high-level detention center and not be identified, that there are no meaningful, reasonably segregable portions of the documents that are not exempt from production; and (5) the DOD’s withholding of photographs taken by Joseph Darby at Abu Ghraib prison and provided to the Army’s Criminal Investigative Division. This written decision expands on, and supersedes, the rulings and observations that I made at the public and in camera oral arguments held on May 26, May 31, August 15, and August 30, 2005.

#### The Applicable Legal Principles

As the Second Circuit recently observed, “FOIA was enacted in order to ‘promote honest and open government and to assure the existence of an informed citizenry [in order] to hold the governors accountable to the governed.’” Nat’l Council of La Raza v. DOJ, 411 F.3d 350, 355 (2d Cir. 2005) (alteration in original) (quoting Grand Cent. P’ship, Inc. v. Cuomo, 166 F.3d 473, 478 (2d Cir. 1999)). Clearly, however, the policy of open disclosure is

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to pending investigations or law enforcement proceedings were also exempt under FOIA.

not the only policy to consider. FOIA itself recognizes this, and provides nine exemptions against disclosure. It is the burden of the relevant agency to show that an adequate search was made, and that a “specific, enumerated exemption[] set forth in” FOIA authorizes it to withhold a document from production. Id.; Carney v. DOJ, 19 F.3d 807, 812 (2d Cir. 1994); see also Tax Analysts v. IRS, 410 F.3d 715, 719-20 (D.C. Cir. 2005) (reiterating that the requirement for granting summary judgment to an agency is that the “agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact”). The showing must meet an exacting standard, since, “[c]onsistent with FOIA’s purposes, these statutory exemptions are narrowly construed.” Nat’l Council of La Raza, 411 F.3d at 355-56 (citing Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 8 (2001)).

My inquiry with respect to the documents in issue is particularly acute. Our nation has been at war with terrorists since their September 11, 2001 suicide crashes into the World Trade Center, the Pentagon, and a field in Shanksville, Pennsylvania, killing thousands and wounding our nation in ways that we still cannot fully recount—indeed, we were at war with terrorists since well before that event. American soldiers are fighting and dying daily in Afghanistan and Iraq. The morale of our nation is a vital concern and directly affects the welfare of our soldiers. How then to deal with the commands of FOIA and the strong policy it reflects “to promote honest and open government,” “to assure the existence of an informed citizenry,” and “to hold the governors accountable to the governed”? Of course, national security and the safety and integrity of our soldiers, military and intelligence operations are not to be compromised, but is our nation better preserved by trying to squelch relevant documents that otherwise would be produced for fear of retaliation by an enemy that needs no pretext to attack?



FOIA places a heavy responsibility on the judge to determine “de novo” if documents withheld by an agency are properly withheld under an exemption and, if necessary, to examine the withheld documents “in camera”:

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency’s determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

5 U.S.C. § 552(a)(4)(B); see also Al-Fayed v. CIA, 254 F.3d 300, 307 (D.C. Cir. 2001) (“[I]t is precisely because FOIA’s terms apply government-wide that we generally decline to accord deference to agency interpretations of the statute, as we would otherwise do under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).”).

An agency’s burden, although high, is not impractical. It suffices if the agency shows, by “[a]ffidavits or declarations supplying facts,” that the agency has conducted a “thorough search” for responsive documents, and has given “reasonably detailed explanations why any withheld documents fall within an exemption.” Carney, 19 F.3d at 812; see also Vaughn v. Rosen, 484 F.2d 820, 826-28 (D.C. Cir. 1973) (requiring as justification for claims of exemption “a relatively detailed analysis in manageable segments” and outlining guidelines for indexing). A district judge is required to give “substantial weight to an agency’s affidavit concerning the details of the classified status of the disputed record.” Miller v. Casey, 730 F.2d

773, 776 (D.C. Cir. 1984). Once the agency has made a reasonable response, the burden on a FOIA plaintiff is high:

In order to justify discovery once the agency has satisfied its burden, the plaintiff must make a showing of bad faith on the part of the agency sufficient to impugn the agency's affidavits or declarations, or provide some tangible evidence that an exemption claimed by the agency should not apply or summary judgment is otherwise inappropriate.

Carney, 19 F.3d at 812 (citations omitted). The declarations submitted by the agency in support of its determination are "accorded a presumption of good faith." Id.

My duty as a judge is to apply the legal principles of the statute and cases discussed above.

I. International Committee of the Red Cross Documents

Plaintiffs demand production of all reports of the International Committee of the Red Cross ("ICRC") concerning the treatment of detainees in Iraq (Item 8 of the prioritized August 16, 2004 List); the government's responses to the ICRC's concerns (Item 13); a letter from military lawyers over the signature of Brig. Gen. Janis Karpinski to the ICRC responding to its concerns about conditions at Abu Ghraib (Item 49); and a complete set of documents reflecting discussions between the ICRC and military officers at Guantánamo Bay (Item 58).<sup>3</sup> Defendant DOD objected to production, arguing that responsive documents are exempted under FOIA Exemption 3, which provides that FOIA disclosure requirements do not apply to matters that are

specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the

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<sup>3</sup> Plaintiffs also originally moved for summary judgment on Items 50 and 51. Defendant DOD claimed that there were no documents responsive to requests 50 (Memorandum for MP and MI personnel at Abu Ghraib from Col. Marc Warren, regarding a new plan to restrict Red Cross access to Abu Ghraib) and 51 (Memorandum from a top legal adviser to Lt. Gen. Ricardo S. Sanchez, to military intelligence and police personnel at Abu Ghraib, regarding a new plan to restrict Red Cross access to Abu Ghraib), except, potentially, a four-page memorandum, dated January 8, 2004, memorializing communications from the ICRC regarding a visit to Abu Ghraib, which DOD is withholding. Plaintiffs accordingly withdrew those two requests without prejudice to reasserting them at a later date.

public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

5 U.S.C. § 552(b)(3). The relevant statute, 10 U.S.C. § 130c, authorizes the withholding of “sensitive information” to the extent such withholding is requested by a foreign government or international organization. See 10 U.S.C. § 130c(a). Section 130c provides that if the information was “provided by, otherwise made available by, or produced in cooperation with” the foreign government or international organization, and certain other criteria are satisfied, the information may be exempted from release by the United States government. In particular, the national security official concerned must determine each of the following:

- (1) That the information was provided by, otherwise made available by, or produced in cooperation with, a foreign government or international organization.
- (2) That the foreign government or international organization is withholding the information from public disclosure (relying for that determination on the written representation of the foreign government or international organization to that effect).
- (3) That any of the following conditions are met:
  - (A) The foreign government or international organization requests, in writing, that the information be withheld.
  - (B) The information was provided or made available to the United States Government on the condition that it not be released to the public.
  - (C) The information is an item of information, or is in a category of information, that the national security official concerned has specified in regulations prescribed under subsection [(g)] as being information the release of which would have an adverse effect on the ability of the United States Government to obtain the same or similar information in the future.

Id. § 130c(b).

Under FOIA, “[t]he two threshold criteria needed to obtain exemption 3 exclusion from public disclosure are that (1) the statute invoked qualifies as an exemption 3 withholding statute, and (2) the materials withheld fall within that statute’s scope.” A.

Michael's Piano, Inc. v. Fed. Trade Comm'n, 18 F.3d 138, 143 (2d Cir. 1994) (citing CIA v. Sims, 471 U.S. 159, 167 (1985)). Exemption 3, as the Second Circuit explained, "incorporates the policies of other statutes"; a statute that meets the requirements of Exemption 3 "may effectively exclude certain matters from disclosure, namely, as stated in exemption 3, those matters 'specifically exempted from disclosure by [the subject] statute.'" Id. (alteration in original) (quoting 5 U.S.C. § 552(b)(3)).

There is no dispute, except for one argument discussed below in this paragraph, that 10 U.S.C. § 130c qualifies as a withholding statute and that the ICRC qualifies as an appropriate international organization; the only question is whether the disputed materials fall within the statute's scope. See id. at 144 ("[W]e follow the approach taken by the Supreme Court in construing withholding statutes, looking to the plain language of the statute and its legislative history, in order to determine legislative purpose." (citing Sims, 471 U.S. at 168-73)).

Plaintiffs' only argument that the statute does not apply is that no regulations have been promulgated to support the determination of the relevant national security official, the Secretary of Defense, that the release of the information would have "an adverse effect on the ability of the United States Government to obtain the same or similar information in the future." See 10 U.S.C. § 130c(b)(3)(C), (g), (h)(1)(A). However, the text of the relevant portion of the statute is in the disjunctive; the statute does not provide that the promulgation of regulations is a necessary precondition to the statute's effectiveness. Furthermore, a directive of Secretary Donald Rumsfeld requires confidential treatment of all ICRC communications. See Decl. of Charles A. Allen, Deputy Gen. Counsel (Internat'l Affairs), Office of Gen. Counsel, DOD, dated Mar. 25, 2005, ¶ 13 & Ex. B (describing and attaching Memo, Sec'y of Def., July 14, 2004). Accordingly, plaintiffs' argument is without merit. I hold that 10 U.S.C. § 130c

constitutes a withholding statute for the purposes of FOIA Exemption 3. I therefore turn to examine if the documents responsive to Items 8, 13, 49, and 58 fall within the scope of 10 U.S.C. § 130c.

Item 8 requests the reports delivered by the ICRC to DOD. Such reports clearly fall within the scope of 10 U.S.C. § 130c and accordingly, they are covered by FOIA Exemption 3. At oral argument, plaintiffs conceded that the ICRC reports were properly exempted under the statute, and I so ruled. Tr. of May 31, 2005, at 12.

The government argues that Items 13, 49, and 58 reflect a dialogue between DOD and the ICRC, and thus were produced “in cooperation with” the ICRC, and are properly exempted under 10 U.S.C. § 130c(b)(1). Plaintiffs disagree with this characterization and argue, in addition, that with respect to at least some documents, extensive discussions in the press constitute a waiver of confidentiality.

The ICRC represented that it maintained, and requested that the United States government likewise maintain, confidentiality with respect to the disputed information, see Letter from Finn Ruda, Deputy Head of ICRC’s Delegation for United States and Canada to Stewart F. Aly, Assoc. Deputy Gen. Counsel, DOD, confirming “that all records of communications from the ICRC or its representatives regarding detainees in Guantánamo and Iraq have been provided by the ICRC to the DOD on condition that the documents not be released to the public.” Second Decl. of Stewart F. Aly, dated Mar. 23, 2005, Ex. D (attaching letter) [hereinafter Second Aly Decl.]. The Finn letter also states that “the ICRC itself is withholding such documents from public disclosure.” Id. The requirements of § 130c(b)(2) and (b)(3) are thus satisfied.

As to the government’s first argument, that the contested information was

“provided by, otherwise made available by, or produced in cooperation with” the ICRC, see 10 U.S.C. § 130c(b)(1), I examined a sample of the documents ex parte and in camera. The government provided a binder of samples — tabs A, B, C, and D, pertaining, respectively, to Items 8, 13, 49, and 58. Tab B<sup>4</sup> provided a sample of four out of twenty-two responsive documents; Tab C contained the one responsive document identified by DOD; and Tab D provided a sample of three of thirty-eight documents.

The documents sampled essentially contained responses by DOD to the observations reported by the ICRC, thereby exposing the information “provided by” the ICRC. Just as an attorney’s responses to a client’s requests for advice are privileged — see, e.g., Coastal States Gas Corp. v. Dep’t of Energy, 617 F.2d 854, 862 (D.C. Cir. 1980) (noting that “[w]hile its purpose is to protect a client’s disclosures to an attorney, the federal courts extend the privilege also to an attorney’s written communications to a client”); In the Matter of Fischel, 557 F.2d 209, 211 (9th Cir. 1977) (“Ordinarily the compelled disclosure of an attorney’s communications or advice to the client will effectively reveal the substance of the client’s confidential communication to the attorney. To prevent this result, the privilege normally extends both to the substance of the client’s communication as well as the attorney’s advice in response thereto.”); see also 8 J. Wigmore, Evidence § 2320 at 628-29 (McNaughton rev. 1961) (describing that one reason for privileging an attorney’s communications to a client is that disclosure could “lead[] to inferences of the tenor of the client’s communications”); 1 McCormick on Evidence § 89 at 326 (John W. Strong ed., 4th ed. 1992) (“[I]t is generally held that the privilege will protect at least those attorney to client communications which would have a tendency to reveal the confidences of the client.”) — so the DOD’s responses to the ICRC are exempt, for otherwise the ICRC’s request for confidentiality would be compromised.

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<sup>4</sup> Tab A pertained to Item 8, which was no longer contested; I examined the documents provided under Tabs B, C,

Specifically, I ruled as follows, after in camera inspection of the sample of documents provided by the government: with respect to Tab B documents, responses to concerns raised by the ICRC regarding the treatment of detainees (Item 13), I ruled that the documents, if produced, would disclose information reported by the ICRC to DOD, and were therefore exempt and that no segregable portion could meaningfully be produced following redaction. See 5 U.S.C. § 552(b). With respect to Item 49, a letter from military lawyers over the signature of Brig. Gen. Janis Karpinski to the ICRC responding to its concerns about conditions at Abu Ghraib, I ruled that the single document could be redacted, and thus the portions not covered by 10 U.S.C. § 130c must be disclosed. With respect to Item 58, a complete set of documents reflecting discussions between the ICRC and military officers at Guantánamo Bay, the documents had already been produced in redacted form. I ruled that the redactions had been made appropriately, and thus that the government had satisfied its burden.

I accepted over plaintiffs' challenge the government's representation that the samples it provided were fairly representative, and I ruled that the principles reflected in my rulings be applied by the government to all other documents in these categories that were responsive to plaintiffs' requests.

## II. DOD Interrogation Activities

Plaintiffs seek summary judgment to obtain DOD's responses to requests for: an interim policy put into effect by Lt. Gen. Ricardo Sanchez based on the Guantánamo Bay policy set forth in Gen. Miller's report (Item 4); documents showing that Lt. Gen. Sanchez approved the use of high-pressure interrogation techniques by senior officials at Abu Ghraib without requiring them to obtain prior approval from outside the prison (Item 37); a memorandum from the Combined Joint Task Force (CJTF-7) regarding the applicability of Army Field Manual 34-

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and D.

52 and sensory deprivation (Item 39); a document regarding “Interrogation and Counter-Resistance Policy” listing interrogation tactics approved by CJTF-7 (Item 40); a directive of Lt. Gen. Sanchez entitled “Interrogation and Counter-Resistance Policy” (Item 41); and a memorandum from CJTF-7 on interrogations (Item 42).

Defendant DOD represented that it possessed only two responsive documents, both of which had been declassified, and that the two had already been turned over to plaintiffs. Defs.’ Br., at 8 (citing Second Aly Decl., ¶¶ 23-26 & Exs. E, F). In response to plaintiffs’ challenge, DOD identified drafts of the two disclosed memoranda, Third Decl. of Stewart F. Aly, dated May 19, 2005, ¶¶ 3-9, and, although offering to process the drafts, advised that they probably would be withheld under FOIA Exemption 5, since they constituted the agency’s deliberative processes. See 5 U.S.C. § 552(b)(5) (providing exemption for “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency”). I ruled that the government’s representation as to the completeness of its production had to be accepted, and that the government should complete its processing of the drafts by June 21, 2005, with leave to plaintiffs to raise objections to exemptions claimed by the government.<sup>5</sup>

### III. CIA’s Glomar Responses

The third dispute concerns a response by the CIA, neither confirming nor denying that it possesses documents responsive to three of plaintiffs’ requests. Plaintiffs’ first request is for a memorandum from the Department of Justice (“DOJ”) to the CIA interpreting the Convention Against Torture (Item 1). Plaintiffs, referring to leaks about the document in the press, comment that the documents may have expressed opinions on certain interrogation techniques, such as “sleep deprivation,” the “use of phobias,” and the “deployment of ‘stress

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<sup>5</sup> Since the parties have not advised me of any continuing issues, I consider this phase of the proceedings closed.



factors,” distinguishing such techniques from those “causing severe physical or mental pain.” Plaintiffs’ second request is for a DOJ memorandum specifying interrogation methods that the CIA may use against top Al-Qaeda members (Item 29), which, according to plaintiffs, may permit a technique known as “waterboarding” whereby a detainee believes he is drowning. Plaintiffs’ third request is for a directive signed by President Bush granting the CIA the authority to set up detention facilities outside the United States and/or outlining interrogation methods that may be used against detainees (Item 61).

The CIA, responding to these three categories of requests, gave a “Glomar response,” neither admitting nor denying the existence of these documents in its possession, and claiming that the very fact of the existence or non-existence of the documents must be withheld.<sup>6</sup> The CIA represents that it cannot admit or deny that it possesses documents relating to these categories without revealing “intelligence activities” or “methods,” and that it must therefore give a Glomar response.

(a) The Dorn Declarations

The CIA Information Review Officer, Marilyn A. Dorn, states in her declaration:

CIA confirmation of the existence of the records requested in item nos. 1, 29, and 61 would confirm a CIA interest in or use of specific intelligence methods and activities. Similarly, a CIA response that it had no records responsive to those items would suggest that the CIA was not authorized to use or was not interested in using these intelligence methods and activities. Either response would provide foreign intelligence agencies and other groups hostile to the United States with information about CIA’s intelligence activities and methods.

See Fourth Decl. of Marilyn A. Dorn, dated Mar. 30, 2005, ¶ 13 [hereinafter Fourth Dorn Decl.].

Ms. Dorn claims that records responsive to the three items requested cannot be

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<sup>6</sup> In response to my question at oral argument about whether a DOJ memorandum could instead be requested, and even possibly be obtained, from the Department of Justice, the government represented that “agencies with the equities in the existence or nonexistence of documents tend to be the ones responding. So...it is appropriate that the CIA is litigating this issue.” See Tr. of May 31, 2005, at 63.

identified as either existing, or not existing, without compromising national security. If the CIA were to state that the documents existed, the CIA would be admitting that it “had engaged in clandestine intelligence activities or had an interest in pursuing clandestine intelligence activities upon which DOJ allegedly advised or which were allegedly included in the ‘Presidential Directive,’” and would also “acknowledge a CIA capability to pursue such intelligence activities and employ such methods,” because the “CIA would not request legal memoranda from DOJ or authorizations from the President for intelligence activities in which it had no interest.” Id. ¶¶ 10-11. If, on the other hand, it were to deny the existence of the documents, its denial “would acknowledge a lack of CIA interest or capability.” Id. ¶ 11. Hence, it can neither admit nor deny.

Ms. Dorn states that the “mere confirmation or denial of the existence or non-existence of [such] documents...reasonably could be expected to cause serious damage to the national security,” id. ¶ 16, because it would “interfere with the United States Government’s collection of intelligence in the war on terrorism,” id. ¶ 12, and be of “material assistance” to those who would disrupt our intelligence operations, id. ¶ 14. Ms. Dorn states also that confirmation or denial of the existence of the requested documents could bear on the foreign relations of the United States, since countries that cooperate with us “may be less willing to cooperate if the U.S. Government were to officially acknowledge CIA current or past clandestine intelligence activities and methods, or intelligence interests.” Id. ¶ 15.

Following oral argument in May, the CIA submitted a Fifth Declaration of Marilyn A. Dorn, dated July 15, 2005 [hereinafter Fifth Dorn Decl.], a classified document, which supplements the agency’s justifications for its Glomar responses. I have reviewed the Fifth Dorn Declaration in camera and ex parte. This Opinion discloses no fact or argument that

is not part of the public record.

The CIA justifies its Glomar response, neither admitting nor denying the existence of three categories of documents responsive to plaintiffs' demands, on the basis of Exemptions 1 and 3 to FOIA. I discuss each of these exemptions in turn.

(b) Exemption 1

Exemption 1 exempts 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." 5 U.S.C. § 552(b)(1). Executive Order 12958, effective as amended March 25, 2003, provides for classification of national security information. Exec. Order No. 12958, reprinted as amended by E.O. 13292 in 50 U.S.C. § 435 [hereinafter E.O. 12958]; see also Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). Pursuant to E.O. 12958, an agency may classify information within specified categories if the appropriate classification authority<sup>7</sup> "determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security":

Sec. 1.1. Classification Standards. (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

E.O. 12958 § 1.1(a). Permissible categories of information that may be classified include information concerning: (a) military plans, weapons systems, or operations; (b) foreign

government information; (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology; and (d) foreign relations or foreign activities of the United States, including confidential sources. Id. § 1.4. Information may not be classified to “conceal violations of law,” to “prevent embarrassment,” or to prevent or delay release of information “that does not require protection”:

Sec. 1.7. Classification Prohibitions and Limitations.

(a) In no case shall information be classified in order to:

- (1) conceal violations of law, inefficiency, or administrative error;
- (2) prevent embarrassment to a person, organization, or agency;
- (3) restrain competition; or
- (4) prevent or delay the release of information that does not require protection in the interest of the national security.

Id. § 1.7(a). The Executive Order also provides for a Glomar response; in response to a FOIA request, “[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.” Id. § 3.6(a).

(c) Exemption 3

The CIA also justifies its Glomar responses under Exemption 3, which exempts matters “specifically exempted from disclosure by statute . . . (A) requir[ing] that the matters be withheld from the public in such a manner as to leave no discretion . . . , or (B) establish[ing] particular criteria for withholding or refer[ring] to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). The framework for analyzing agency withholdings under Exemption 3 was outlined earlier in connection with the ICRC documents. See A. Michael’s Piano, Inc. v. Fed. Trade Comm’n, 18 F.3d 138, 143 (2d Cir. 1994) (requiring the government to show that “(1) the statute invoked qualifies as an exemption 3 withholding statute, and (2) the materials withheld fall within that statute’s scope”).

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<sup>7</sup> Ms. Dorn has the requisite classification authority. See E.O. 12958 §§ 1.1(a), 1.3.

The qualifying statute here is Section 103(c)(7) of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-3(c)(7) (West 2003), which commands the Director of Central Intelligence (“DCI”) to “protect intelligence sources and methods from unauthorized disclosure.”<sup>8</sup> See CIA v. Sims, 471 U.S. 159, 167-68 (1985); Assassination Archives and Research Ctr. v. CIA, 334 F.3d 55, 58 (D.C. Cir. 2003). The CIA contends that a substantive answer to plaintiffs’ requests can “reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods.” Wolf v. CIA, 357 F. Supp. 2d 112, 117 (D.D.C. 2004) (quoting Gardels v. CIA, 689 F.2d 1100, 1103 (D.C. Cir. 1982)).

The Supreme Court in Sims, analyzing the “intelligence sources and methods” language of the statute, held that its “broad sweep” “comport[ed] with the nature of the Agency’s unique responsibilities.” 471 U.S. at 169 (construing an earlier version of the statute authorizing the DCI to protect “intelligence sources and methods”). The Supreme Court ruled that “the plain meaning of the statutory language, as well as the legislative history of the National Security Act...indicates that Congress vested in the Director of Central Intelligence very broad authority to protect all sources of intelligence information from disclosure,” and that the DCI, not the judiciary, has the responsibility to weigh the factors and decide if disclosure “may lead to an unacceptable risk of compromising the Agency’s intelligence-gathering process.” Id. at 168-69, 180; see also Fitzgibbon v. CIA, 911 F.2d 755, 766 (D.C. Cir. 1990) (“The assessment of harm to intelligence sources, methods and operations is entrusted to the Director of Central Intelligence, not to the courts.” (citing Sims)).

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<sup>8</sup> The recently enacted Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (Dec. 17, 2004) (except as otherwise expressly stated, effective not later than six months after enactment, as provided by section 1097 of such Act), amends the National Security Act. For example, section 1011(a) of the 2004 Act, 50 U.S.C.A. § 403-1(i)(1), provides that the “Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” The government argues, however, that the withholding statute in effect at the time of plaintiffs’ requests governs the requests. Plaintiffs have not challenged this position. I agree with the government, see Pub. Citizen Health Research Group v. FDA, 704 F.2d 1280, 1284 (D.C. Cir. 1983) (“To invoke Exemption 3, an agency must demonstrate that...a statute exists and was in effect at the time of the request....”), and apply the withholding statute in effect at the time of plaintiffs’ requests.

(d) Analysis

The Glomar response, by which the agency neither admits nor denies that it possesses a requested document, traces its roots to Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976) [hereinafter Phillippi I]. That case involved the Glomar Explorer, a large ship ostensibly designed for oceanic research. The ship was recorded as owned by the Summa Corporation, a corporation owned or controlled by Howard Hughes. However, according to accounts appearing in the media, the real owner and operator was the CIA. A controversy arose concerning whether the CIA—before the news stories appeared—had attempted to persuade the media not to publish these accounts. The plaintiff, Phillippi, a journalist, filed suit under FOIA to uncover such contacts between the CIA and the news media, demanding production of:

all records relating to the Director's or any other agency personnel's attempts to persuade any media personnel not to broadcast, write, publish, or in any other way make public the events relating to the activities of the Glomar Explorer, including, but not limited to, files, documents, letters, [etc.].

Id. at 1011 n.1. The CIA, asserting that the “existence or nonexistence of the requested records was itself a classified fact exempt from disclosure under Sections (b)(1) and (3) of FOIA,” id. at 1012, determined that “in the interest of national security, involvement by the U.S. Government in the activities which are the subject matter of [Phillippi's] request can neither be confirmed nor denied.” Id. The CIA was concerned that admission or denial of contacts with the press would amount to admission or denial of its involvement with the Glomar Explorer project and would thereby compromise “intelligence sources and methods” in violation of section 102(d)(3) of the National Security Act of 1947, 50 U.S.C. § 403(d)(3) (1970), and “severely damage the foreign relations and the national defense of the United States.” Id. at 1011, 1013-14 (Aff. of Brent Scowcroft, Ass't to Pres. for Nat'l Sec. Affairs). As the Court of Appeals described the issue:

In effect, the situation is as if appellant had requested and been refused permission to see a document which says either “Yes, we have records related to contacts with the media concerning the Glomar Explorer” or “No, we do not have any such records.”

Id. at 1012. The Court of Appeals remanded to require the CIA to “submit a public justification, which is as detailed as is possible, for refusing to confirm or deny the existence of the requested records.” Id. at 1015 n.12. The Court of Appeals held that the district court should discharge its de novo review obligation by first creating “as complete a public record as is possible,” and only then, if necessary, by “examin[ing] classified affidavits in camera and without participation by plaintiff’s counsel.” Id. at 1013.

Later cases, relying on Phillippi I, have approved Glomar responses where substantive responses, either admitting or denying that particular documents existed, “would remove any ‘lingering doubts’ that a foreign intelligence service might have on the subject, and [where] the perpetuation of such doubts may be an important means of protecting national security.” Frugone v. CIA, 169 F.3d 772, 774-75 (D.C. Cir. 1999) (citing Military Audit Project v. Casey, 656 F.2d 724, 745 (D.C. Cir. 1981)); see also Hunt v. CIA, 981 F.2d 1116, 1118 (9th Cir. 1992).

The danger of Glomar responses is that they encourage an unfortunate tendency of government officials to over-classify information, frequently keeping secret that which the public already knows, or that which is more embarrassing than revelatory of intelligence sources or methods. That over-classification was evident in Phillippi, after administrations changed and “the government acknowledged both that the CIA was responsible for the [Glomar Explorer] project” and that “CIA officials had tried to dissuade members of the press from publishing stories about it.” Phillippi v. CIA, 655 F.2d 1325, 1328 (D.C. Cir. 1981) [hereinafter Phillippi II]. Yet, even then, the CIA was allowed to redact records to withhold descriptions of

conversations between the CIA and the press. The district court rejected plaintiff's arguments that since the world already knew, possibly from the CIA's own disclosures, that the real purpose of the Glomar Explorer apparently extended beyond oceanic research to raising a lost Russian submarine from the ocean floor, there could be no remaining statutory purpose to withhold descriptions of contacts with the press. The Court of Appeals upheld the district court's deference to the CIA, holding that courts lacked competence to decide such delicate questions affecting national security and should defer to "well-documented and specific affidavits of the CIA." Id. at 1330.

In sum, the line between what may be revealed and what must be concealed is itself capable of conveying information to foreign intelligence agencies. For this reason, this court cannot simply assume, over the well-documented and specific affidavits of the CIA to the contrary, that revelation of seemingly innocent information which might nonetheless jeopardize a fallback cover story is required under the FOIA, either because the information in question has already been made public, or even, as in the present case, because it was disseminated for confidential purposes by the CIA itself. Without the ability to engineer controlled leaks of disinformation, the CIA would be deprived of the ability to disseminate a fallback cover while simultaneously protecting it.

Id. The Court of Appeals also accepted that there was a national interest in keeping foreign analysts in the dark, and leaving them unsure if that which was publicly disclosed was all that was secretly known. As the Court of Appeals put it:

FOIA does not require the CIA to lighten the task of our adversaries around the world by providing them with documentary assistance from which to piece together the truth.

Id. at 1332. And, further, even if the only question was whether to recognize officially that which was informally or unofficially believed to exist, the niceties of international diplomacy sometimes make it important not to embarrass a foreign country or its leaders, and exemptions from FOIA protect that concern as well. Id. at 1332-33.

Historians will evaluate, and legislators debate, how wise it is for a society to



give such regard to secrecy. The practice of secrecy, to compartmentalize knowledge to those having a clear need to know, makes it difficult to hold executives accountable and compromises the basics of a free and open democratic society. It also creates a dangerous tendency to withhold information from those outside the insular group, for fear of compromising the sources and integrity of intelligence. The consequences can be dire for, as noted in the 9/11 Commission Report, the strict need-to-know, proprietary approach to intelligence that has been employed by government agencies prevents the effective use of our vast storehouse of information. 9/11 Comm'n Rep. (2004), § 13.3, at 416-17 (“The biggest impediment to all-source analysis—to a greater likelihood of connecting the dots—is the human or systemic resistance to sharing information.”). Identities of terrorists may be locked in the files of one agency and not given to another, or reported, if at all, only at the very top of chains of command, denying real-time need to know by those at operating points. The insularity of information tends to cause a multiplicity of intelligence-gathering agencies, each zealously protecting its own private sources in competition with other agencies. See, e.g., Judith Miller, A New York Cop in Israel, Stepping a Bit on F.B.I. Toes, N.Y. Times, May 15, 2005, § 1, at 37 (discussing tensions between the New York Police Department and the FBI arising from their separate intelligence-gathering endeavors abroad, in turn resulting from the NYPD’s desire to have quick access, on an equal footing with federal agencies, to key counter-terrorism information).

There was no more cogent critic of the penchant by government officials to over-classify information than the late Senator Daniel Patrick Moynihan, and few with his competence and experience. Senator Moynihan, reflecting on his experiences as Chairman of the Commission on Protecting and Reducing Government Secrecy, among many other relevant

positions, commented at the conclusion of his book, Secrecy:

[A] huge proportion of the government's effort at classifying is futile anyway. Let [George F.] Kennan have the last word. In a letter of March 1997 he writes: "It is my conviction, based on some 70 years of experience, first as a government official and then in the past 45 years as an historian, that the need by our government for secret intelligence about affairs elsewhere in the world has been vastly over-rated."...

A case can be made...that secrecy is for losers. For people who don't know how important information really is. The Soviet Union realized this too late. Openness is now a singular, and singularly American, advantage. We put it in peril by poking along in the mode of an age now past. It is time to dismantle government secrecy, this most pervasive of Cold War-era regulations. It is time to begin building the supports for the era of openness that is already upon us.

Daniel Patrick Moynihan, Secrecy, 226-27 (Yale Univ. Press 1998); see generally Rep. of the Comm'n on Protecting and Reducing Gov't Secrecy (1997).

This is not to say that there is no room for secrets, or that the courts have the competence or the expertise of national security experts. Indeed, the courts generally respect the CIA's right to make a Glomar response. See Bassiouni v. CIA, 392 F.3d 244, 246 (7th Cir. 2004) ("Every appellate court to address the issue has held that the FOIA permits the CIA to make a 'Glomar response' when it fears that inferences from Vaughn indexes or selective disclosure could reveal classified sources or methods of obtaining foreign intelligence."). Most such cases involve requests by persons who claim to have had employment or other personal connections to the agency, or who seek such information about others who may have had such relationships. By giving a Glomar response, the CIA is able to avoid identifying its employees, or targets, and their activities. See, e.g., id. at 245 (Glomar response necessary to avoid "reveal[ing] details about intelligence-gathering methods"); Frugone v. CIA, 169 F.3d 772, 774 (D.C. Cir. 1999) (Glomar response necessary to avoid acknowledgment of employment); Minier v. CIA, 88 F.3d 796, 801-02 (9th Cir. 1996) (Glomar response necessary to avoid revealing if

person was a CIA agent); Hunt v. CIA, 981 F.2d 1116, 1119 (9th Cir. 1992) (“[D]isclosure of the existence or non-existence of records pertaining to Eslaminia,” an Iranian national allegedly murdered by Hunt, “is tantamount to a disclosure whether or not he was a CIA source or intelligence target.”).

Other cases defer to the CIA’s unwillingness to describe its intelligence-gathering activities. See, e.g., Miller v. Casey, 730 F.2d 773, 774 (D.C. Cir. 1984) (upholding Glomar response to request for “information concerning alleged efforts by the United States and other countries to infiltrate intelligence agents and potential guerrillas into Albania during the period 1945-53”); Gardels v. CIA, 689 F.2d 1100, 1102-03 (D.C. Cir. 1982) (upholding Glomar response to request by a student at the University of California for “documents revealing covert CIA connections with or interest in the University”); Wolf v. CIA, 357 F. Supp. 2d 112, 114 (D.D.C. 2004) (upholding Glomar response to request by a researcher for records concerning Jorge Elicier Gaitan, a former Colombian presidential candidate who was assassinated in 1948); Earth Pledge Found. v. CIA, 988 F. Supp. 623, 625 (S.D.N.Y. 1996) (upholding Glomar response to request for communications between the CIA station in the Dominican Republic and CIA headquarters “pertaining to contacts with dissident elements, hostile to the regime of Rafael Trujillo”).

In the present case, the CIA justifies its Glomar responses, in its publicly filed documents, by referencing the same types of concerns as those found in the cases. Ms. Dorn states that the “CIA would not request legal memoranda from DOJ or authorizations from the President for intelligence activities in which it had no interest”; that “[m]erely acknowledging that the CIA sought legal opinions or authorizations addressing specific interrogation and detention activities is itself classified because the answer provides information about the types

of intelligence methods and activities that are available to the CIA or may be of interest to the CIA”; and that “[r]evealing that information reasonably could be expected to interfere with the United States Government’s collection of intelligence in the war on terrorism.” Fourth Dorn Decl. ¶¶ 11-12. Further, Ms. Dorn states that our foreign relations could be compromised because hitherto cooperating countries “may be less willing to cooperate if the U.S. Government were to officially acknowledge CIA current or past clandestine intelligence activities and methods, or intelligence interests.” *Id.* ¶ 15. In the Fifth Dorn Declaration, a classified document submitted to me *in camera*, Ms. Dorn provides further elaboration and describes particularized harms to justify the agency’s Glomar responses.

In *Miller v. Casey*, 730 F.2d 773 (D.C. Cir. 1984), the Court of Appeals upheld a Glomar response under Exemptions 1 and 3 upon descriptions of specific probable harms that might flow from substantive admissions or denials. The request in *Miller* was for:

All information on attempts by the U.S., U.K., and other western countries to infiltrate intelligence agents and potential guerrillas into Albania during the period between the end of World War II and the death of Stalin in 1953, including but not limited to those operations apparently betrayed to the Russians by Kim Philby.

*Id.* at 774. In response, the Information Review Officer for the Directorate of Operations of the CIA (the same position held by Ms. Dorn), described why national security and the United States’ foreign relations would be compromised by a substantive disclosure:

1) disclosure now might prevent foreign countries from participating in future covert missions, 2) disclosure might hamper future relations with Albania, 3) a pattern of denials or affirmances would permit hostile nations to piece together a “catalog” of U.S. covert missions, 4) denial or affirmation would enable the Soviet Union to ascertain the reliability of its double agent, Kim Philby, 5) acknowledgement could jeopardize sources and sympathizers still within Albania, 6) acknowledgement could hamper future recruitment of sources, and 7) acknowledgement would reveal the particular intelligence method--infiltration of agents--allegedly used in the mission.

*Id.* at 775-76.

The Information Review Officer showed also how acknowledging the existence of the Albanian program would reveal “intelligence sources or methods” in three possible ways, thereby compromising them: “by providing the critical confirmation which would allow Albanian leaders to identify participants in the covert action; by damaging future CIA efforts to recruit sources; and by revealing how, where and when the CIA has deployed its resources.” Id. at 777-78. Upon these particularized justifications, the Court of Appeals upheld the CIA’s Glomar response under Exemptions 1 and 3 to FOIA.

Courts interpret FOIA to afford agency affidavits “a presumption of good faith” and award agencies “summary judgment on the basis of affidavits” that are “adequate on their face.” Carney v. DOJ, 19 F.3d 807, 812 (2d Cir. 1994); see also Miller, 730 F.2d at 776 (“[T]he district court must accord substantial weight to an agency’s affidavit concerning the details of the classified status of the disputed record.” (quotations omitted)). Clearly, the need for such deference is particularly acute in the area of national security. The statutory text of FOIA, however, requires the court to “determine the matter de novo,” 5 U.S.C. § 552(a)(4)(B), for “[i]n no case” is classification to conceal “violations of law” or “inefficiency, or administrative error,” or to mask “embarrassment.” See E.O. 12958 § 1.7; see also Phillippi I, 546 F.2d at 1013-15 & n.12. Largely, the courts fail to grapple with this tension, ruling instead that the administrative assertions of secrecy should be accepted without much, if any, de novo review.

In the case before me, Item 29, a DOJ memorandum specifying interrogation methods that the CIA may use against top Al-Qaeda members, and Item 61, a directive signed by President Bush granting the CIA the authority to set up detention facilities outside the United States and/or outlining interrogation methods that may be used against detainees, specifically refer to “interrogation methods” alleged to be considered, and perhaps used, by the CIA in

connection with detainees in United States' custody. The discussions of these documents in the public press, undoubtedly arising from numerous leaks of the documents, raise concern, however, that the purpose of the CIA's Glomar responses is less to protect intelligence activities, sources or methods than to conceal possible "violations of law" in the treatment of prisoners, or "inefficiency" or "embarrassment" of the CIA. Compare 50 U.S.C.A. § 403-3(c)(7) (West 2003) (protecting intelligence sources and methods), and E.O. 12958 § 1.4 (same; permissible subjects of classification), with E.O. 12958 § 1.7 (criteria that forbid classification). The Dorn Declarations amply discuss the need to protect "intelligence sources and methods." But they do not describe the intelligence sources or methods themselves, or reflect any discussion within the administration whether the particular methods might constitute a "violation[] of law," or an "embarrassment," or administrative "inefficiency" or "error," when debate on these points within the administration probably occurred, as suggested by the discussions in the press. See E.O. 12958 § 1.7. And since the existence of the documents that plaintiffs request, which give rise to all this controversy, is neither admitted nor denied, there is nothing to show the court that might allow me to arrive at my own conclusions. In short, I am not given enough relevant information to make the de novo determinations that FOIA would seem to require. See 5 U.S.C. § 552(a)(4)(B).

Nevertheless, under the cases and notwithstanding FOIA's clear statutory command, there is small scope for judicial evaluation in this area. See, e.g., Phillippi II, 655 F.2d 1325. The Fifth Dorn Declaration sets out that which the cases require. See Miller, 730 F.2d 773. The agency's arguments that it should not be required officially to acknowledge the precise "intelligence activities" or "methods" it employs or considers—for example, whether it has any role whatsoever in the interrogation of detainees—are given deference by the courts, for

the CIA, not the courts, is deemed to have the competence to “weigh the variety of complex and subtle factors in determining whether disclosure of information may lead to an unacceptable risk of compromising the Agency’s intelligence-gathering process.” Sims, 471 U.S. at 180; see also Fitzgibbon v. CIA, 911 F.2d 755, 766 (D.C. Cir. 1990) (disapproving the district court’s performance of “its own calculus as to whether or not harm to the national security or to intelligence sources and methods would result from disclosure”). On the basis of the Fourth and, in particular, the Fifth Dorn Declarations, I accept the CIA’s Glomar response with respect to Items 29 and 61 of the August 16, 2004 List.

Item 1, however, a “[m]emorandum from DOJ to CIA interpreting the Convention Against Torture,” does not, by its terms, implicate “intelligence sources or methods.” The CIA’s Glomar response to that item focuses, not on plaintiffs’ demand, but on plaintiffs’ effort to explain to the government why, because of frequent references in the public press, it should not be difficult for the government to process its response. Thus, plaintiffs referred to news reports of interrogation techniques that may have been justified in the memorandum, such as “sleep deprivation,” the “use of phobias,” and the “deployment of ‘stress factors,’” distinguishing such practices from those that cause “severe physical or mental pain” characteristic of torture. The CIA justifies its Glomar response not on the text of the demand, but on all those references, as if they were part of the demand itself. See Fourth Dorn Decl., at 5 n.4. In effect, the agency seeks to use plaintiffs’ attempt to provide assistance to the government in identifying the memorandum as a basis for withholding information about the item requested. But plaintiffs’ speculation as to the possible contents of the memorandum is not controlling; rather, it is the unembellished request set forth in the August 16, 2004 List (set out in the “Description of Record” column) that controls. The List was created for the benefit of

defendant agencies, and they must be bound by it. See Miller, 730 F.2d at 777 (The “agency [i]s bound to read [the request] as drafted, not as either agency officials or [the requester] might wish it was drafted.”). I rule, therefore, that acknowledging whether or not the memorandum requested by plaintiffs exists reveals nothing about the agency’s practices or concerns or its “intelligence sources or methods.” Available exemptions can be proved if necessary to avoid compromise, if any, to the interest of national defense or foreign policy. Since the government has failed in its burden to justify its Glomar response, see 5 U.S.C. § 552(a)(4)(B); Halpern v. FBI, 181 F.3d 279, 287 (2d Cir. 1999); Carney v. DOJ, 19 F.3d 807, 812 (2d Cir. 1994), the government shall produce the documents relating to Item 1, or prove that the same are exempt from production.

IV. CIA Request to DOD to Detain an Iraqi Suspect Without Identifying the Suspect

The fourth set of issues involves seventy-one documents responsive to Item 43 of the August 16, 2004 List, a request by former CIA Director Tenet to Defense Secretary Rumsfeld that the DOD hold an Iraqi suspect at a high-level detention center, but that he not be listed on the prison rolls, and an order by Secretary Rumsfeld implementing the request. The CIA, responding on behalf of the government,<sup>9</sup> withheld the documents under Exemptions 1, 2,<sup>10</sup> 3, 5 and 7(A).<sup>11</sup> In particular, with respect to Exemption 1, the CIA relied upon Executive Order 12958, which governs the classification of national security information. With respect to Exemption 3, the CIA relied upon the National Security Act, 50 U.S.C.A. § 403-3(c)(7) (West 2003), and Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50

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<sup>9</sup> Perhaps as the agency with the greatest “equity” in the documents. See note 6, supra.

<sup>10</sup> Exemption 2 exempts from FOIA matters that are “related solely to the internal personnel rules and practices of an agency.” 5 U.S.C. § 552(b)(2).

<sup>11</sup> Exemption 7(A) exempts “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).



U.S.C.A. § 403g (West Supp. 2003), as the statutes furnishing the requisite authority to withhold.<sup>12</sup>

The CIA supported its position by providing a Vaughn index of 126 pages, describing each document by its length and general subject matter, but not as to its specific content. See Fourth Dorn Decl., Ex. A. At the end of each description, Ms. Dorn represented that “There is no meaningful, reasonably segregable portion of the document that can be released.”

Plaintiffs challenge whether, indeed, there are no “meaningful, reasonably segregable” portions of the documents. If there are, those portions must be produced. See 5 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.”). Plaintiffs asked the court to review in camera each of the seventy-one responsive documents. Plaintiffs do not press their challenge to Ms. Dorn’s showing that the documents overall are exempt from production.

An agency seeking to withhold material may satisfy its burden under FOIA by affidavits evincing a thorough search and providing reasonably detailed explanations for the withholding. Carney v. DOJ, 19 F.3d 807, 812 (2d Cir. 1994). Cases generally disfavor in camera inspections by district court judges as the primary method for resolving FOIA disputes. See, e.g., NLRB v. Robbins Tire and Rubber Co., 437 U.S. 214, 224 (1978) (“The in camera review provision is discretionary by its terms, and is designed to be invoked when the issue before the District Court could not be otherwise resolved; it thus does not mandate that the documents be individually examined in every case.”); Halpern v. FBI, 181 F.3d 279, 287 (2d Cir. 1999) (“When a government agent can attest in a sworn affidavit that the redactions are

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<sup>12</sup> Exemptions 1 and 3, and their implementing regulations and statutes, were discussed in the previous section of

necessary, and elaborate on the reasons for the redactions with sufficient specificity, the district court should be able to rule on the appropriateness of the redactions without conducting an in camera review of the redacted materials.”); PHE, Inc. v. DOJ, 983 F.2d 248, 253 (D.C. Cir. 1993) (noting that in FOIA cases “in camera review is generally disfavored”).

However, when a court is not able to resolve to its own satisfaction an agency’s determination to withhold documents, it may require a further showing by the agency and, if necessary, it may conduct an in camera review. See Halpern, 181 F.3d at 295 (ruling that, on remand, “the district court may, in its discretion, order in camera review of the unredacted documents themselves,” and remarking that “[i]n camera review is considered the exception, not the rule, and the propriety of such review is a matter entrusted to the district court’s discretion” (quoting Local 3, Int’l Bhd. of Elec. Workers, AFL-CIO v. NLRB, 845 F.2d 1177, 1180 (2d Cir. 1988))).

Ms. Dorn’s Fourth Declaration describes the nature of each of the seventy-one documents, and the procedures by which she determined non-segregability with respect to each document. Fourth Dorn Decl. ¶ 22. Ms. Dorn’s statement that a “line-by-line review was conducted for all the documents, individually and as [a] whole” is undocumented, and her statement that “there are no meaningful, reasonably segregable, non-exempt portions” of the seventy-one documents is conclusory, for she does not describe the individual documents paragraph by paragraph and line by line. Id. FOIA provides that the district judge has the responsibility, ultimately, to make the determination, 5 U.S.C. § 552(a)(4)(B), and I determined that there was no feasible way for me to evaluate the conclusory determination of lack of segregability at the end of each of Ms. Dorn’s document descriptions without viewing at least a sample of the documents in camera.

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this Opinion, in connection with the CIA’s Glomar response.

I ordered the plaintiffs to select a sample size of fifteen documents, that is, about 20% of the total set of seventy-one responsive documents, and the government to re-review those fifteen to confirm that there are no segregable portions that may be released, subject to my review. Plaintiffs identified the fifteen documents to be reviewed, numbered according to the numbering scheme provided in Ms. Dorn's Fourth Declaration—13, 39, 263, 269, 273, 279, 291, 304, 335, 337, 346, 402, 428, 429, and 431—and the government re-reviewed them, and confirmed its position as to non-segregability.

Following this confirmation by the government, the CIA, in further support of its position, provided two classified declarations, Decl. of Porter J. Goss, Dir., CIA, dated Aug. 3, 2005; Sixth Decl. of Marilyn A. Dorn, dated Aug. 5, 2005, which I reviewed in camera. The Sixth Dorn Declaration furnishes a further explanation of the agency's determination of non-segregability, and attaches an eighty-eight page Vaughn index addressing solely the fifteen documents identified by plaintiffs. The agency argues that the Sixth Dorn Declaration and Vaughn index should avert the need for an in camera review of the fifteen documents themselves, but, to the extent I determine otherwise, the agency is prepared to provide minimally redacted versions of the documents. The Declaration of CIA Director Goss describes the information that is redacted.

I have reviewed the Goss Declaration and the Sixth Dorn Declaration. The explanations provided therein more substantially support the agency's position. In particular, the Vaughn index attached to the Sixth Dorn Declaration conveys a better sense of the nature and contents of the sample fifteen documents identified by plaintiffs. Accordingly, I am now satisfied that there is no meaningful, reasonably segregable, non-exempt portion of the seventy-one documents that can be produced. See Halpern, 181 F.3d at 294 (“What a district court

needs from the government, in a Vaughn affidavit, is information that is...specific enough to obviate the need for an in camera review....”). Since plaintiffs’ objection was restricted to the issue of segregability, and since plaintiffs have not objected to my tentative ruling that the Goss Declaration and Sixth Dorn Declaration sufficed, I now consider the fourth dispute to be closed and grant summary judgment to the government.

V. The Darby and Related Photographs of Abuse of Detainees

Plaintiffs and defendants seek summary judgment with respect to DOD’s withholding of certain photographs and videotapes depicting abuse of detainees (Items 10,<sup>13</sup> 11,<sup>14</sup> and 69) in Guantánamo Bay and Iraq. Oral argument focused on Item 69,<sup>15</sup> which requested a “report of Detainee mistreatment and a CD with photographs that Joseph Darby, a military policeman assigned to Abu Ghraib, provided to the Army’s Criminal Investigations Division.” The government initially represented that 144 original photographs and four movies were responsive,<sup>16</sup> and that the images “were taken for personal, rather than official, purposes.” Defs.’ Reply Br., at 27 n.12.

I first reviewed, ex parte and in camera, a sample of eight photographs offered by defendant DOD. My Order dated June 1, 2005 reflected my rulings on the responsiveness of each photograph in the sample, as well as on the appropriateness and extent of redactions in

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<sup>13</sup> Item 10 requested videotapes, photographs and other records of abuse, including videotapes, photographs and other records of abuse catalogued and stored in Guantánamo Bay facilities.

<sup>14</sup> Item 11 requested videotapes, photographs and other records depicting abuse at Iraqi facilities.

<sup>15</sup> The government indicated at oral argument and in its reply papers that DOD had not yet finished processing all of the photographs and other media in its possession that might be responsive to requests 10 and 11, but that to the extent any such items already had been processed and withheld under Exemptions 6 and 7(C), DOD would apply my rulings on the Darby photographs to any such images. I held at oral argument that that procedure was satisfactory. See Tr. of May 26, 2005, at 14; see also id., at 28 (suggesting that the parties, at the end of oral argument, create a schedule of items that need to be processed).

<sup>16</sup> These figures reflected the number of images initially determined to be responsive. Other images on the two CDs provided by Darby to the Army’s Criminal Investigation Command (“CID”), including duplicates and photographs wholly unrelated to plaintiffs’ concerns, are not part of this litigation. See Second Decl. of Phillip J. McGuire, Dir. of U.S. Army Crime Records Ctr., CID, dated Mar. 30, 2005, ¶¶ 3, 4 [hereinafter Second McGuire Decl.].

connection therewith, and I required the government to apply those rulings to all photographs responsive to plaintiffs' requests. The government processed the remaining photographs taken by Darby, and determined that eighty-seven photographs and four movies, redacted as appropriate, were responsive. See Third Decl. of Phillip J. McGuire, Dir. of U.S. Army Crime Records Ctr., CID, dated July 20, 2005, ¶ 6. In a session held in camera and ex parte on August 9, 2005, I viewed all eighty-seven photographs and four videos (collectively, the "Darby photographs"), in both their unredacted and redacted forms.

(a) Exemptions 6 and 7(C)

The government, contending that FOIA Exemptions 6, 7(C), and 7(F), 5 U.S.C. § 552(b)(6), (b)(7)(C), (b)(7)(F), apply, opposes the release of the Darby photographs.

Exemption 6 exempts:

personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Exemption 7 exempts:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

I first address Exemptions 6 and 7(C); Exemption 7(F) will be addressed separately in a

later section.

The government argues that release of the Darby photographs, even if redacted, would constitute an “unwarranted invasion of personal privacy.” The government contends that even though the public, in Iraq and elsewhere, has seen photographs from Abu Ghraib when first they appeared in the press, presumably similar to the Darby photographs, the individuals depicted in the photographs would be recognized, even from redacted photographs.

Exemptions 6 and 7(C) contain the identical phrase “unwarranted invasion of personal privacy.” Exemption 6, however, has been interpreted to present a higher standard, since the agency must establish that disclosure “would” constitute a “clearly unwarranted” invasion, whereas Exemption 7(C) allows for the withholding of records or information that “could reasonably be expected” to constitute an “unwarranted” invasion. DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 756 (1989). Nonetheless, both exemptions require similar considerations by the reviewing district court. See, e.g., FLRA v. Dep’t of Veterans Affairs, 958 F.2d 503, 510 (2d Cir. 1992) (“And though Reporters Committee involved Exemption 7(C) its discussion governs Exemption 6, for the noted differences bear only on the type of information sought and the degree of invasion to a privacy interest that will be tolerated.”).

Exemption 6 is to be interpreted broadly as encompassing “information which applies to a particular individual,” Dep’t of State v. Washington Post Co., 456 U.S. 595, 602 (1982); in general, this exemption protects “individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” Id. at 599. When such information is sought, courts are to “determine whether release of the information would constitute a clearly unwarranted invasion of that person’s privacy.” Id. at 602.

Under Exemption 7, “the government must demonstrate that (1) the document was compiled for law enforcement purposes, and (2) release of the material would result in one of the harms enumerated in the statute,” Ortiz v. Dep’t of Health and Human Servs., 70 F.3d 729, 732 (2d Cir. 1995)—in the case of 7(C), an “unwarranted invasion of personal privacy.” If there is a “personal privacy interest recognized by the statute,” courts consider whether the “privacy claim is outweighed by the public interest in disclosure.” Nat’l Archives and Records Admin. v. Favish, 541 U.S. 157, 160 (2004); see also Dep’t of Veterans Affairs, 958 F.2d at 510 (“[O]nce a more than de minimis privacy interest is implicated the competing interests at stake must be balanced in order to decide whether disclosure is permitted under FOIA.”).

(b) Analysis

A question may be raised as a threshold matter with respect to Exemption 7(C)’s application to the Darby photographs, whether the photographs were indeed “compiled for law enforcement purposes.” The government represents that the Army Criminal Investigation Command (“CID”) “opened a report of investigation immediately after receiving these photographs” and that the information therein contained has “been used extensively by CID agents to conduct the investigations into incidents of abuse of detainees at Abu Ghraib.” Defs.’ Br., at 67-68 (citing Second McGuire Decl., ¶ 6). The government claims, accordingly, that the Darby photographs were “compiled for law enforcement purposes.”<sup>17</sup> Plaintiffs appear to agree with this analysis. See Pls.’ Reply Br., at 16-17 n.4.

Accordingly, even though the Darby photographs were, in the government’s own words, “taken for personal, rather than official, purposes,” Defs.’ Reply Br., at 27 n.12, I will assume for the purposes of Exemption 7 that the Darby photographs were “compiled for law

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<sup>17</sup> Amicus curiae The American Legion, in a brief filed August 11, 2005, at 8-9, argues that the Darby photographs are not properly the subject of plaintiffs’ FOIA requests since the photographs were actually under the control of courts martial or of military authority exercised in the field in time of war when plaintiffs made their second FOIA request on May 25, 2004. Since, however, the government is the party in interest and since the government has not

enforcement purposes.” This assumption is consistent with case law under FOIA. See Ortiz, 70 F.3d at 732-33 (an unsigned, unsolicited letter used by the Department of Health and Human Services’ Office of Inspector General to launch a criminal investigation, and kept in its investigative files, was “compiled for law enforcement purposes”); Dep’t of Veterans Affairs, 958 F.2d at 508 (“To qualify as agency records, the requested information must either be created or obtained by the agency and within its control at the time the FOIA request is made.”); see also Ctr. for Nat’l Sec. Studies v. DOJ, 331 F.3d 918, 926 (D.C. Cir. 2003) (requiring “(1) a rational nexus between the investigation and one of the agency’s law enforcement duties; and (2) a connection between an individual or incident and a possible security risk or violation of federal law”); Quiñon v. FBI, 86 F.3d 1222, 1228 (D.C. Cir. 1996) (examining if the record was “created or acquired in the course of an investigation”).

I am satisfied from my review that publication of redacted photographs will not constitute an “unwarranted invasion of personal privacy,” since all identifying characteristics of the persons in the photographs have been redacted, and therefore, as a preliminary matter, I do not find a cognizable “invasion of personal privacy.” If, as the government argues, the protagonists might recognize themselves in re-publications of the photographs, or be recognized by members of the public, see, e.g., Massey v. FBI, 3 F.3d 620, 624 (2d Cir. 1993) (“Persons can retain strong privacy interests in government documents containing information about them even where the information may have been public at one time.” (citing Reporters Committee, 489 U.S. at 762-63)), even without identifying characteristics being revealed, that possibility is no more than speculative, a speculation which could apply equally to textual descriptions without pictures.

The Supreme Court addressed similar concerns in Dep’t of the Air Force v. Rose,

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raised this objection, I do not consider it.



425 U.S. 352 (1976), as further explained in Reporters Committee, 489 U.S. at 768-69 (1989) (remarking that “much of our discussion” in Rose, which dealt with Exemption 6, was applicable to Reporters Committee, which dealt with Exemption 7(C)). Rose involved a request submitted to the Air Force for case summaries of honor and ethics hearings, with personal references and other identifying information removed from the summaries. The summaries were kept in the United States Air Force Academy’s Honor and Ethics Code reading files, and were regularly posted on forty squadron bulletin boards and circulated to various faculty members and administration officials. 425 U.S. at 355. Without examining the summaries to form its own view, the district court held that Exemption 6 was unavailable to the Air Force because “disclosure of the summaries without names or other identifying information would not subject any former cadet to public identification and stigma, and the possibility of identification by another former cadet could not, in the context of the Academy’s practice of distribution and official posting of the summaries, constitute an invasion of personal privacy proscribed by § 552(b)(6),” but it granted summary judgment to the Air Force on other grounds. Id. at 357.

The Second Circuit reversed, concluding that the district court’s decision “‘ignores certain practical realities’ which militated against the conclusion ‘that the Agency’s internal dissemination of the summaries lessens the concerned cadets’ right to privacy, as embodied in Exemption Six.’” Id. at 358 (quoting 495 F.2d 261, 267-68 (2d Cir. 1974)). The Court of Appeals remanded for further proceedings in which the Air Force was to “‘produce the summaries themselves in court’ for an in camera inspection ‘and cooperate with the judge in redacting the records so as to delete personal references and all other identifying information. . . . [The Court of Appeals thought] it highly likely that the combined skills of court and Agency, applied to the summaries, will yield edited documents sufficient for the

purpose sought and sufficient as well to safeguard affected persons in their legitimate claims of privacy.” Id. The Supreme Court affirmed, id. at 380-82, and, as it later explained in Reporters Committee, approved the procedure by which the district court was to remove identifying information and thereby protect the claimed privacy interest:

[W]e doubly stressed the importance of the privacy interest implicated by disclosure of the case summaries. First: We praised the Academy’s tradition of protecting personal privacy through redaction of names from the case summaries. But even with names redacted, subjects of such summaries can often be identified through other, disclosed information. So, second: Even though the summaries, with only names redacted, had once been public, we recognized the potential invasion of privacy through later recognition of identifying details, and approved the Court of Appeals’ rule permitting the District Court to delete “other identifying information” in order to safeguard this privacy interest.

489 U.S. at 769; see also id., 489 U.S. at 762, 771 (examining the personal privacy interest “in avoiding disclosure of personal matters” and finding substantial privacy interest in criminal rap sheets, even though “events summarized in a rap sheet have been previously disclosed to the public”). The Court has reaffirmed that the “redaction procedure is...expressly authorized by FOIA.” Dep’t of State v. Ray, 502 U.S. 164, 174 (1991) (applying Exemption 6).

The procedures I adopted and the rulings I made in the in camera sessions embody the principles set out in Rose and Reporters Committee. I examined each of the Darby photographs, in both its original and redacted forms. Where I determined that the government could better mask identifying features, I ordered it to do so. Furthermore, in the case of a certain small number of photographs, mainly of female detainees, and one of the videos, where the context compelled the conclusion that individual recognition could not be prevented without redaction so extensive as to render the images meaningless, I ordered those images not to be produced. Having viewed the remaining Darby photographs, as thus redacted, I hold that there is no “invasion of personal privacy” under Exemptions 6 and 7(C). See, e.g., Ray, 502 U.S. at

175-76 (noting that “disclosure of such personal information [regarding marital and employment status, children, living conditions and attempts to enter the United States] constitutes only a de minimis invasion of privacy when the identities of the interviewees are unknown”). If, because someone sees the redacted pictures and remembers from earlier versions leaked to, or otherwise obtained by, the media that his image, or someone else’s, may have been redacted from the picture, the intrusion into personal privacy is marginal and speculative, arising from the event itself and not the redacted image.

Moreover, even were I to find an “invasion of personal privacy,” any further intrusion into the personal privacy of the detainees by redacted publications would be, with the exception of the small number described above, minimal and, under a balancing analysis, not “unwarranted” in light of the public interest policy of FOIA. The Supreme Court has set forth its most recent iteration of the balancing analysis under Exemption 7(C) in Nat’l Archives and Records Admin. v. Favish, 541 U.S. 157 (2004); see also Reporters Committee, 489 U.S. at 772 (“[W]hether disclosure of a private document under Exemption 7(C) is warranted must turn on the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny, rather than on the particular purpose for which the document is being requested.”) (quotations omitted). As discussed above, since Exemption 7(C) contains the easier burden for the government, I address that Exemption. See Reporters Committee, 489 U.S. at 762 n.12 (“Because Exemption 7(C) covers this case, there is no occasion to address the application of Exemption 6.”).

In Favish, the Supreme Court held that the public interest in photographs of the death scene of Vincent Foster, Jr., deputy counsel to President Clinton, was insufficiently supported in light of the substantial interest in privacy of Vincent Foster’s family. The Court

arrived at this holding after asking whether the information requested would advance a significant public interest:

Where the privacy concerns addressed by Exemption 7(C) are present, the exemption requires the person requesting the information to establish a sufficient reason for the disclosure. First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.

Favish at 172.

With the exception of the small number of Darby photographs that I ordered to be withheld, where the risk of exposure is too great and the informational value is minimal, the balancing analysis weighs in favor of disclosure in the present case. There is a substantial public interest in these pictures, evidenced by the active public debate engendered by the versions previously leaked to the press, or otherwise obtained by the media. See discussion in section (c) of this Opinion, infra. Moreover, the government concedes that wrongful conduct has occurred. Defs.' Br., at 70-72. Plaintiffs assert that they seek release of the Darby photographs to inform and educate the public, and to spark debate about the causes and forces that led to the breakdown of command discipline at Abu Ghraib prison and, possibly, by extension, to other prisons in Iraq, Afghanistan, Guantánamo, and perhaps elsewhere. These are the very purposes that FOIA is intended to advance. The photographs are sought to "shed[] light on an agency's performance of its statutory duties" and to "contribut[e] significantly to public understanding of the operations or activities of the government." Pls.' Reply Br., at 24 (quoting Reporters Committee, 489 U.S. at 773 & 775). As I remarked at oral argument:

photographs present a different level of detail and a different medium, and are the best evidence that the public could have as to what occurred at a particular time, better than testimony, which can be self-serving, better than summaries, which can be misleading, and better even than a full description no matter how complete that description might be.

Tr. of May 26, 2005, at 14. There is no alternative, less intrusive means by which the information may be elicited. See, e.g., Dep't of Def. Dep't of Military Affairs v. FLRA, 964 F.2d 26, 29-30 (D.C. Cir. 1992). The redacted originals, rather than piece-meal leaks and possibly partial depictions of several of the pictures, are more probative of what Darby and his fellow military personnel actually did. Under the requirements of Favish, the claimed public interest in production of the redacted photographs is substantiated and far outweighs any speculative invasion of personal privacy.

The government also opposes production because, it argues, doing so would conflict with the United States' obligations under the Geneva Conventions. The Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, 6 U.S.T. 3316, 74 U.N.T.S. 135 (the "Third Geneva Convention") provides that a detaining power must protect a prisoner of war "particularly against acts of violence or intimidation and against insults and public curiosity." Art. 13. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (the "Fourth Geneva Convention") provides that civilians under detention are entitled to "respect for their persons, their honor....shall at all times be treated humanely, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity." Art. 27.

Defendants present evidence that the United States historically has interpreted these two conventions to forbid the taking and publishing of photographs of detainees, see Decl. of Edward R. Cummings, Ass't Legal Adviser for Arms Control and Verification, Dep't of State, dated Mar. 24, 2005, ¶¶ 12-17 [hereinafter Cummings Decl.], and argue that publication of the photographs in this case would conflict with the United States' treaty obligations thereunder. See id. ¶ 19; Decl. of Geoffrey S. Corn, Special Ass't to Judge Advocate Gen. for

Law of War Matters, Dep't of Army, dated Mar. 25, 2005, ¶¶10-11 [hereinafter Corn Decl.].

The government's treaty interpretations are entitled to respect. See Kolovrat v. Oregon, 366 U.S. 187, 194 (1961) ("While courts interpret treaties for themselves, the meaning given to them by the departments of government particularly charged with their negotiation and enforcement is given great weight.").

The government argues that "[e]ven if the identities of the subjects of the photographs are never established," those subjects could suffer humiliation and indignity against which the Geneva Conventions were intended to protect. Corn Decl. ¶ 11. It also states, without supporting documentation, that the ICRC has taken the position that the Third Geneva Convention forbids publishing images that "show prisoners of war in degrading or humiliating positions or allow the identification of individual POWs." Cummings Decl. ¶ 17. The redactions and withholding that I ordered should protect civilians and detainees against "insults and public curiosity" and preserve their "honor." Production of these images coheres with the central purpose of FOIA, to "promote honest and open government and to assure the existence of an informed citizenry [in order] to hold the governors accountable to the governed," Nat'l Council of La Raza v. DOJ, 411 F.3d 350, 355 (2d Cir. 2005). Accordingly, I hold that the government may not withhold the Darby photographs, redacted to eliminate all identifying characteristics of the persons shown in the photographs, under Exemptions 6 and 7(C).

(c) The Government's Supplemental Argument: Exemption 7(F)

On July 28, 2005, more than two months after the motion was initially argued, the government added another ground of claimed exemption, Exemption 7(F), to supplement its opposition to production of the Darby photographs. Exemption 7(F), 5 U.S.C. § 552(b)(7)(F), exempts

records or information compiled for law enforcement purposes, but only to the

extent that the production of such law enforcement records or information...(F) could reasonably be expected to endanger the life or physical safety of any individual.

Plaintiffs and amici curiae, The Reporters Committee for Freedom of the Press and other prominent news organizations, object to my consideration of the government's eleventh-hour argument in reliance on Exemption 7(F). See Proposed Br. Amici Curiae, filed Aug. 3, 2005. Amici argue that the exemption now pressed by the government could have been presented much earlier, certainly by the date of oral argument in May, and that its invocation at this late date delays the ultimate resolution of the issues. Amici contend that the government's supplemental argument is not made in "good faith" and should not be considered by the court. See Piper v. DOJ, 374 F. Supp. 2d 73, 78-79 (D.D.C. 2005). While I appreciate the concern of amici, I rule that the government's opposition, although filed late, should be considered. See, e.g., Nat'l Council of La Raza v. DOJ, No. 03 Civ. 2559, 2004 WL 2314455, at \*1 (S.D.N.Y. Oct. 14, 2004); see also August v. FBI, 328 F.3d 697 (D.C. Cir. 2003). The issue of the physical safety of our troops in Iraq and Afghanistan, and of the citizens of those countries, has been of paramount concern throughout this case, and it is sensible to address the issue squarely under the framework advanced by the government. The parties agreed to an expedited briefing schedule in order to minimize delays.<sup>18</sup>

The government contends that publication of the Darby photographs pursuant to court order is likely to incite violence against our troops and Iraqi and Afghan personnel and civilians, and that redactions will not avert the danger. The government argues that the terrorists will use the re-publication of the photographs as a pretext for further acts of terrorism.

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<sup>18</sup> As requested by the government, certain portions of the government's submission—its Supplemental Memorandum of Law and supplemental declarations—were filed under seal in accordance with my Sealing Order of July 28, 2005 to withhold (1) specific descriptions of the images whose release is in issue, and (2) sensitive information relating to national security and the United States' foreign relations. Plaintiffs objected to the sealing of the submission except with respect to the first item, the specific descriptions of the Darby photographs. However, I was able to establish consensus in enlarging the public record so that all the government's arguments

See Second Amended Decl. of Richard B. Myers, Chairman, Joint Chiefs of Staff, dated Aug. 25, 2005, ¶¶ 8, 31 (stating that the “insurgents will use any means necessary to incite violence and, specifically, will focus on perceived U.S. or Coalition mistreatment of Iraqi civilians and detainees as a propaganda and recruiting tool to aid their cause,” and that “redaction of the photographs and videos will not alleviate or lessen this risk”). Plaintiffs, on the other hand, provide the declaration of a scholar on the Middle East who states that, in his opinion, “there is nothing peculiar about Muslim culture in Iraq or elsewhere that would make people react to these pictures in a way different from other people’s reactions elsewhere in the world.” Decl. of Khaled Fahmy, Prof., New York Univ., dated Aug. 4, 2005, ¶ 8. In addition, Professor Fahmy suggests that there is a large group of Iraqis, and of Muslims generally, who respond favorably when we show the openness of our society and the accountability of our government officials, and that we would suppress those values and that favorable response by preventing publication of the Darby photographs. See id. ¶ 11.

Our nation does not surrender to blackmail, and fear of blackmail is not a legally sufficient argument to prevent us from performing a statutory command. Indeed, the freedoms that we champion are as important to our success in Iraq and Afghanistan as the guns and missiles with which our troops are armed. As President Bush stated in his 2005 State of the Union address,

[t]he attack on freedom in our world has reaffirmed our confidence in freedom’s power to change the world. We are all part of a great venture: to extend the promise of freedom in our country, to renew the values that sustain our liberty, and to spread the peace that freedom brings.

Available at <http://www.whitehouse.gov/news/releases/2005/02/20050202-11.html>. Justice

Anthony Kennedy, in a recent interview, expanded on the same point:

Why should world opinion care that the American Administration wants to bring

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could be made publicly. Oral argument on the expanded public record was held on August 15, 2005. This Opinion discloses no fact or argument that is not part of the public record.



freedom to oppressed peoples? Is that not because there's some underlying common mutual interest, some underlying common shared idea, some underlying common shared aspiration, underlying unified concept of what human dignity means? I think that's what we're trying to tell the rest of the world, anyway.

Jeffrey Toobin, Swing Shift, The New Yorker, Sept. 12, 2005, at 50.

The terrorists in Iraq and Afghanistan do not need pretexts for their barbarism; they have proven to be aggressive and pernicious in their choice of targets and tactics. They have driven exploding trucks into groups of children at play and men seeking work; they have attacked doctors, lawyers, teachers, judges and legislators as easily as soldiers. Their pretexts for carrying out violence are patent hypocrisies, clearly recognized as such except by those who would blur the clarity of their own vision. With great respect to the concerns expressed by General Myers, my task is not to defer to our worst fears, but to interpret and apply the law, in this case, the Freedom of Information Act, which advances values important to our society, transparency and accountability in government.

Exemption 7(F) was enacted to protect the safety of individuals involved in law enforcement investigations. Originally, the exemption protected only "law enforcement personnel." See Pub. L. No. 93-502, 88 Stat. 1561, 1563 (1974) (exempting "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would... endanger the life or physical safety of law enforcement personnel"). In 1986, Exemption 7(F) was amended to protect all those put at risk through their participation in law enforcement proceedings, whether as sources of information or as witnesses. See Freedom of Information Reform Act of 1986, Pub. L. No. 99-570, §§ 1801-1804, 100 Stat. 3207; see also Garcia v. DOJ, Office of Info. and Privacy, 181 F. Supp. 2d 356, 378 (S.D.N.Y. 2002) (withholding names and identifying information of government agents and private citizen informers where subject of investigation had history of retaliation and violence); Blanton v.

DOJ, 182 F. Supp. 2d 81, 87 (D.D.C. 2002) (same, in connection with racial hate crime, the bombing of a church, and charges of first degree murder), aff'd, 64 Fed. Appx. 787 (2003); Shores v. FBI, 185 F. Supp. 2d 77, 85 (D.D.C. 2002) (same, identities of cooperating witnesses where plaintiff had already attempted retaliation).

Exemption 7(F) has thus been construed to protect individuals involved in law enforcement investigations and trials, as officials and as private citizens providing information and giving testimony. At least twice, however, the statute has been applied to give protection to broader groups of individuals who were not involved in particular criminal investigations and prosecutions. See Living Rivers, Inc. v. U.S. Bureau of Reclamation, 272 F. Supp. 2d 1313, 1321 (D.Utah 2003) (withholding inundation maps for fear terrorists could use the information to place at risk the life or physical safety of downstream residents who would be flooded by a breach of the Hoover Dam or Glen Canyon Dam); Larouche v. Webster, 75 Civ. 6010, 1984 WL 1061, at \*8 (S.D.N.Y. Oct. 23, 1984) (withholding FBI laboratory report describing manufacture of home-made machine gun to protect law enforcement personnel from encounters with criminals armed with home-made weapons). Moreover, at least one court has ruled that “[u]nlike Exemption 7(C), which involves a balancing of societal and individual privacy interests, 7(F) is an absolute ban against certain information and, arguably, an even broader protection than 7(C).” Raulerson v. Ashcroft, 271 F. Supp. 2d 17, 29 (D.D.C. 2002). Accordingly, the government argues that once it has established that the Darby photographs are “records or information compiled for law enforcement purposes,” any non-trivial concern that it advances about the life or physical safety of any individual entitles it to withhold the photographs under Exemption 7(F).

Plaintiffs, on the other hand, argue that Living Rivers and Larouche are

aberrational, see Maydak v. DOJ, 362 F. Supp. 2d 316, 321 n.4 (D.D.C. 2005) (“In general, this exemption [7(F)] has been interpreted to apply to names and identifying information of law enforcement officers, witnesses, confidential informants and other third persons who may be unknown to the requester.”). Plaintiffs also argue that since Congress lodged its concern about endangerment to life and safety under Exemption 7, and did not address the concern in an independent and generally applicable exemption, Exemption 7(F) should be applied in its narrow context, to the concern expressed by Congress, and not as a catch-all exemption. See Tr. of Aug. 30, 2005, at 22-23. In essence, plaintiffs contend that Exemption 7(F) should not be a substitute for the government’s power to classify information requiring protection.

Larouche was decided before the statutory amendment and without much analysis of Exemption 7(F). Its focus was on law enforcement—on the dangers of home-made machine guns to law enforcement personnel—a nexus to Exemption 7(F)’s central purpose. With regard to Living Rivers, the inundation maps were compiled by the Bureau of Reclamation to “maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands” by protecting and alerting threatened communities, 272 F. Supp. 2d at 1319 (citing 43 U.S.C. § 373b(a)), again a nexus to law enforcement in that context. However, there is no such nexus with respect to the Darby photographs.<sup>19</sup> The Darby photographs are being withheld, not to protect anyone involved in the courts martial investigations and prosecutions, but for another purpose. The persons who took the photographs, or handed them over to commanding officers, do not ask for protection. Law enforcement officials charged with investigating the circumstances that surrounded the taking of the Darby photographs do not ask

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<sup>19</sup> In its brief, at 4, amicus The American Legion suggests that because the Darby photographs “apparently concern, at least in part, activities inside a reserve brigade of military police,” the photos should be withheld because “[t]heir lives would be endangered by disclosure of the Darby photos, and they deserve no less protection than civilian police receive under the FOIA.” The government makes no such argument, and indeed, it is clear from General Myers’ declaration that he is concerned broadly about potential danger to all members of the United States’ armed forces and public, as well as to Iraqi and Afghan personnel and civilians.

for protection, and there is no allegation that release of the photographs will endanger their lives. And since the identifying characteristics of the detainees are to be redacted, they too are not endangered. The sole justification for suppressing the photographs is the DOD's concern about speech—generally, how some might exploit the Darby photographs, in propaganda and in terrorist activities, by arguing, through false extension, that the pictures represent the attitudes of all American soldiers, or indeed of all Americans, toward the Iraqi people.

It is not necessary for me to rule if Larouche and Living Rivers are, or are not, appropriate extensions of Exemption 7(F). I reject, however, the government's argument that reasoning must stop once a threat to life or safety is discerned. Balancing and evaluation are essential aspects of the judicial function, no less in considering the exemptions of FOIA than in other areas of the law. It is clear to me that the core values that Exemption 7(F) was designed to protect are not implicated by the release of the Darby photographs, but that the core values of FOIA are very much implicated.

The interest at stake arises from pictures of flagrantly improper conduct by American soldiers—forcing prisoners under their charge to pose in a manner that compromised their humanity and dignity. As I stated at the time of the original argument, and as I reiterated previously in this decision, the pictures are the best evidence of what happened, better than words, which might fail to describe, or summaries, which might err in their attempt to generalize and abbreviate. Publication of the photographs is central to the purposes of FOIA because they initiate debate, not only about the improper and unlawful conduct of American soldiers, “rogue” soldiers, as they have been characterized, but also about other important questions as well—for example, the command structure that failed to exercise discipline over the troops, and the persons in that command structure whose failures in exercising supervision

may make them culpable along with the soldiers who were court-martialed for perpetrating the wrongs; the poor training that did not create patterns of proper behavior and that failed to teach or distinguish between conduct that was proper and improper; the regulations and orders that governed the conduct of military forces engaged in guarding prisoners; the treatment of prisoners in other areas and places of detention; and other related questions.

Suppression of information is the surest way to cause its significance to grow and persist. Clarity and openness are the best antidotes, either to dispel criticism if not merited or, if merited, to correct such errors as may be found. The fight to extend freedom has never been easy, and we are once again challenged, in Iraq and Afghanistan, by terrorists who engage in violence to intimidate our will and to force us to retreat. Our struggle to prevail must be without sacrificing the transparency and accountability of government and military officials. These are the values FOIA was intended to advance, and they are at the very heart of the values for which we fight in Afghanistan and Iraq. There is a risk that the enemy will seize upon the publicity of the photographs and seek to use such publicity as a pretext for enlistments and violent acts. But the education and debate that such publicity will foster will strengthen our purpose and, by enabling such deficiencies as may be perceived to be debated and corrected, show our strength as a vibrant and functioning democracy to be emulated.

In its most recent discussion of FOIA, the Supreme Court commented that “FOIA is often explained as a means for citizens to know what ‘their Government is up to.’ The sentiment is far from a convenient formalism. It defines a structural necessity in a real democracy.” Favish, 541 U.S. at 171-72. As President Bush said, we fight to spread freedom so the freedoms of Americans will be made more secure. It is in compliance with these principles, enunciated by both the President and the highest court in the land, that I order the

government to produce the Darby photographs that I have determined are responsive and appropriately redacted.

Conclusion.

For the reasons stated, the motions for partial summary judgment, by plaintiffs and by defendants, are granted and denied as discussed herein. This Opinion and Order is stayed twenty days in order to allow for appeal by either side, should it wish to do so.

SO ORDERED.

Dated: New York, New York  
September 29, 2005



ALVIN K. HELLERSTEIN  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

.....x  
AMERICAN CIVIL LIBERTIES UNION,  
CENTER FOR CONSTITUTIONAL RIGHTS,  
PHYSICIANS FOR HUMAN RIGHTS,  
VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

ECF CASE

Plaintiffs,

No. 04 Civ. 4151 (AKH)

v.

DEPARTMENT OF DEFENSE, AND ITS  
COMPONENTS DEPARTMENT OF ARMY,  
DEPARTMENT OF NAVY, DEPARTMENT  
OF AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND  
SECURITY; DEPARTMENT OF JUSTICE,  
AND ITS COMPONENTS CIVIL RIGHTS  
DIVISION, CRIMINAL DIVISION, OFFICE  
OF INFORMATION AND PRIVACY, OFFICE  
OF INTELLIGENCE POLICY AND REVIEW,  
FEDERAL BUREAU OF INVESTIGATION;  
DEPARTMENT OF STATE; AND CENTRAL  
INTELLIGENCE AGENCY,

Defendants.

.....x

**DECLARATION OF CARTER F. HAM**

Carter F. Ham, pursuant to 28 U.S.C. sec. 1746, declares as follows:

1. I am a Brigadier General in the United States Army. I am currently the Deputy Director for Regional Operations (DDRO) of the Operations Directorate on the Joint Staff at the Pentagon. The DDRO is the principal advisor to the Director for Operations, J-3, of the Joint Staff for operational matters outside of the continental United States. As such, the DDRO coordinates and communicates frequently with the staffs of US Central Command, US European Command, US Pacific Command and US Southern Command to ensure combatant command concerns are addressed by the Joint Staff. The DDRO

develops and coordinates operational orders and, once the Secretary of Defense approves such orders, communicates operational orders to the combatant commands. Additionally, the DDRO manages the Global Force Management system, which, in close coordination with US Joint Forces Command, US Transportation Command and US Strategic Command, ensures the highest priority combatant command requirements are met most effectively and efficiently. The DDRO maintains oversight of the National Military Command Center. In performing my duties as DDRO, I routinely confer with and obtain advice from combatant commanders' staffs regarding the operational requirements of their commands; I evaluate and synthesize this information; and I advise and make recommendations to the Chairman of the Joint Chiefs of Staff through the Director of Operations and other members of the Joint Staff.

2. Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with this civil action and with Plaintiffs' requests for information under the Freedom of Information Act. Further, I have reviewed the 29 photographic images that are identified in Exhibit B of the Fourth Declaration of Philip J. McGuire (collectively referred to as the "Responsive Army Photos"). For the reasons set forth in this declaration, I have concluded that the official release of the images further identified below, even if redacted to obscure identifying information, could reasonably be expected to:

- a. Endanger the lives and physical safety of the Soldiers, Sailors, Airmen, and Marines in the United States Armed Forces presently serving in Iraq and Afghanistan, as well as other U.S. officials, Coalition Forces allied with the United States, and contractors serving with these forces;



- b. Endanger the lives and physical safety of Iraqi civilians at large, and police and military personnel of the democratic Iraqi Transitional Government working in coordination with the United States and Coalition Forces in support of Operation IRAQI FREEDOM;
- c. Endanger the lives and physical safety of Afghan civilians at large, and police and military personnel of the Government of Afghanistan working in coordination with the United States and Coalition Forces operating in support of Operation ENDURING FREEDOM, NATO-led operations, and contractors serving with these forces;
- d. Aid the recruitment efforts and other activities of insurgent elements, weaken the new democratic governments of Iraq and Afghanistan, and add radical pressures on several of our regional allies and friends; and
- e. Increase the likelihood of violence against United States interests, personnel, and citizens worldwide.

**THE BASES FOR MY CONCLUSIONS**

3. My conclusions are based upon my years of service and experience in the United States military, the assessments and evaluations of the battlefield commanders responsible for Iraq and Afghanistan, and intelligence reports and assessments of Department of Defense subject-matter experts on the Middle-Eastern region. In performing my duties, I routinely rely on the views of our combat command operations staffs, intelligence synthesis and reports, and the assessments of subject matter experts. In formulating my conclusions concerning the Responsive Army Photos, I have used the same approach, types of resources, information, and experts. In particular:

a. I have served in the United States Armed Forces for more than 30 years at various levels of command and staff. I have served in my current position as Deputy Director of Regional Operations on the Joint Staff at the Pentagon since April 2005. From August 2003 through February 2005, I was Deputy Commanding General for Training and Readiness for the US Army's I Corps, which included duty as Commander, Multi-National Brigade Northwest, Operation IRAQI FREEDOM. In the period of January 2004 to February 2005, I also was the senior U.S. commander in Mosul, Iraq, responsible for all U.S. and Coalition operations in the northern provinces of Iraq. From August 2001 to July 2003, I served in Central Command, including deployment to Qatar with the Central Command Headquarters, for the initial phases of Operation IRAQI FREEDOM. As a result of my experiences, I have intimate, extensive knowledge of our military forces and their capabilities, as well as of the conventional and unconventional forces and capabilities of the enemies arrayed against us.

b. As Deputy Director for Regional Operations, I receive and review daily operations briefings, reports and intelligence analyses from Central Command, the Joint Staff, the Defense Intelligence Agency, the Central Intelligence Agency and the National Security Agency. I oversee the Current Operations cell in the National Military Command Center, which is responsible for reporting real-time, worldwide events affecting national security and US interests. Given my familiarity with current Operation IRAQI FREEDOM / Operation ENDURING FREEDOM events, I frequently provide briefings to the Senate and House Armed Services Committees and Congressional Delegations traveling to Iraq and

Afghanistan. In short, my job requires me to be an expert in worldwide current operations.

c. In reaching my conclusions, I have reviewed and relied upon the Second Amended Declaration of former Chairman of the Joint Chiefs of Staff, General Richard B. Myers, dated August 25, 2005, that was submitted to this Court regarding the so-called Darby photos. See Second Amended Declaration of Richard B. Myers, dated August 25, 2005, ¶¶ 2, 24-26.

d. With respect to this matter, I also have solicited and relied upon the assessments and recommendations of the following three individuals regarding their views of the military implications of release of the Responsive Army Photos:

- 1) General John P. Abizaid, Commander, U.S. Central Command, who is the ultimate military commander responsible for the geographical area that includes both Iraq and Afghanistan;
- 2) General George Casey, the commander of the Multi-National Forces-Iraq (the ultimate military commander in Iraq of the coalition armed forces); and
- 3) Lieutenant General Karl W. Eikenberry, Combined Forces Command Afghanistan (the ultimate military commander in Afghanistan of the coalition armed forces).

Each of these three commanders, by virtue of their positions and responsibilities and their immediate visibility of the battlefield environment, have highly informed opinions that I have considered in this matter. Each of these three commanders agree with and support my conclusions about release of the Responsive Army Photos.

e. As I indicated above, I have also considered and relied upon the analysis and assessments of DOD resident subject-matter experts on the Middle-Eastern region.

**OPERATION ENDURING FREEDOM  
AND OPERATION IRAQI FREEDOM**

4. Following the attacks on the United States of September 11, 2001, the United States military, with the support of a worldwide coalition, launched Operation ENDURING FREEDOM to drive the oppressive Taliban regime – which provided comfort and support to al-Qaeda terrorists – from Afghanistan. As a result of that successful effort, the Taliban was removed from power, and on October 9, 2004, the Afghan people for the first time ever selected their head of state, the president of Afghanistan, by democratic vote. Operation IRAQI FREEDOM was launched, again with the support of a worldwide coalition, to remove the dictatorial regime of Saddam Hussein from power, with the aim of ending an active threat to the safety of the U.S. and fostering the establishment of a democratic form of government in Iraq. Following a brief period when Iraq was led by a Coalition Provisional Authority, sovereignty of Iraq was transferred to an interim government, and democratically elected representatives of the Iraqi people are in the process of completing work on a national constitution. There is, however, more work to do. Insurgent elements in both Afghanistan and Iraq continue to attack the process of democratic transition in those countries by mounting violent and deadly assaults against the multinational forces that remain posted in the region in order to protect and defend those countries as they take their steps toward freedom. As part of the multinational commitment to strengthening and defending these emerging

democracies, more than 23,000 U.S. troops remain on the ground in Afghanistan and over 132,000 U.S. troops are part of the ongoing mission in Iraq.

5. As General Myers' declaration sets forth in more detail, perceived mistreatment or humiliation of detainees in the custody of the United States Armed Forces has been exploited or misrepresented for violent ends in Iraq, Afghanistan and elsewhere in the Middle East. See General Myers' Decl. ¶¶ 8, 14-19, 24-29. A prime example of such violence was the rioting that occurred as a result of a *Newsweek* report – later retracted – of alleged abuse of the Koran by United States' personnel. Id. ¶¶ 14-19.

A. Current Situation in Iraq

6. The situation on the ground in Iraq remains dynamic and dangerous in Baghdad and several other parts of the country. It changes from day to day, and it varies from region to region. Insurgent attacks against Coalition Forces in Iraq average about 1,700 attacks per month. However, significant events can cause those levels to spike to approximately 2,500 insurgent attacks per month.

7. As General Myers' declaration makes clear, one of the goals of the insurgency is to use violence against innocent civilians to undercut the mission of the U.S. and Coalition forces, as well as the Iraqi Transitional Government, and to stop the transition to democracy in that country. Thus, the insurgents will use any means necessary to incite violence and, specifically, have and will focus on perceived U.S. or Coalition mistreatment of Iraqi civilians and detainees as a propaganda and recruiting tool to aid their cause.

8. For example, two British soldiers were killed and another was injured in Amarah, Iraq, by way of an Improvised Explosive Device in February 2006. Open sources linked

these killings to recent use of a 2004 video of British soldiers beating Iraqi youths in the Amarah area. Amarah, which is located north of Basra in the British-controlled Maysan province, is dubbed the “Wild West” by British troops and has been the focus of heavy attacks by insurgents. There had been warnings in the Arab media that there could be reprisals against British forces in the area as a result of the video. The warnings proved true. More than 1,000 protestors, many of them supporters of Shia cleric Muqtada al-Sadr, gather and shouted slogans against the alleged abuse of the youths in Amarah. The release of the tape inflamed tensions and led to the ruling council of Maysan province making a public declaration that they would suspend cooperation with all British forces and officials. Members of Shiite political groups opposed to the U.S.-led coalition appeared to have engineered that move, apparently seeking to exploit public sensitivities after attempts by the British to be more aggressive with Shiite militias.

B. Current Situation in Afghanistan

9. The situation on the ground in Afghanistan also remains volatile. In addition to the details set forth in General Myers’ declaration, the most recent estimates indicate that there are about 250 insurgent attacks per month against the Coalition Forces, which forces operate in support of the Government of Afghanistan. The insurgency in Afghanistan relies heavily on aggressive information operations to turn perceived insult or deprecation towards Islam into causes for violent uprisings.

10. As noted in General Myers’ declaration, when *Newsweek* incorrectly reported that U.S. military personnel at Guantanamo Bay, Cuba had desecrated the Koran, at least eleven people died and many were hurt during several anti-U.S. protests in Afghanistan. Open sources reported that two United Nations guest-houses were attacked, as were

shops and government buildings. Two offices of international aid groups were destroyed. And uprising of Muslims was not limited to Afghanistan. Open sources reported that about 12,000 people gathered in Egypt, many of them supporters of the outlawed Muslim Brotherhood. About 30 people were injured during that protest. A similar number gathered in Beirut, Lebanon, where the crowd carried black banners and burned American and Israeli flags. In Bangladesh's capital of Dhaka, about 5,000 people rallied after Friday prayers, spitting on U.S. flags and burning them. While doing so, they shouted "Death to America!" and "Destroy America!"

11. The recent reaction to re-publication of the Danish cartoon of the Prophet Muhammad is another example of images being used in information operations to stir violent reactions in Afghanistan. In January 2006, a Norwegian publication reprinted a Danish cartoon depiction of the Prophet Muhammad. As a direct result, open sources reported that at least eleven people were killed in Afghanistan, including two people who died when protesters turned on the U.S. airbase at Bagram. As a result of the cartoon, violence erupted elsewhere as well. Again, open sources reported that the cartoon sparked violence between Nigeria's Muslim and Christian communities, leaving nearly 150 people dead and thousands displaced after five days of violence. Five protestors were killed in Pakistan during demonstrations. One teenage boy died in Somalia after protestors attacked police. In Turkey – where U.S. forces are also stationed – a Catholic priest was killed, allegedly by a teenage shooter who was influenced by the cartoon. Protestors also attacked the Danish embassies in Iran, Syria and Lebanon. In addition to these violent reactions, open sources reported protests at many locations in reaction to the Muhammad cartoon.

**THE RESPONSIVE ARMY PHOTOS**

12. I have personally reviewed the 29 responsive photographic images that are identified in Exhibit B of the Fourth Declaration of Philip J. McGuire.

13. REDACTED-- FILED UNDER SEAL

14. REDACTED-- FILED UNDER SEAL

15. REDACTED-- FILED UNDER SEAL

16. REDACTED-- FILED UNDER SEAL

17. REDACTED-- FILED UNDER SEAL

**CONCLUSIONS AFTER REVIEWING THE RESPONSIVE ARMY PHOTOS**

18. Based on my review, I believe that official release of the 22 Responsive Army Photographs described in paragraphs 13-16 above will pose a clear and grave risk of inciting violence and riots against American troops and coalition forces. I also believe that release of the Responsive Army Photos will expose innocent Iraqi, Afghan, and American civilians to harm as a result of the insurgency's reaction, which will likely

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<sup>1</sup> These thirteen photographs are identified as numbers 11, 13-18, 20-27 in Exhibit B to the Fourth McGuire Declaration.



involve violence and rioting. It is probable that the insurgents and other groups will seize upon these images as grist for their propaganda mill, which will result in, besides violent attacks, increased terrorist recruitment, continued financial support, and exacerbation of tensions between the Iraqi and Afghan populaces and U.S. and Coalition Forces.

19. My opinion is based upon the information set forth in General Myers' declaration, including but not limited to the vitriolic and violent reaction to *Newsweek's* Koran report, as well as the updated assessment of the conditions in Iraq and Afghanistan, which is informed by the violence arising out the publication of cartoons depicting the Prophet Muhammed and release of a British video depicting the mistreatment of Iraqi nationals. Release of these Responsive Army Photos will be portrayed as part of an alleged, continuing effort of the United States to humiliate Muslims and, given the patterns of violence observed there, will be used by the insurgents as propaganda to increase calls for violence against U.S. and Coalition personnel. I believe that if the Responsive Army Photos are released, riots, violence, and attacks by insurgents will result.

20. I am also concerned that, while the photographs are illustrative of isolated activity, their graphic and offensive nature will make it easy to falsely generalize from those images and impugn the United States Armed Forces as a whole, thereby generating a more vehement – and violent – reaction. The offensiveness of these images will make it more difficult to counteract calls for violence against U.S. and Coalition Forces.

Redaction of the Responsive Army Photos Does Not Alter These Conclusions

21. Redaction of the Responsive Army Photos to obscure individuals' faces and identifying information does not change my opinion. Release of the photographs, even in redacted form, will very likely lead to riots and violence in Iraq, Afghanistan and elsewhere in the Middle East, posing grave risk to both military forces and civilians. This is because the privacy concerns of the detainees are separate and distinct from the inflammatory nature of the images depicted in the Responsive Army Photos – and thus the risk of harm to our personnel – which remains apparent despite redaction.

Sealing Portions of This Declaration

22. In some of the paragraphs of this Declaration, I provide descriptions of the records that are the subject of this litigation, and I respectfully request that the Court seal the paragraphs 13-17.

CONCLUSION

In light of the knowledge and information described herein, and given the inflammatory nature of the Responsive Army Photos, I believe that the Responsive Army Photos that I have identified in this declaration must be withheld in order to protect the lives of: members of the United States Armed Forces, forces operating in cooperation with the United States, and contractors operating with those forces; U.S. officials; Iraqi and Afghan police and military personnel working in coordination with our government and military forces; as well as to protect against the increased likelihood of violence against U.S. interests, personnel, and citizens world-wide.

I declare under penalty of perjury that the foregoing is true and correct.

  
CARTER F. HAM

Date: Washington, D.C.  
April 26, 2006

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, CENTER FOR  
CONSTITUTIONAL RIGHTS, PHYSICIANS FOR HUMAN  
RIGHTS, VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, AND ITS COMPONENTS  
DEPARTMENT OF ARMY, DEPARTMENT OF NAVY,  
DEPARTMENT OF AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND SECURITY;  
DEPARTMENT OF JUSTICE, AND ITS COMPONENTS  
CIVIL RIGHTS DIVISION, CRIMINAL DIVISION, OFFICE  
OF INFORMATION AND PRIVACY, OFFICE OF  
INTELLIGENCE, POLICY AND REVIEW, FEDERAL  
BUREAU OF INVESTIGATION; DEPARTMENT OF STATE;  
AND CENTRAL INTELLIGENCE AGENCY,

Defendants.

CIVIL ACTION  
DOCKET NO. 04-CV-4151 (AKH)

**DECLARATION OF  
MICHAEL E. PHENEGER**

Michael E. Phenege, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a retired U.S. Army Colonel who served 30 years on active duty as a Military Intelligence Officer. While on active duty from 1963 to 1993, I held a wide variety of assignments including: Commander, U.S. Army Intelligence School (Fort Devens); Director of Intelligence (I2), U.S. Special Operations Command; Deputy Director of Intelligence (D/I2), U.S. Central Command; Commander, 470<sup>th</sup> MI Group (Panama); Director of Operations, 66<sup>th</sup> MI Brigade (Germany); and G2, Second Infantry Division (Korea). During assignments with USSOCOM and USCENTCOM, I routinely provided intelligence support to those combatant commanders. During my tenure with Central Command, I made frequent trips to the Middle East as part of a team conducting bi-lateral military planning with counterparts in Bahrain, Kuwait, and (less frequently) Saudi Arabia. For three years, I taught intelligence subjects at the

U. S. Army Intelligence School, Fort Huachuca, AZ and participated in the development of Army intelligence doctrine.

2. While I do not have current access to classified information, I routinely consult a wide variety of published sources about the status of ongoing military and nation building activities in Iraq and Afghanistan. These include reporting in major newspapers and studies prepared by the Center for Strategic and International Studies (CSIS), the Brookings Institution, and GlobalSecurity.org. Of particular interest is the working draft of Anthony H. Cordesman's CSIS study: Iraq's Evolving Insurgency and the Risk of Civil War dated April 26, 2006. I comment on military affairs for local media outlets in Tampa, Florida. I have great professional respect for Brigadier General Carter F. Ham and Generals Richard Myers, John Abizaid, George Casey and Karl W. Eikenberry who contributed their insights to Brigadier General Ham's declaration; however, I disagree with several of their conclusions.

3. I am an active member of the American Civil Liberties Union (ACLU), a plaintiff in this case. I represent Florida on the ACLU's national board of directors and serve on the national Executive Committee, but the analysis and conclusions in this declaration are based on my military judgment.

4. At the request of the plaintiffs, I made an earlier declaration (dated August 2, 2005) addressing the redacted versions of the Declarations of Richard B. Myers, Chairman of the Joint Chiefs of Staff, and Ronald Schlicher, former Deputy Assistant Secretary of State and Coordinator for Iraq in the Bureau of Near Eastern Affairs, pertaining to the official release to the plaintiffs of 87 photos and four tapes of Abu Ghraib prisoners under the Freedom of Information Act. This declaration addresses redacted versions of the Declarations of BG Ham, Richard B. Jackson, and Phillip J. McGuire ("Ham Decl.," "Jackson Decl." and "McGuire Decl." respectively) that address the effects of the release of 29 additional photos relating to the government's abuse of detainees held in U.S. custody abroad.

5. Insurgent groups in Iraq and Afghanistan have specific military and political objectives. Iraqi insurgents mount from 55 to 80 attacks a day; in Afghanistan the level of violence is much lower. In Iraq, attacks on U.S. and coalition forces are designed to foment

sectarian violence between Sunnis and the Shiites who control the nascent government. Sunni and foreign insurgents have stepped up attacks on Iraqi police, military and government sites to undermine the effectiveness and legitimacy of the government. Insurgent attacks on Shiite religious sites are designed to provoke retaliatory attacks on Sunnis and exacerbate religious and tribal differences. Attacks on the Iraqi oil infrastructure and reconstruction efforts have reduced oil production and exports to prewar levels and have slowed efforts to rebuild critical infrastructure. Attacks on these projects have forced contractors to devote about 25% of reconstruction funds to secure the projects. It is not clear that insurgents will be successful in their effort to provoke civil war, divide the country along religious and ethnic lines and force coalition forces to leave the country; however, their intent is clear. Their actions are designed to achieve these objectives.

6. BG Ham is correct in stating that the "situation on the ground in Iraq remains dynamic and dangerous in Baghdad and several other parts of the country," Ham Decl. at ¶ 6, but I believe he is incorrect in asserting that publication of the photos would endanger the lives and physical safety of U.S., coalition, Iraqi and Afghan forces and that of Iraqi and Afghan civilians. Insurgents attack U.S., coalition Iraqi, Afghan and Iraqi forces dozens of times every day. They seek to achieve their objectives and deny us the ability to achieve ours. They will continue to attack us as long as they have the will and the resources.

7. Insurgents may use torture photos and anti-Muslim cartoons as the pretext for their attacks, but they are not the real motivation. Attacks will continue whether these photos are released or not.

8. Images and information that may damage the image and reputation of U.S. and coalition forces are published frequently with no adverse result. Images of Abu Ghraib detainee abuse recently published on Australian television and Salon.com as well as other images published on Palmbeachpost.com do not appear to have been used as a pretext for insurgent action. Some of these images depict a detainee who is presumed deceased. Another depicts simulated homosexual acts. The material is readily available. It can be viewed and copied by anyone with access to the Internet. Newspapers in Jordan, Iraq, Egypt, Lebanon and other Mid-East countries and regional electronic media including Al Jazeera and Al Arabia covered the

release and published some photos. On February 16, 2006, CNN reported that a spokesman for then Iraqi Prime Minister al-Jaafari stated that the conduct depicted in the photos “completely conflicted with the human rights charter and their repetition should be prevented.” The Iraqi Council of Ministers welcomed “the firm denunciation (of the conduct) by the U.S. State Department and American officials.” CNN reported that a U.S. officer (from the context - Major General Rick Lynch) said the release of the photos had not resulted in “increased hostility” in Iraq. See *Iraqi Government Denounces Abu Ghraib Abuse*, Feb 16, 2006, available at <http://www.cnn.com/2006/WORLD/meast/02/16/abughraib.photos/index.html>. There was no apparent reaction on April 10<sup>th</sup> and 27,<sup>th</sup> 2006, when the U.S. government authenticated, in this litigation, the material posted by Salon.com and the Palm Beach Post respectively.

9. In addition, in recent months, a number of reports containing vivid descriptions of torture and mistreatment of detainees in U.S. custody were published with no indication that our insurgent enemies attempted to use them as a pretext for attack. Though these reports do not contain shocking photos, the content of some reports is, in some respects, more shocking to the conscience than many of the Abu Ghraib photos already released. On March 19, 2006, Eric Schmitt and Carolyn Marshall of the New York Times published “*Task Force 6-26: Inside Camp Nama; In Secret Unit’s ‘Black Room,’ A Grim Portrait of U.S. Abuse*,” describing prisoner abuse by Task Force 6-26, a Special Operations unit that created its own interrogation facility in one of the former Iraqi government’s torture chambers. The facility had signs proclaiming, “No blood no foul.” CIA, FBI, and Defense Intelligence Agency (DIA) officials who either observed or were made aware of the interrogation techniques used in the Black Room dissociated themselves and reported violations through their chains of command. In February 2006, the non-governmental organization Human Rights First published *Command’s Responsibility: Detainee Deaths in U. S. Custody in Iraq and Afghanistan*; the report examines the cases of 98 individuals who died while in U.S. custody overseas. Thirty-four were suspected or confirmed homicides; at least eight and as many as twelve were tortured to death. The report contains vivid profiles of the abuses suffered by many of the victims including Iraqi Major General Abed Hamed Mowhoush whose torture is portrayed in graphic detail. General Mowhoush surrendered after U.S. forces arrested his sons and used them for leverage to compel his surrender. He was interrogated on numerous occasions with a pattern of escalating violence and severe beatings. At

one point, his interrogators simulated the execution one of his sons to make Mowhoush cooperate. When he still refused to answer questions, he was placed head first in a sleeping bag and bound with electrical cord. His interrogator sat on his chest impairing his ability to breath; he died of asphyxiation. An autopsy revealed that Mowhoush's body was covered with bruises; he had five broken ribs. In April 2006, the Detainee Accountability Project published "*By the Numbers*," a documentation of 330 cases involving more than 600 U.S. personnel who are "alleged to have abused detainees, ranging from beatings and assaults, to torture, sexual abuse, and homicide." This study reports that many cases of alleged abuse are not investigated, and that almost all of the perpetrators punished were low-ranking enlisted personnel, who largely received minimal punishments. Public sources do not indicate that insurgent groups in Iraq and Afghanistan have used these or similar reports as a pretext for attacking coalition forces.

10. The Al Amarah incident on February 28, 2006, described in BG Ham's declaration is more complex than his declaration indicates. BG Ham acknowledges that Al Amarah is a dangerous place. Ham Decl. at ¶ 9. It is the administrative center of the Maysan Governorate; the population is predominately Shia. The Mhadi Army, a militia loyal to Muqtada al-Sadr, reportedly dominates the Maysan Governorate. The Badr Corps, a militia aligned with the Supreme Council for Islamic Revolution in Iraq (SCIRI), also has a presence in the city. Press reports indicate that many Badr Corps leaders spent time in exile in Iran. In the April 24, 2004, Michael Rubin in the New Republic Online quoted Sheik Muhammed Al Abadi, a Badr Corps member in Al Amarah, as stating: "The Americans may think they will have peace in eight months. But even if they stay eighteen years, we will never give them peace." Other press accounts indicate that Al Amarah is a center for the infiltration of weapons from Iran into Iraq. Al Amarah has been the scene of many incidents between Iraqis and British forces.

11. In January 2004, British soldiers in Al Amarah were videotaped apparently beating young Iraqis who were demonstrating for better employment opportunities. On or about February 15, 2006, the video was broadcast on British television and was reported in Al Amarah newspapers. Published sources indicated that Iraqis responded with demonstrations. On February 17<sup>th</sup>, local officials organized protest demonstrations in Al Amarah and Basra. They demanded that British forces apologize to the families of the victims of abuse, compensate them,



and investigate and punish the soldiers involved. The officials stated their intention not to cooperate with British forces and said they intended to pursue legal action "until those responsible are indicted and held accountable."

12. On February 22, 2006, insurgents bombed an important Shiite mosque in Samarra. The bombing was followed by an unprecedented wave of sectarian violence that affected most areas of the country. In the week that followed the Mosque bombing, reprisal attacks resulted in 379 deaths and 458 wounded. As a result of the outbreak of violence, curfews were imposed in many areas of the country, including Al Amarah. The curfew was lifted on February 27<sup>th</sup>. On February 28<sup>th</sup>, two British soldiers were killed in Al Amarah and a third was injured by an Improvised Explosive Device ("IED") that had been placed in an abandoned vehicle adjacent to a local playground. Responding British forces were stoned by a crowd but sustained no injuries.

13. Though British press reports linked the British soldiers' deaths to the video of abuse and earlier demonstrations, I have not been able to identify any insurgent claim linking the attack to the broadcast of the video. It is doubtful that there was a cause and effect relationship. The IED attack occurred almost two weeks after the video was broadcast and the demonstrations that immediately followed. Media reports of the incidents did not mention any attacks against British forces in Al Amarah in the days between the demonstrations and the imposition of the curfew. The British soldiers were killed by an Improvised Explosive Device of the type used in Iraq on an almost daily basis. On May 6, 2006, the BBC reported that "the distance between bases, and more importantly because of the dangers of bombs at the sides of roads" forced the British to make increased use of helicopters to move troops. The article specifically mentions a helicopter troop lift from Basra to Al Amarah.

14. On the day the British soldiers were killed, Iraq was still experiencing widespread violence stemming from the February 22nd attack on the Samarra Mosque; this included five attacks in Baghdad that killed 41 people. The lapse of time between the release of the video, the demonstrations and the IED attack combined with the violence that permeated the country during that period make it impossible to establish a cause and effect relationship between the video and the IED attack.

15. There is also a significant difference of context between the Al Amarah video and the photos plaintiffs seek to obtain. The Al Amarah incident was local. It occurred against a backdrop of long-standing interactions and complaints between local residents and British forces. Press accounts describing the video featured interviews with local individuals who claimed to have been among those beaten by British forces during the January 2004 incident. This is a situation that is unlikely to occur when the contested photos are released. The 29 photos are from different locations in Iraq and Afghanistan; the identifying features of Iraqi and Afghani detainees will be redacted.

16. Evaluating BG Ham's declaration in light of information contained in the McGuire and Jackson declarations is disconcerting. There is a marked discrepancy between the scale of harm that BG Ham predicts could result from release of these images, and the apparent leniency of punishments for what Richard B. Jackson describes as "threats, imminent assault, or humiliation of detainees" depicted in photos at Tabs C, D, E, and F. Jackson Decl. at ¶ 6.

17. BG Ham asserts that the release of the 29 photos at issue will endanger American, coalition Iraqi and Afghani lives. Ham Decl. at ¶ 2. In contrast, Mr. McGuire states that "the content of the 29 ROI Photos does not necessarily depict criminal behavior," and Exhibit C of this declaration indicates that no punishments were assessed with respect to 14 of the photos (Tabs A, B, F, and G). McGuire Decl. at ¶ 7, Ex. C. With regard to the remaining 15 photos (Tabs C, D, and E), investigations found probable cause to believe that criminal activity had occurred. McGuire Decl. at Ex. C. According to the McGuire declaration, however, all cases involving probable cause of criminal activity were resolved through Article 15 (Non-Judicial Punishment), Uniform Code of Military Justice ("U.C.M.J"). *Id.* One soldier was found not guilty in an Article 15 (U.C.M.J.) proceeding. *Id.* Eleven soldiers received unspecified punishment under Article 15 for a variety of charges, and one soldier received a reprimand. The level of the commander imposing the Article 15s and the punishments imposed under Article 15 were not specified. *Id.* However, it is, frankly, difficult to logically reconcile the magnitude of the potential harms alleged by BG Ham with the reality of the minor punishments that could be imposed on perpetrators under Article 15 of the U.C.M.J.

18. Prior to the "War on Terror," there was a bright line between acceptable and unacceptable treatment of prisoners of war and other protected persons. That line has been blurred. The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment was ratified by the United States and implemented in Section 2340 of the Criminal Code. The Geneva Conventions III and IV prohibited torture and cruel, inhuman and degrading treatment. The Army's Interrogation Field Manual FM 34-52, states that: "The use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind is prohibited by law and is neither authorized nor condoned by the U.S. Government."

19. Richard B. Jackson's declaration argues that the photos should not be released because the Geneva conventions bind us to treat detainees humanely and protect them from exposure to insults or public curiosity. Jackson Decl. at ¶ 6. It is unfortunate that our failure to ensure humane treatment has resulted in behavior like that depicted in the Abu Ghraib photos and those at issue here. I believe the identity of the detainees in these images can be obscured to satisfy the Geneva requirement to protect detainees from becoming objects of public curiosity. It is necessary to release these images in redacted form to ensure complete public accountability for the widespread use of torture and cruel, inhuman and degrading interrogation techniques in the "War on Terror." It is necessary to restore the bright line between legal and illegal interrogation techniques.

20. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

  
MICHAEL E. PHENEGER, Colonel, U.S. Army  
(Retired)

Date: May 18, 2006

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, CENTER FOR  
CONSTITUTIONAL RIGHTS, PHYSICIANS FOR HUMAN  
RIGHTS, VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, AND ITS COMPONENTS  
DEPARTMENT OF ARMY, DEPARTMENT OF NAVY,  
DEPARTMENT OF AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND SECURITY;  
DEPARTMENT OF JUSTICE, AND ITS COMPONENTS  
CIVIL RIGHTS DIVISION, CRIMINAL DIVISION, OFFICE  
OF INFORMATION AND PRIVACY, OFFICE OF  
INTELLIGENCE, POLICY AND REVIEW, FEDERAL  
BUREAU OF INVESTIGATION; DEPARTMENT OF STATE;  
AND CENTRAL INTELLIGENCE AGENCY,

Defendants.

CIVIL ACTION  
DOCKET NO. 04-CV-4151 (AKH)

**DECLARATION OF  
KHALED FAHMY**

Khaled Fahmy, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an Associate Professor of Middle Eastern Studies at New York University. My research to date has focused on the social history of the modern Middle East, with a particular focus on the relationship between modernity and religion. In addition, my extensive experience in the Egyptian National Archives has enabled me to engage with the new scholarship within Middle Eastern studies on nationalism and state building, social history and gender studies, as well as medical and legal history. Among my articles on these subjects are: "The military and politics in Egypt: An historical overview," "Towards a social history of modern Alexandria," "Prostitution in Nineteenth-Century Egypt," "The Police and the People in Nineteenth-Century Egypt," "The Anatomy of Justice: Forensic Medicine and Criminal law in Nineteenth-Century Egypt," and "Women, Medicine and Power in Nineteenth-Century Egypt."

During my twelve years of teaching first at Princeton University and then at NYU, I offered courses on the modern history of the Middle East, including: "Emergence of the Modern Middle East," "Modern Egypt," "Colonialism, Imperialism and Nationalism in the Middle East," "Women in Islam," "History of the Middle East from 1750 to the present," and "Problems and Methods in Middle Eastern Studies."

2. I am a native speaker of Arabic. I spend nearly five months each year living in Cairo conducting research in the Egyptian National Archives. I am also intimately familiar with the Egyptian cultural and intellectual community. Furthermore, I have traveled extensively in the Middle East, and am familiar with the various societies and cultures of the region.

3. As a result of my scholarship I have received the following honors and fellowships: Fulbright Scholar-in-Residence (1993-94), Malcolm Kerr Awards of the Middle East Studies Association for best humanities dissertation: honorable mention (1993), and Faculty Fellow in the Project on Cities and Urban Knowledges, International Center for Advanced Studies, New York University (2000-2001). I am affiliated with the Middle East Studies Association, the Egyptian Historical Association, and the American Historical Association.

4. I previously submitted a declaration dated August 4, 2005 relating to the government's withholding of images of detainee abuse at Abu Ghraib turned over by Joseph Darby to the Army Criminal Investigations Command (the "Darby images"). See Decl. of Khaled Fahmy, Aug. 4, 2005 ("Aug 2005 Fahmy Decl."). At the request of the plaintiffs, I have reviewed the Declaration of Carter F. Ham ("Ham Decl.") pertaining to the 29 photographic images that are identified in Exhibit B of the Fourth Declaration of Phillip J. McGuire (collectively referred to as the "Responsive Army Photos").

5. In his Declaration, Brigadier General Ham expresses his view that the release of the material in question could reasonably be expected to endanger the lives and physical safety of U.S. soldiers in the armed forces, as well as Iraqi and Afghani civilians. Ham Decl. at ¶ 2. In addition, he argues that the release of this material will also aid in the recruitment efforts of insurgent elements in Iraq and will increase the likelihood of violence against U.S. interests and

citizens worldwide. *Id.* For reasons set forth in my previous declaration, it is my view that the assertions of Brigadier General Ham are based on generalizations and assumptions about Muslim and Arab culture that are unfounded. I therefore reiterate here what I stated in my August 4, 2005 declaration relating to the government's withholding of the Darby images. *See Aug. 2005 Fahmy Decl.*

6. In his declaration, Brigadier General Ham repeats a point made earlier in General Myers's declaration, comparing the hypothetical results of the release of the Responsive Army Photos of prisoner abuse to the publication by *Newsweek* of a disputed case of desecrating the Koran in Guantanamo Bay, Cuba. *See Ham Decl.* at ¶ 10. As set forth in my August 2005 declaration, however, these two events are not analogous. There is nothing that approaches the holiness of the Koran in Islam. The Koran is believed by Muslims to be the literal word of God. They believe that it contains the eternal and unchanging message from God to humanity. There is nothing in Islam that approaches the Koran's sanctity. To compare Muslims' feelings about reports of alleged desecration of the Koran to their feelings about abuse of Iraqi prisoners by U.S. troops is to misunderstand a fundamental tenet of Islam, namely, the sanctity of the Word of God. This comparison also confuses feelings of anger, frustration and/or hostility that some Iraqis may have towards what they consider a foreign occupation of their country with a basic religious feeling that millions of Muslims around the world have regarding what they consider their Holy Book. *See Aug. 2005 Fahmy Decl.* at ¶ 7.

7. It is my opinion that there is nothing peculiar about Muslim culture in Iraq or elsewhere that would make people react to the Responsive Army Photos in a way different from other people's reactions elsewhere in the world. In other words, there is nothing specifically "Islamic" about the feelings conjured in people's minds when these pictures became available in the region. The perpetrators who abused the prisoners in Abu Ghraib might have conjured this link between what they assumed the religion of their captors to have been and the humiliation that they wanted to subject their captives to. However, there is no evidence whatsoever to support the allegation that Iraqi Christians, for example, would have felt any less insulted by this treatment than their fellow Muslim countrymen. In fact, one need not be Iraqi at all to be offended by these pictures.


8. Similarly, Brigadier General Ham compares the hypothetical result of the release of the Responsive Army Photos to the worldwide violence that occurred following the publication in Denmark (and then in Norway) of cartoons depicting the Prophet Muhammad. Ham Decl. at ¶ 11. Again, the two events are not analagous. While Muslims deny any divine attributes to Muhammad and insist that he was 100% human, they still think of him as an infallible, Perfect Man. His words and deeds are revered and emulated, as Muslims take them to be the best guide to how to lead an upright life and implement God's will as expressed in the Koran. As such, the Prophet Muhammad is treated with the utmost respect and veneration and his position in Islam is second only to the Koran. It follows that pictures depicting him in an irreverent manner (which is the conclusion reached by many Muslims across the globe about the Danish cartoons) is seen as literally blasphemous. By contrast, and as said above, there is nothing religious about how Iraqis (or anyone for that matter) think and react to the pictures depicting abuse of prisoners.

9. The insurgents in Afghanistan and Iraq defend their actions on multiple and sometimes shifting grounds. At various times, they have stated that they are fighting American occupation, that they oppose the stationing of United States troops in the Middle East, and that they are fighting for the overthrow of corrupt governments backed by the United States. While it is possible that insurgents may point to the abuse of prisoners by United States personnel as further justification for their actions, it is highly unlikely that such abuse would be the real justification. Photographs of detainee abuse might conceivably be used as pretexts for violence, but violence is likely to persist whether or not the photographs are released.

10. Even as pretexts, the photographs are likely to be of marginal value, as the insurgents have the ability to produce and disseminate fabricated images of U.S. troops abusing prisoners. The insurgents do not need accurate photographs in order to generate pretexts. The insurgents will have pretexts whether or not the true photographs are released. I do not know of any incident in which a photograph – real or doctored – was the actual cause of violence.

11. Moreover, the official release of the Responsive Army Photos will also win the support of those Muslims who seek some measure of public accountability. Indeed, in the Muslim world, much of the anger surrounding the photographs stems from the perception that the U.S. endorses torture, and that it has failed to hold officials accountable for abuses that took place on their watch and that they may even have authorized. The government's concealment of evidence that torture has occurred only feeds that anger. Refusing to release these photographs may be viewed as a further effort to cover up the scandal, which in my opinion would be just as harmful, if not more so, as releasing the photographs. An official release of the photographs, and official action to hold perpetrators accountable, will be seen by many Muslims, as by many Americans, as significant progress.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

  
Khaled Fahmy, Professor, New York University

Date: May 19 2006



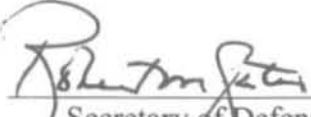
**CERTIFICATION OF THE  
SECRETARY OF DEFENSE**

This certification pertains to a collection of photographs (as that term is defined in Section 565(c)(2) of the Department of Homeland Security Appropriations Act, 2010 (Pub. L. 111-83) ("DHS Appropriations Act")) assembled by the Department of Defense that were taken in the period between September 11, 2001 and January 22, 2009, and that relate to the treatment of individuals engaged, captured or detained after September 11, 2001 by the Armed Forces of the United States in operations outside the United States. These photographs are contained in, or derived from, records of investigations of allegations of detainee abuse, including the records of investigation processed and released in *American Civil Liberties Union v. Department of Defense*, 04 Civ. 4151 (AKH) (S.D.N.Y.). The photographs include but are not limited to the 44 photographs referred to in the decision of the United States Court of Appeals for the Second Circuit in *American Civil Liberties Union v. Department of Defense*, 543 F.3d 59, 65 & n.2 (2d Cir. 2008), petition for cert. filed, 78 U.S.L.W. 3083 (Aug. 7, 2009) (No. 09-160).

Upon the recommendations of the Chairman of the Joint Chiefs of Staff, the Commander of U.S. Central Command, and the Commander of Multi-National Forces-Iraq, and by the authority vested in me under Section 565(d)(1) of the DHS Appropriations Act, I have determined that public disclosure of these photographs would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States.

Therefore, these photographs meet the standard for protected documents, as that term is defined in section 565(c)(1) of the DHS Appropriations Act and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C § 552, and in all proceedings pursuant to that law. As required by Section 565(d)(4) of the DHS Appropriations Act, I hereby direct that notice of this Certification be provided to Congress.

Date: 11-13-09

  
\_\_\_\_\_  
Secretary of Defense



# COMMITTEES ON APPROPRIATIONS

Daniel K. Inouye (D-HI), Chairman  
United States Senate

David R. Obey (D-WI), Chairman  
U.S. House of Representatives

Wednesday, October 7, 2009

Contact: Rob Blumenthal / John Bray, w/Inouye (202) 224-7363  
Ellis Brachman / Jenilee Keefe Singer, w/Obey (202) 225-2771

## FY2010 CONFERENCE SUMMARY: HOMELAND SECURITY APPROPRIATIONS

The Homeland Security Appropriations Bill is focused on securing our nation's borders and preparing for any potential disaster. The conference agreement totals \$42.776 billion of discretionary budget authority for fiscal year 2010, \$2.648 billion, or 6.6 percent, above fiscal year 2009.

Priorities in the bill are focused on five major goals:

- 1) Securing our borders and enforcing our immigration laws;
- 2) Protecting the American people from terrorist threats and other vulnerabilities, and ensuring the Department is nimble enough to address future threats;
- 3) Preparing for, responding to, and recovering from all-hazards;
- 4) Supporting our State, local, Tribal, and private sector partners in homeland security with resources and information; and
- 5) Giving the Department resources to strengthen financial, procurement, IT systems, and other management tools that it needs to succeed; eliminating or reducing programs that are ineffective or duplicative.

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### Bill Total

2009 Enacted:	\$40.128 billion
2010 President's Request:	\$43.071 billion (includes Coast Guard Overseas Contingencies)
House Passed:	\$42.617 billion
Senate Passed:	\$42.927 billion
<b>Conference Agreement:</b>	<b>\$42.776 billion</b>

### KEY INVESTMENTS

**Customs and Border Protection (CBP):** \$10.1 billion, \$306 million above 2009, excluding stimulus funding. Funding within CBP for border security includes:

- **Border Security Fencing, Infrastructure, and Technology (BSFIT):** \$800 million for Southwest Border investments, \$25 million above 2009, and \$22 million above the budget request. Through a mix of fencing, technology, and Border Patrol agents on the ground CBP now has nearly 700 miles of Southwest border under effective control, compared to 241 miles in FY 2005.
  - BSFIT funding includes \$40 million, the same as 2009, for additional investments in Northern Border security technology.
- **Border Patrol:** \$3.587 billion, \$86 million above 2009, to fully support 20,163 Border Patrol agents – an increase of 6,000 (or more than 50 percent) since 2006.
- **Southwest Border Counterdrug Initiatives:** \$72.6 million, including \$20 million for additional scanning systems for southbound lanes and checkpoints, and \$26 million above the request for 50 additional CBP officers, 100 Border Patrol agents, and 33 support personnel and equipment to stop

the outbound flow of weapons and currency used in the drug trade. All inspection equipment is to be competitively procured.

- **Western Hemisphere Travel Initiative:** \$145 million, as requested, to continue deploying technology and infrastructure at the 46 busiest border ports of entry and to facilitate travel and security for all travelers.

**Immigration and Customs Enforcement (ICE):** \$5.437 billion, \$447.7 million above 2009, including:

- **Dangerous Criminal Aliens:** \$1.5 billion for identifying and removing from the United States criminal aliens who are either at-large or already incarcerated in prisons or jails once an immigration judge has ordered them deported.
  - **Secure Communities:** Included in the \$1.5 billion is \$200 million, \$50 million above 2009, for a program that allows local law enforcement to check fingerprints of people booked on criminal charges for immigration and criminal records.
- **Southwest Border Violence:** \$100 million to combat international trade in illicit drugs, weapons smuggling and crimes associated with violence along the Southwest Border. This is part of an overall \$99 million increase over 2009 for ICE investigations. Funding includes:
  - \$70 million, as requested, to expand operations related to Southwest border violence by initiating more ICE investigations, intelligence activities, and international programs;
  - \$10 million above the request for investigations of transnational gangs;
  - \$10 million above the request for expansion of Border Enforcement Security Task Forces (BESTs); and
  - \$10 million above the request for counter-proliferation investigation, including bulk cash and weapons smuggling investigations.
- **Detention Capacity:** Funding for 33,400 detention beds and statutory language requiring that this number of beds be maintained throughout the fiscal year.
- **Worksite Enforcement:** \$135 million, \$6 million above the request, to hire special agents to perform audits of employers.
- **Alternatives to Detention:** \$70 million, \$6 million above the request, to expand this program nationwide

**United States Visitor and Immigrant Status Indicator Technology (US-VISIT):** \$373.7 million, \$73.7 million above 2009, for the US-VISIT program which uses biometrics to track the entry of visitors to the United States. The bill directs that a total of \$50 million be used to implement a biometric air exit capability so that we can determine if individuals have overstayed their visas.

**United States Citizenship and Immigration Services:** \$224 million, \$122 million above 2009, including \$5 million to cover naturalization of immigrants serving in the U.S. armed services, \$50 million for processing asylum and refugee applications, and \$11 million to expand immigrant integration and outreach efforts that promote legal paths to US citizenship.

- **E-Verify:** Includes a 3-year extension of E-Verify, as requested, and \$137 million to operate the system and further improve its accuracy and compliance rates.

**Transportation Security Administration (TSA):** \$7.7 billion, \$678.7 million above 2009, excluding stimulus funding. Funding includes:

- **Explosive Detection Systems:** \$778.3 million in discretionary funding to purchase and install explosives detection systems at airports. An additional \$250 million will be provided for this activity through mandatory fees.
- **Air Cargo Security:** \$122.8 million, including \$3.5 million above the budget request for 50 additional inspectors to ensure compliance with the 100% screening mandate set for August 2010 in the 9/11 Act; \$2.2 million above the budget request for inspectors and canine teams to convert 35 legacy teams to proprietary teams; and \$9 million above the budget request for testing and deployment of screening technologies.

- **Surface Transportation Security:** \$110.5 million, including funds for 15 new Visible Intermodal Protective Response security teams and 100 new surface transportation security inspectors to defend against potential attacks against our subways, trains, and buses.

**Coast Guard:** \$8.8 billion (excluding mandatory funding), \$415 million above 2009, including:

- **Deepwater:** \$1.154 billion, \$120 million above 2009, including \$389 million to complete production of the fourth National Security Cutter (NSC #4) and for long lead time materials for NSC #5.
- **Maritime patrol aircraft:** \$138.5 million for adding two patrol aircraft to the service rotation.
- **Fast Response Cutters:** \$243 million for four patrol boats.
- **Response Boat Mediums:** \$121 million to replace 41 foot Utility Boats in use since the early 1970's.
- **Interagency Operation Centers:** \$10 million for centers authorized by the SAFE Port Act.

**Federal Law Enforcement Training Center:** \$282.8 million for personnel and construction. The bill includes a general provision expanding the definition of “rural” to help the Rural Policing Institute reach jurisdictions in more rural areas of the United States.

**Chemical Security:** \$103.4 million for risk-based chemical facility security including \$25 million above 2009 to support the coordination and management of regulating high-risk chemical facilities. The increase, combined with the conversion of contract employees to federal employees, will bring the total DHS chemical facility regulatory staffing to 246, which is 168 above 2009. The bill also includes a one year extension of DHS’s regulatory authority to secure chemical facilities.

**FEMA:** \$903 million for FEMA Management and Administration. Together with amounts made available for management and administration from other FEMA accounts, these activities are funded at \$9 million above fiscal year 2009.

**Science and Technology:** \$1.006 billion, \$73.9 million above 2009, for research on homeland security priorities, such as counter-improvised explosives devices, cyber security, air cargo security, and first responder technologies.

**Cyber Security:** \$397 million, \$84 million above 2009, to expedite the continuing effort to combat the cyber security threat by reducing the points of access to the federal computer network to prevent hacking; by coordinating with the private sector who owns 85 percent of the Nation’s critical infrastructure; and by increasing security training and management of telecommunications, networks, computer systems, and the Internet.

**Homeland Security Grants:** \$4.17 billion, nearly \$300 million above the request, for grants to first responders and partners in homeland security, including:

- **State Grants:** \$950 million, matching the request and 2009, for grants used to plan, equip and train local first responders to respond to terrorist attacks and catastrophic incidents, including \$60 million for Operation Stonegarden.
- **Urban Area Security Grants:** \$887 million, matching the request and \$50 million above 2009, to help high-risk urban communities prevent, respond to, and recover from terrorist attacks.
- **Rail/Transit Security Grants:** \$300 million, \$50 million above the request, to protect critical transit infrastructure, including freight rail, Amtrak and ferry systems in high-threat areas.
- **Port Security Grants:** \$300 million, \$50 million above the request, to assist ports in enhancing maritime domain awareness and enhancing risk management capabilities to prevent, detect, and respond to terrorist attacks.
- **Emergency Management Performance Grants:** \$340 million, \$25 million above the request and 2009, for all-hazard grants for state and local emergency managers.
- **Fire Grants (including SAFER):** \$810 million, \$220 million above the request and \$35 million above 2009, to help local fire departments address communication, equipment and staffing problems. Of this total, \$420 million is for SAFER, as requested, and \$390 million is for fire grants.

- **Metropolitan Medical Response System:** \$41 million, \$1 million above the request, to help high-threat communities respond to mass casualty incidents.
- **Interoperable Communications:** \$50 million, matching the request and 2009, for help firefighters and emergency responders talk to each other during a crisis.
- **Emergency Operations Centers:** \$60 million, \$25 million above 2009, to equip and upgrade central command facilities used by emergency personnel during disasters.

**REAL ID:** \$60 million, \$40 million below 2009, to help states comply with REAL ID, which requires state driver's licenses to meet new standards in order to be used for federal identification purposes. Of this total, \$50 million is for the driver's license security grant program, the same as 2009, and \$10 million is for REAL ID hub development.

**Emergency Food and Shelter:** \$200 million, matching 2009 and \$100 million above the request, to address the increasing needs for food and shelter of our citizens in this time of economic downturn.

**Strengthening DHS Financial, Procurement, IT Systems, and other Management tools:**

- **Data Center Migration:** \$150 million above 2009 to continue the migration of 24 DHS data centers located across the country and develop the two secure locations they will be housed in. This funding will enable DHS to effectively monitor all IT systems for compliance while reducing the risk of vulnerabilities in information systems. Migration to two centers will also allow the Department to mitigate disaster recovery deficiencies.
- **Office of Security:** \$90.2 million, \$29.3 million above 2009, including: \$20 million for secure identification cards for DHS employees pursuant to Homeland Security Presidential Directive 12; and \$3 million to create a Personnel Security Adjudication Team to reduce the backlog in background investigations for security clearances, which has delayed hiring of critical positions at DHS.
- **Office of the Chief Procurement Officer:** \$68.5 million, \$29.5 million above 2009, including: \$7.5 million to create a new contracting component for classified programs; \$8 million to increase capacity in the acquisition program management division (this increase will bolster the Department's efforts to oversee major Departmental procurements); and \$7 million for 100 additional acquisition professionals across the Department to fill a shortage of qualified contracting professionals.

**Domestic Nuclear Detection Office (DNDO):** \$383 million, \$131.2 million below 2009. The reduction reflects the Department's delay in developing next-generation radiation portal monitors. DNDO is encouraged to focus on deterrence to alternative pathways for bringing nuclear devices or radiological materials into the country, such as general aviation or small maritime vessels. A total of \$20 million is provided for the Securing the Cities program.

**United States Secret Service:** \$1.5 billion, \$70 million above 2009. Additional funds are for Secret Service personnel costs, a new overseas field office in Tallinn, Estonia, and to secure the Service's mission-critical computer applications.

**SIGNIFICANT CUTS:**

**Advanced Spectroscopic Portal Monitors:** Language is included prohibiting the Department from full-scale procurement of Advanced Spectroscopic Portal Monitors (ASP) monitors until the Secretary submits a report to the Committees on Appropriations certifying that a significant increase in operational effectiveness will be achieved.

**Program Eliminations:** Cuts \$319 million by eliminating funding for programs such as: advanced spectroscopic portal monitors, trucking industry security grants, and commercial equipment direct assistance program.

**OTHER IMPORTANT POLICY ITEMS:**

**Guantanamo Bay Detention Facility:** 1) Prohibits current detainees from being released into the continental United States, Alaska, Hawaii, DC, or any U.S. territory. 2) Prohibits current detainees from being transferred to the continental United States, Alaska, Hawaii, DC, or any U.S. territory, except to be prosecuted and only after Congress receives a plan detailing: risks involved and a plan for mitigating such risk; cost of the transfer; legal rationale and court demands; and a copy of the notification provided to the Governor of the receiving state 14 days before a transfer with a certification by the Attorney General that the individual poses little or no security risk. 3) Current detainees cannot be transferred or released to another country (including freely associated states) unless the President submits to Congress 15 days prior to such transfer: the name of the individual and the country the individual will be transferred to; an assessment of risks posed and actions taken to mitigate such risks; and the terms of the transfer agreement with the other country, including any financial assistance. 4) Requires the President to submit a report to Congress describing the disposition of each current detainee before the facility can be closed. 5) Bars the use of funds to provide any immigration benefits to GTMO detainees other than to allow them to be brought to the U.S. for prosecution. 6) Mandates the inclusion of all GTMO detainees on the TSA No Fly List.

**Detainee Photos:** Codifies the President's decision to allow the Secretary of Defense to bar the release of detainee photos.

**National Bio and Agro-defense Facility (NBAF):** Prohibits the obligation of construction funds until DHS undertakes a bio-safety and bio-security mitigation risk assessment to determine requirements for the safe operation of NBAF in Manhattan, Kansas. Once DHS completes the risk assessment, the National Academy of Sciences shall provide an independent evaluation of the DHS study to ensure that risk has been adequately identified and mitigated for in planning for NBAF. In addition, the Secretary of DHS, in coordination with the Secretary of Agriculture, shall report to the Committees on the procedures used to issue a permit for foot-and-mouth disease live virus research and an emergency response plan in the event of an accidental release of a hazardous pathogen originating from NBAF.

**Federal Protective Service (FPS):** Transfers FPS from ICE to the National Protection and Programs Directorate and requires DHS to maintain a FPS in-service field staff of at least 900 FPS officers to protect Federal buildings.

**LORAN-C:** Allows for termination of the LORAN-C signal on January 4, 2010, after certification from the Commandant of the Coast Guard that it is not needed for navigation and from the Secretary of DHS that it is not needed as a backup for GPS.

**Oversight:** Expenditure plans, important to ensure that DHS is appropriately planning, are required for many programs, including: Deepwater; the Secure Border Initiative; the Automated Commercial Environment; US-VISIT; National Cyber Security Initiative; BioWatch; Office of Policy; CIO IT acquisition projects; TSA air cargo security, checkpoint support, and explosive detection systems; USCIS REAL-ID Hub; DNDO portal radiation monitors; ICE Alternatives to Detention; and Next Generation Networks.

**Visa Extensions:** Provides three year authorization extensions for the religious worker (R visa), rural-serving doctors (Conrad 30-J visa), and investor (EB-5 visa) programs.

**Humanitarian Treatment for Surviving Spouses and Other Relatives of Deceased Immigrant Sponsors:** Provides statutory authority for USCIS to complete processing of permanent residence applications for surviving spouses and other relatives of immigration sponsors who die during the adjudication process.

**Program Extensions:** Extends the authorization for PreDisaster Mitigation and Chemical Facility Anti-Terrorism Standards for a year.

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 AMERICAN CIVIL LIBERTIES  
4 UNION, et al.,

Plaintiffs,

v.

04-CV-4151 (AKH)

6 DEPARTMENT OF DEFENSE, et al.,

7 Defendants.

Oral Argument

8 -----x

9 New York, N.Y.  
10 July 20, 2011  
11 3:24 p.m.

11 Before:

12 HON. ALVIN K. HELLERSTEIN,

13 District Judge

14 APPEARANCES

15 AMERICAN CIVIL LIBERTIES UNION  
16 For Plaintiffs

16 BY: ALEXANDER A. ABDO, ESQ.  
17 JAMEEL JAFFER, ESQ.

18 GIBBONS P.C.  
19 Attorneys for Plaintiffs

19 BY: ALICIA L. BANNON, ESQ.  
20 LAWRENCE S. LUSTBERG, ESQ.

21 UNITED STATES ATTORNEY'S OFFICE  
22 SOUTHERN DISTRICT OF NEW YORK

21 For Defendants  
22 BY: AMY A. BARCELO, AUSA  
23 TARA LA MORTE, AUSA

23 CHARLES G. MILLS, ESQ.  
24 Attorney for Amicus Curiae The American Legion  
25

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1 (In open court)

2 (Case called)

3 THE CLERK: Counsel, please state your name for the  
4 record.

5 MR. ABDO: Alexander Abdo for the plaintiffs, your  
6 Honor.

7 MR. JAFFER: Jameel Jaffer for plaintiffs, your Honor.

8 MR. LUSTBERG: Lawrence S. Lustberg, Gibbons, P.C., on  
9 behalf of plaintiffs.

10 MS. BANNON: Alicia Bannon, Gibbons, P.C., on behalf  
11 of plaintiffs.

12 MS. BARCELO: Amy Barcelo, assistant United States  
13 attorney, on behalf of the government.

14 MS. LA MORTE: Tara La Morte, assistant United States  
15 attorney, on behalf of the government.

16 MR. MILLS: Charles G. Mills on behalf of the amicus  
17 curiae, the American Legion.

18 THE COURT: All right. Who's going to argue for the  
19 plaintiff?

20 MR. ABDO: I will, your Honor. Alexander Abdo.

21 THE COURT: Go ahead, Mr. Abdo.

22 MR. ABDO: Your Honor, at issue today is the  
23 government's withholding of approximately 2,000 photographs  
24 depicting the abuse of detainees in US custody throughout  
25 detention facilities in Iraq and Afghanistan. The vast



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1 majority of the photographs have never been publicly described.  
2 This court and the Second Circuit ordered their release, as you  
3 will recall. Now, however, the government --

4 THE COURT: Vividly.

5 MR. ABDO: Well, now, as I'm sure your Honor recalls,  
6 the government is withholding the photographs under new  
7 statutory authority provided by Congress. That statute  
8 authorizes the government to withhold certain photographs if  
9 the Secretary of Defense determines that release of the  
10 photographs would endanger US citizens, civilians, or  
11 employees, and the Secretary has made such a determination.

12 The question today for the court is a very simple one:  
13 whether there is any judicial review whatsoever of the  
14 Secretary's determination that release of the photographs would  
15 endanger those individuals. We think there are -- there is,  
16 for three simple reasons.

17 The first is that the photo statute is an Exemption 3  
18 withholding statute because it establishes particular criteria  
19 for the withholding of agency records.

20 Second, one of those criteria -- indeed, the most  
21 important -- is that the Secretary determines that release of  
22 the requested records would endanger US individuals.

23 And finally, FOIA requires additional review of that  
24 determination, as it does of all criteria established under  
25 Exemption 3 statutes.

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1           As the briefing to this court shows, the majority of  
2 the caselaw supports that simple analysis. The Ninth Circuit,  
3 in a case known as *Long*, and a number of circuits following  
4 that decision, encountered a very similar situation that this  
5 court is in now. The Ninth Circuit had ordered the release of  
6 certain tax-related information, and Congress responded by  
7 passing a statute that provided new statutory authority for the  
8 withholding of that information if the Secretary of the  
9 Treasury determined that release would cause a particular harm.  
10 The district court in that case found that the statute,  
11 invocation of the statute was sufficient to discharge the  
12 government's obligations to withhold the tax-related  
13 information, but the Ninth Circuit reversed, holding that FOIA  
14 provides --

15           THE COURT: Tell me, Mr. Abdo, the nature of the  
16 information that was sought in that case.

17           MR. ABDO: The information was return information  
18 submitted by taxpayers that was withheld by the Secretary of  
19 the Treasury on the claim that disclosure would adversely  
20 impact the administration of the tax laws.

21           THE COURT: You mean the Freedom of Information Act  
22 requests were for the precise returns filed by taxpayers?

23           MR. ABDO: I don't recall whether it was for  
24 particular information within returns, but it was for  
25 information covered by the portion of the tax act that

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1 protected return information.

2 THE COURT: I think I need to know more about that to  
3 consider if *Long* is a good precedent for you. Some areas, by  
4 the very nature of those areas, the court naturally has a great  
5 deal of information and is in possession of a better ability to  
6 evaluate the nature of the withholding than perhaps in other  
7 areas, and I'd like to compare what a court might well  
8 appreciate in *Long* to the very difficult job a judge sitting in  
9 New York City, insulated in a courtroom from a battlefield,  
10 might be able to evaluate in the case applied.

11 MR. ABDO: There's no doubt, your Honor, that the  
12 context of the two cases are distinct. What we are asking the  
13 court to do, however, is engage in the very type of analysis  
14 that courts examining FOIA requests engage in all the time, to  
15 determine --

16 THE COURT: No, they don't. They don't. Once the  
17 head of an agency has a deliberate consideration and  
18 determination, courts tend to respect that.

19 MR. ABDO: Respectfully, your Honor, there is some  
20 deference given to heads of agencies in making those  
21 determinations, but all we're requesting at this point is that  
22 the government provide a justification for the invocation of  
23 the statute, which it has yet to do.

24 For example, in the context of Exemption 1, courts are  
25 called upon routinely to determine whether the government's

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1 determination of national security harm satisfies its  
2 obligation to withhold records that would allegedly endanger  
3 the national security. There may be some measure of deference  
4 in that context, but that deference on the question of the  
5 substance has never been held to negate the availability of  
6 judicial review in the first instance for the government  
7 withholdings.

8 THE COURT: I've done a lot of those reviews in this  
9 case. Mr. Lustberg has been involved in any number of them.  
10 And I looked at the particular statement that is subject to the  
11 withholding request. And I looked for a reasonable  
12 relationship by the nature of the subject matter to the general  
13 classification -- for example, in the CIA papers -- that a  
14 method of investigation or inquiry would be disclosed. And  
15 it's not a very detailed evaluation; it is rather superficial,  
16 by its very nature.

17 And here, as I understand what happened, the United  
18 States was all set to make the publication ordered by me and  
19 affirmed by the Second Circuit when the Prime Minister of Iraq  
20 importuned President Obama not to allow it for fear that a  
21 great deal of civil unrest and insurrection would occur in  
22 Iraq, endangering the Iraqi government, the officials of the  
23 Iraqi government, the United States military, and civilian  
24 forces supporting that government. And it went up through the  
25 chain of command, and Secretary of Defense Gates made the

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1 determination, based on recommendations made at every step  
2 along the way.

3           When I initially made the determination to release the  
4 photographs, I considered an affidavit from the then commander  
5 in chief Richard Myers, who wrote as to his concern that the  
6 release of the photographs would endanger American military and  
7 civilian forces in Iraq and lead to insurrection and the like.  
8 And I ruled that these were really speculative, that the  
9 terrorists in Iraq needed no pretext to attack American forces,  
10 and the core values of the Freedom of Information Act were more  
11 cogent and more dear than the speculation of even the commander  
12 in chief of the United States military. And the Second Circuit  
13 affirmed.

14           And then we have this presidential order, and an act  
15 of Congress. What more could I do?

16           MR. ABDO: Respectfully, your Honor, the determination  
17 or the public statements you're referring to are from several  
18 years ago, and we're simply not in a position to know now  
19 whether those are the same types of concerns that are animating  
20 the government's withholdings. A year and a half ago, when the  
21 government -- when the President determined not to release the  
22 photographs as he had initially determined to do, he made a  
23 very time-sensitive statement about the nature of the facts on  
24 the ground at the time. We are now two years removed from that  
25 determination and yet we have no record from the Secretary of

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1 Defense explaining the entirely conclusory explanation in his  
2 certification that disclosure of these records now would cause  
3 harm. Moreover, we don't have any connection drawn --

4 THE COURT: It's evident. It's evident. It's the  
5 same concern about harm that's been expressed throughout the  
6 case, which I did not follow but which Congress commands me to  
7 follow. I'm just a judge.

8 MR. ABDO: We understand that, your Honor. But  
9 there's a crucial role for judges to play in the FOIA process.  
10 The process of FOIA is not simply for the government to come  
11 into court, invoke an exemption, and for courts then to simply  
12 ratify that invocation of an exemption.

13 THE COURT: I don't think the government did that. If  
14 Secretary of Gates had done what you said, I might be tempted  
15 to require more. But in the context of the history of this  
16 case, I think the concerns are real, and they've been  
17 expressed. It was a very interesting statement that was made,  
18 when the United States was ready, willing, and able to produce  
19 the redacted photographs, an amazing statement, and it, in  
20 effect, could not be ignored by the President or the Congress.  
21 The history makes it quite clear, I think.

22 MR. ABDO: Your Honor, we respect that the court is  
23 inclined to defer to determinations of the agency, but there  
24 has to be something to defer to. Currently before the court,  
25 the only document provided by the government attempting to

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1 justify the withholding of these records on this motion is a  
2 Secretary certification, which does no more than essentially  
3 copy and paste the language of the statute relating to the  
4 required harm that must be demonstrated. The Secretary has not  
5 attempted, nor has any declarant on behalf of the government,  
6 to explain how any one of the photographs would lead to that  
7 harm. Given the sheer volume of the photographs, 2,000, we  
8 think it unlikely that the release of even one of them, much  
9 less the least inflammatory of them, would cause the type of  
10 harm that the Secretary predicts. But we're also --

11 THE COURT: You want me to go through all 2,000 and  
12 rank them? This one is benign, we'll let that go through, but  
13 this one shows something more dramatic? What would I be  
14 looking for? What kind of criteria would I use to go through  
15 this?

16 MR. ABDO: We would invite *in camera* review, your  
17 Honor, but the initial posture of most FOIA cases is to require  
18 the government, through a Vaughn declaration and a Vaughn  
19 index, to make that showing, because the government bears the  
20 burden under FOIA in the first instance of attempting to  
21 justify its withholdings. It has yet to produce a Vaughn index  
22 or declaration with respect to these 2,000 photographs. So we  
23 think the first step for the court would be simply to order the  
24 government to produce a Vaughn declaration explaining how  
25 release of each of the photographs would result in the harm it

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1 claims and an index that provides sufficient textual detail,  
2 describing each photograph, to allow the court to connect the  
3 alleged harm with the actual records.

4 And it's notable that the statute at issue says not a  
5 word about textual descriptions of these photographs. It  
6 protects simply the photographs themselves. And so the court  
7 wouldn't be in any way endangering the asserted interests of  
8 the government if it merely required a textual description to  
9 be provided by the government to the plaintiffs. All it would  
10 be doing would be vindicating FOIA's core purposes by allowing  
11 adversarial testing of the government's claim of harm by  
12 providing a sufficient record for the court to conduct the *de*  
13 *novo* review mandated and, importantly in this case, by creating  
14 a full record of the government's reasons for withholding and  
15 the contents of the records it seeks to withhold.

16 THE COURT: Mr. Abdo, I'm looking at your brief, and I  
17 take it that you want me, as stated at the bottom of page 9, to  
18 conduct a *de novo* review, finding if the release of the  
19 photographs actually would cause the harm specified by the act.

20 MR. ABDO: The phrase --

21 THE COURT: How am I equipped to do that?

22 MR. ABDO: We respectfully disagree, your Honor. FOIA  
23 mandates that courts engage in that type of *de novo* review --

24 THE COURT: Actually would cause the harm.

25 MR. ABDO: We perhaps misquoted the statute, but



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1 whatever --

2 THE COURT: This is argument. You didn't quote  
3 anything. You just asked. This is argument. That's what you  
4 want me to do. You want me to conduct a *de novo* review to find  
5 whether the photographs actually would cause the harm. What is  
6 the harm specified by the law?

7 MR. ABDO: Subsection (d), your Honor, of the statute  
8 authorizes withholding if the Secretary of Defense determines  
9 that disclosure of that photograph would endanger citizens of  
10 the United States, members of the United States armed forces,  
11 or employees of the United States government deployed outside  
12 the United States. That is the very type of determination,  
13 albeit with some deference in these contexts, that courts  
14 engage in when, for example, they ask whether release of a  
15 document would compromise national security under Exemption 1.  
16 It is the same type of question that this court asked when the  
17 CIA sought to neither confirm nor deny the existence of a  
18 particular legal memorandum, an explanation that this court,  
19 after conducting *de novo* review, rejected, notwithstanding the  
20 context of that withholding, and the same type of determination  
21 that this court more recently --

22 THE COURT: I recall that the government volunteered  
23 that information.

24 MR. ABDO: Ultimately, your Honor, I don't recall  
25 whether that's true, but --

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1 THE COURT: I don't remember well enough, but I don't  
2 remember having made that determination. Maybe Mr. Lustberg  
3 remembers that.

4 MR. ABDO: It was in the September 2005 order, your  
5 Honor.

6 In any event, your Honor --

7 THE COURT: I called on Mr. Lustberg because I think  
8 only he has memory long enough to the beginning of the case.

9 MR. LUSTBERG: And I had hair when this case started,  
10 Judge.

11 THE COURT: What shall I say, Mr. Lustberg?

12 MR. LUSTBERG: I don't have a specific word.

13 I think the issue in that case was that some of those  
14 memoranda had already been disclosed in the public record, so  
15 there was a different determination that your Honor had to  
16 make.

17 THE COURT: I think that's right.

18 MR. ABDO: Then I'll point your Honor to a more recent  
19 determination that the alleged source and method withheld by  
20 the CIA in one of those memoranda was not in fact a source or  
21 method but was in fact a source of authority and would not  
22 cause the harm claimed by the CIA.

23 In any event, the point is a larger one, your Honor,  
24 that FOIA requires that courts conduct that type of review.  
25 Although styled *de novo* by FOIA, it varies, of course,

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1 according to the circumstances, but the review in any of those  
2 circumstances fulfills an important role of the court in  
3 ensuring that it is the rule of law respected when records are  
4 withheld and not simply a mere ratification of withholding  
5 decisions.

6 THE COURT: I wrestled with that consideration at some  
7 earlier time, because the statute seems to be saying two  
8 things. It does call upon a *de novo* review of sorts, but that  
9 review seems to be satisfied by looking at the procedure used  
10 by the particular head of an agency in claiming an exemption,  
11 and the court did not seem -- particularly in matters of  
12 defense and intelligence, the courts give a great deal of  
13 respect for the decision made.

14 And I remember very well the *Glomar* case, where  
15 President Carter ordered the release of information that showed  
16 that what the United States had been calling an exploration and  
17 scientific research ship actually was used for spying purposes  
18 in the Pacific, and notwithstanding the disclosure by the  
19 United States, a subsequent claim to withhold disclosure under  
20 an exemption was upheld by the District of Columbia circuit  
21 because even the provenance of a particular disclosure could  
22 embarrass our foreign relations. I was very struck by that  
23 decision, which I thought was something that the Second Circuit  
24 would follow, and which I would follow, that matters of defense  
25 and intelligence are of such a sensitive nature, it's very

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1 difficult for a judge, and maybe impossible, to make the kinds  
2 of calculations and evaluations that are necessary for the  
3 normal kind of *de novo* review. And I applied it here.

4           Going back to what happened, here is the certification  
5 by Secretary Gates that you quote on page 5 of your brief.

6 "After hearing recommendations of the Chairman of the Joint  
7 Chiefs of Staff, the Commander of US Central Command, and the  
8 Commander of Multinational Forces, Iraq, that public disclosure  
9 of these photographs would endanger citizens of the United  
10 States, members of the United States armed forces, or employees  
11 of the United States government deployed outside the United  
12 States." I've seen photographs similar to this in an *in camera*  
13 review, and it's clear from all the public information as well  
14 that what is depicted in these photographs are scenes of  
15 inappropriate corrections officers behavior towards detainees.  
16 There are scenes where dogs are used, there are scenes where  
17 there's public nakedness, there are scenes of compromising  
18 behavior. All of this is on the public record in word  
19 descriptions. Photographs have not been depicted. And I felt,  
20 after seeing these pictures, that the dimension of visual  
21 knowledge of what was going on is different in kind and quality  
22 from the intellectual knowledge that comes from reading words  
23 on a page, and it was for that reason that I held that it was  
24 appropriate to publish these photographs. And I had before me  
25 certifications by the military that the publication would

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1 endanger lives. We were in a wartime situation there, and we  
2 were being attacked regularly. And I believed from everything  
3 known to me that the danger of our forces and civilians were at  
4 such a high level that there need be no pretext for additional  
5 terrorist activity against us, and so the photographs would do  
6 nothing, and I felt that the speculation of the commander in  
7 chief, although entitled to great deference, did not outweigh  
8 the core values of FOIA. But there's now a specific statute  
9 that says that these kinds of certifications need to be given  
10 conclusive respect.

11 Then, as now, there are still the same issues of the  
12 visual image of American troops committing improper and  
13 inappropriate acts towards Iraqis which fuel insurrection and  
14 terrorist activity, endangering our forces. We've drawn down  
15 our forces. There are more civilians, many more civilians than  
16 military, and we're in the process of continuing to draw down  
17 our forces. The dangers that are certified by Secretary Gates  
18 become much more vivid in this kind of an environment. And  
19 although one can argue that the conditions existing now are of  
20 a more benign nature than existed when Congress enacted the  
21 statute, one could argue the contrary as well. We continue to  
22 hear and read of terrorist activities in Iraq, one Iraqi  
23 against another and one Iraqi against the forces of the United  
24 States. We're not out of danger. And for the same rationale  
25 that animated the passage by Congress of the act -- what is the

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1 name, the Protected National Defense --

2 MR. ABDO: The Protected National Security Documents  
3 Act.

4 THE COURT: Yes. That should be applied. I cannot  
5 conduct the evaluation that you want. The certifications are  
6 there. I just read that particular certification. The other  
7 criteria of the law is that the photographs were taken during  
8 the period beginning on September 11<sup>th</sup>, 2001 through  
9 January 22, 2009, and relate to the treatment of individuals  
10 engaged, captured, or detained after September 11, 2001, by the  
11 armed forces of the United States and operations outside of the  
12 United States. There's no serious question that the  
13 photographs, each of the 2,000, qualify, is there?

14 MR. ABDO: We have the Secretary's representation but  
15 that's it, your Honor.

16 THE COURT: You do not --

17 MR. ABDO: We're not contesting that, your Honor.

18 THE COURT: You're not. I think it's enough.

19 Mr. Abdo, I'm sympathetic to your argument, but I  
20 think I have to follow this.

21 MR. ABDO: Your Honor, if I could make just one point.

22 THE COURT: Yes.

23 MR. ABDO: It seems that the primary motivation is the  
24 court's belief that Congress has conclusively acted, and I'd  
25 just like to push back up against that a little bit.

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1 THE COURT: You may.

2 MR. ABDO: Congress could easily have written a  
3 statute that would have prohibited the disclosure of these  
4 photographs without the availability of any judicial review of  
5 a determination of harm. It could, for example, have drafted a  
6 statute like the CIA Act, which protects the operational files  
7 of the CIA without any intervention of a court; it could have  
8 protected these photographs in the same way it protects  
9 information provided by census takers, which is protected in  
10 the Census Act, or to visa applicants, protected by the U.S.  
11 Code. Instead it seeks to hinge its holding on the  
12 determination of harm, and that determination of harm, under  
13 hornbook law of FOIA, is an Exemption 3 criterion that is  
14 subject to judicial review. And at this point there's simply  
15 no record before the court to allow that type of review. The  
16 Secretary's certification, with all due respect to the  
17 Secretary, is nothing more than a recitation of the statutory  
18 language. It provides no explanation for its determination of  
19 harm; it doesn't explain anything about the contents of the  
20 2,000 photographs. It may very well be that some of them are  
21 withholdable for the reasons that the court provided, but we  
22 simply don't know whether all 2,000 of them are or whether all  
23 2,000 have the same type of content that would, you know,  
24 self-evidently cause the type of harm that the court has  
25 discussed. And that's because we simply have no record of what

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1 the photographs are. We don't know even how many there are  
2 conclusively from the government. We don't know where they  
3 were taken, and we don't know what they show. Without that  
4 type of record, the Secretary's conclusory statement that  
5 disclosing them would cause a harm is entirely unreviewable.  
6 It would simply be wholesale deference without any other type  
7 of review that FOIA calls for to ratify that withholding  
8 without, at the very least, satisfying the procedural  
9 requirements of FOIA.

10 And to be frank, it's a very modest request, your  
11 Honor. We're simply asking that the government provide what it  
12 does, even in all of the national security cases that your  
13 Honor was talking about. Even in the *Glomar* context, even in  
14 the Exemption 1 and national security Exemption 3 context.  
15 Even in those contexts, the government provides a Vaughn  
16 declaration and it provides an index that describes the  
17 withheld records in as much detail as possible without  
18 compromising the interests that it is trying to protect. It  
19 has yet to do that here, and the only basis we can discern for  
20 that judgment is that the government thinks the statute has  
21 legislated the withholding of these photographs, but that is  
22 emphatically not the case. Congress did not enact the type of  
23 categorical ban that it has done in so many contexts. It  
24 hinged withholding on specific criteria -- criteria that are  
25 reviewable by courts' determinations of harm, that, albeit



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1 often reviewed in the context where deference is appropriate,  
2 are reviewed nonetheless on the basis of a record provided by  
3 the government. And here all we have is a declaration that  
4 recites the photographs, and upon that record, we think it  
5 would be improper for the court to uphold the withholding of  
6 the photographs without more.

7 THE COURT: Thank you.

8 Ms. La Morte?

9 MS. BARCELO: Actually, Ms. Barcelo.

10 THE COURT: Ms. Barcelo. Sorry.

11 MS. BARCELO: No problem, your Honor.

12 THE COURT: Whenever I become familiar with the  
13 assistants, you switch on me.

14 MS. BARCELO: Yes. I understand. The court --

15 THE COURT: Should the government have issued a Vaughn  
16 declaration?

17 MS. BARCELO: There is no requirement for a Vaughn  
18 index -- declarations or index here, your Honor. The basis --  
19 as your Honor noted, this case has a unique history, or this --  
20 the coming about of this statute.

21 THE COURT: I'm not sure it's unique, but it sure is  
22 extensive.

23 MS. BARCELO: Yes. Well, I do think -- I mean, I  
24 think the issue of these specific photos has a unique history,  
25 and it resulted in an enactment of a unique statute. As a

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1 result of the enactment of the Protected National Security  
2 Documents Act, we're now operating under FOIA Exemption 3.  
3 That's the basis under which the government is withholding  
4 these documents. And FOIA Exemption 3 is different from the  
5 other FOIA exemptions under which this court has previously  
6 considered the documents -- these photographs. Excuse me.

7 FOIA Exemption 3 requires only that a statute be a  
8 FOIA Exemption 3 statute. Here plaintiffs argue that it is,  
9 and that the document -- secondly, that the documents fall  
10 within the scope of that statute. Here the government's  
11 argument, the basis for the withholding -- the basis for the  
12 documents -- the photographs falling within the scope of the  
13 statute is the existence of the Secretary's certification which  
14 fulfills all of the requirements of the statute, because each  
15 and every one of the photographs falls within the scope of this  
16 certification --

17 THE COURT: How do we know that?

18 MS. BARCELO: We know that because the certification  
19 says so, your Honor. The certification refers specifically to  
20 the photographs that are, I quote, "contained in or derived  
21 from records of investigations of allegations of detainee  
22 abuse," including the records -- including the records of  
23 investigation, process and release in this very case, citing  
24 the index number for this very case.

25 THE COURT: Well, the statute seems to make a

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1 distinction between the certificate, which is that disclosure  
2 would endanger citizens of the United States, etc., and that  
3 the photograph qualifies objectively. They're two different  
4 criteria, and I don't think we can accept the certificate to  
5 cover each and all of the photographs.

6 MS. BARCELO: I'm sorry. I'm not sure that I  
7 understand the question.

8 THE COURT: The certificate has to do with danger to  
9 persons.

10 MS. BARCELO: That's correct.

11 THE COURT: The photographs are qualified documents  
12 under the act if they were taken during a certain period and if  
13 they related to treatments engaged, captured, or detained by  
14 the United States armed forces. So I can't accept the  
15 certificate as conclusively saying that each of these 2,000  
16 photographs qualifies under subsection (b) of the act.

17 MS. BARCELO: The certificate does also address both  
18 of those points.

19 THE COURT: But I can't accept that. The law does not  
20 require me to accept that. It requires me to accept the point  
21 of danger. It doesn't require me to accept that these  
22 photographs were taken during a certain period and related to  
23 certain individuals.

24 MS. BARCELO: As an initial matter, plaintiffs are not  
25 disputing that either one of those criteria are met here, and I

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1 do think the Secretary's certification, which is issued by the  
2 Secretary of Defense himself, does speak precisely to both of  
3 those issues, the time period during which the photographs were  
4 taken.

5 THE COURT: I don't think that's relevant. That's not  
6 what the statute says. I do think it would be an idle act to  
7 go over each of these 2,000 photographs to see if they qualify  
8 under this period. We won't know from the photograph  
9 necessarily exactly when it was taken, although they may be  
10 time stamped. We will be able to see from each of the  
11 photographs what they relay. And I think for the purposes of  
12 this motion, we don't have to go into that exercise, but I do  
13 not hold that the government's certificate is conclusive on the  
14 aspect of subsection (b).

15 MS. BARCELO: Thank you, your Honor.

16 THE COURT: Let's talk a little bit about *Long* and  
17 *A. Michael's Piano*, two cases that are cited by the plaintiffs.  
18 In *Long*, what was sought are standards used or to be used for  
19 the selection of income tax returns for examination or that  
20 they used for determining such standards. In other words, what  
21 the applicant wanted to know was what criteria did the IRS use  
22 in deciding which returns were audited; a valuable piece of  
23 information for taxpayers.

24 The government argued that disclosure would qualify  
25 under the act, that it authorized these kinds of criteria and

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1 data, to establish those criteria, to be exempted from  
2 disclosure.

3 The Court of Appeals in the Ninth Circuit held that  
4 the court had to make that determination. The case is not  
5 binding on me, since we sit in the Second Circuit, and I don't  
6 think I would agree with the Court of Appeals in the Ninth  
7 Circuit. I think this kind of information is inconsistent with  
8 the effective tax administration. But that would be on the  
9 substance. I could understand a rule that says a district  
10 judge has to delve into it because these are the kinds of  
11 things that judges are aware of. You have to understand.

12 For the reasons I expressed before, I don't think we  
13 have a very good understanding of what may or may not be  
14 dangerous on the battlefield in the crazy conditions that exist  
15 in Iraq at this point in time. And even there, the history of  
16 what's involved, with which I've become as familiar as almost  
17 any person outside the CIA or the Department of Defense, shows  
18 to me that the Secretary of Defense has a rational basis for  
19 how he wishes to conclude. I might disagree with him. I might  
20 agree that the core values of FOIA are more important and more  
21 cogent. In fact, I expressed those views. But I cannot say  
22 that there is a lack of a rational basis for what Secretary  
23 Gates has certified, and if you want me to do a *de novo* review,  
24 I've done it, by reason of my familiarity with the case, and  
25 that's as far as I'll go. I will not opine that there is or is

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1 not a danger in the battlefield because of the disclosure of  
2 pictures of this sort. And I should say that issuing the  
3 rulings I did was probably the most difficult judicial decision  
4 that I've had to do in 12 years. We put people in the line of  
5 fire every day. Regardless of whether we agree or disagree  
6 with one or more aspects of national policy, we cannot gainsay  
7 the fact that these are very brave soldiers and sailors and  
8 airmen who carry out very dangerous missions every day to  
9 protect the United States and advance its policies. And it's a  
10 very difficult act on the part of a district judge to arrogate  
11 the function of deciding what measure of danger is permissible  
12 and what not.

13 So I will not do the *de novo* review except to the  
14 extent of looking for the rational basis of what the Secretary  
15 of Defense has done, and I've done that.

16 Before leaving, there's just one other case I wanted  
17 to discuss with you, and that's *A. Michael's Piano v. FTC*. Can  
18 you tell me a little bit about that case. That's a Second  
19 Circuit decision.

20 MS. BARCELO: Certainly, your Honor.

21 In that case, that was an Exemption 3 FOIA case,  
22 similar to this -- the issues that we are now discussing. *A.*  
23 *Michael's Piano*, of course, dealt with a different Exemption 3  
24 withholding statute than what we're talking about here. But  
25 the fundamental issue that the Second Circuit was addressing

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1 here was, how do we determine whether or not a record is  
2 protected under Exemption 3? Do we interpret the statute  
3 using, you know, different principles of statutory  
4 interpretation when considering it as a FOIA Exemption 3  
5 statute than we would for any other sort of -- any other  
6 statute that has been enacted by Congress?

7 It looks at, in considering -- excuse me. In  
8 considering the different ways that a FOIA Exemption 3 statute  
9 could be interpreted, the Second Circuit looks at the ways  
10 other -- other circuits -- excuse me -- had interpreted 6103 of  
11 the Internal Revenue Code, which is the statute the plaintiffs  
12 argue we should interpret the PNSDA in a manner similar. What  
13 the Second Circuit held was that in those cases, where other  
14 circuits had argued or had held that principles of FOIA *de novo*  
15 review should be imposed upon the interpretation of the scope  
16 of the FOIA Exemption 3 statute and other circuits had argued  
17 or had held that APA principles of arbitrating capricious  
18 review should be imposed upon the interpretations of the scope  
19 of the Exemption 3 statutes, the Second Circuit considered both  
20 of those options and rejected them. Instead, the Second  
21 Circuit held, in light of the Supreme Court precedent in the  
22 *CIA v. Sims* case -- which I know the court is very familiar  
23 with, as it's come up a number of times in the previous case --  
24 it held that a FOIA Exemption 3 statute could only be  
25 interpreted according to its plain language, its plain meaning,

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1 taking into account its structure, its purpose, and the  
2 legislative history of the statute, with the ultimate goal of  
3 determining Congressional purpose in enacting the statute and  
4 determining what Congress intended. Did Congress intend for  
5 the types of documents that we're talking about here to be  
6 protected under this statute. Here, there is no question that  
7 that is what Congress is intending with respect to the  
8 photographs at issue here. That I think is what we can -- the  
9 sense in which *A. Michael's Piano* was instructive, that a FOIA  
10 Exemption 3 statute should be interpreted in the same manner as  
11 any other Congressional enactment, on its own terms, its own  
12 plain language, and Congressional intent on enacting the  
13 statute.

14 THE COURT: The Second Circuit held -- this is a 1994  
15 case -- that the burden of proof on *de novo* judicial review  
16 rests with the agency asserting the exemption. What did  
17 Secretary Gates have to do? Was his certificate sufficient?

18 MS. BARCELO: His certificate -- certification  
19 absolutely was sufficient.

20 THE COURT: Because that's what the statute says.

21 MS. BARCELO: Because that's what the statute  
22 requires; exactly, your Honor. The statute requires --

23 THE COURT: And clearly the materials withheld fall  
24 within the scope of the statute.

25 MS. BARCELO: That's exactly right, your Honor.



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1 THE COURT: And that's the end of the inquiry.

2 MS. BARCELO: That is also exactly right.

3 THE COURT: Anything else?

4 MS. BARCELO: Unless the court has any further  
5 questions.

6 THE COURT: No. Thank you.

7 MS. BARCELO: Thank you.

8 THE COURT: Do we have any legislative history that  
9 commands judicial review to a greater extent than I've  
10 expressed?

11 MS. BARCELO: There is none, your Honor.

12 THE COURT: Last word, Mr. Abdo?

13 MR. ABDO: Yes, your Honor. Respectfully, the inquiry  
14 about judicial review isn't whether Congress has expressed an  
15 intent to maintain the default rule of judicial review under  
16 FOIA. The inquiry under *Long* and all of the other -- the vast  
17 majority of the circuits to consider a question similar to this  
18 is whether Congress has tried to negate judicial review or get  
19 rid of it. In this context it hasn't. It has left FOIA as it  
20 stands --

21 THE COURT: It says nothing about judicial review.

22 MR. ABDO: That's exactly right. That's --

23 THE COURT: It says nothing about what standards of  
24 inquiry the court should look to.

25 MR. ABDO: That's the case with all Exemption 3

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1 statutes, your Honor. Not a single one expresses a view on  
2 whether the traditional FOIA review should apply, and the only  
3 context in which Congress does express a view in those cases is  
4 when it does try to extract a withholding statute from the  
5 purview of FOIA, which Congress has not done here. And even  
6 today the government concedes for the first time that the  
7 proper framework is Exemption 3. And so it seems to us that  
8 the only real question is whether a criterion under the statute  
9 for withholding is that the Secretary determined harm or, as  
10 your Honor has said a couple times, whether the Secretary  
11 merely needs to certify that harm would exist. We think that's  
12 a distinction without a difference. The statute requires both.  
13 The only reason for the existence of a certification process  
14 was to allow Congress to impose a temporal limit on the  
15 certification, not to allow a single certification or a single  
16 determination of harm to preclude release of these photographs  
17 for all time. And the reason for that should be  
18 straightforward. These are records that obviously cut to the  
19 core of governmental transparency and to the core of the  
20 purposes of FOIA. And so Congress was careful not to enact a  
21 statute that allowed the withholding of these photographs on  
22 the basis of one determination, no matter how long ago made.

23 THE COURT: What's the time period I look to in  
24 deciding whether your request for FOIA disclosure were  
25 appropriate or not? As of today or as of the time you made the

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1 request?

2 MR. ABDO: I believe it's the government's burden to  
3 justify its withholding as of this moment. And that's  
4 consistent with how the court has, for example, treated  
5 withholdings under Exemption 7, where there are temporal  
6 considerations. So for example, when Special Prosecutor Durham  
7 withheld certain records under Exemption 7(a), the court asked  
8 for periodic updates that might affect the relevance of his  
9 withholding analysis at any given moment. And so I think the  
10 question is whether the Secretary's simple statement that the  
11 records should be withheld suffices to discharge the  
12 government's burden to demonstrate that there would be harm if  
13 the photographs were released today with respect to 2,000  
14 photographs which we know nothing about.

15 THE COURT: Okay. Thank you very much, Mr. Abdo.

16 I deny the plaintiff's motion for disclosure of these  
17 documents and hold that the government properly showed the  
18 applicability of Exemption 3 of the Freedom of Information Act,  
19 5 U.S.C. § 552(b)(3), and Section 565 of the Department of  
20 Homeland Security Appropriations Act 2010, Public Law No.  
21 111-83, 123, Statute 2142 and 2184-85 of 2009, better known as  
22 the Protected National Security Documents Act of 2009.

23 So I deny plaintiff's motion for disclosure and I  
24 grant the government's cross-motion for partial summary  
25 judgment.

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1           This controversy has a rather long history.  
2 Plaintiffs started the matter in October 2003 when they  
3 submitted a FOIA request to a number of federal government  
4 agencies, including the Department of Defense, and several  
5 components, seeking the release of all records concerning the  
6 treatment of detainees taken into United States custody after  
7 September 11, 2001, and held at military bases or detention  
8 facilities abroad.

9           This lawsuit, seeking to implement the FOIA request,  
10 was filed in June of 2004.

11           I examined *in camera* each of the photographs that were  
12 then in issue and I ordered that there be a redaction on most  
13 of these photographs to mask the identity of the detainee and,  
14 subject to such redaction, that most of these had to be  
15 disclosed.

16           My opinion in writing is *American Civil Liberties*  
17 *Union v. Department of Defense*, 389 F.Supp.2d 547 at 568-79,  
18 issued in 2005 and affirmed by the Court of Appeals at  
19 543 F.3d 59, decided in 2008, and then vacated after subsequent  
20 proceedings by the United States Supreme Court at  
21 130 U.S. 777 (2009).

22           These photographs, known as the Darby photographs,  
23 from the person who took them, further claim exemption under  
24 Exemption 6 and 7(c) of FOIA, 5 U.S.C. § 552(b)(6) and  
25 (b)(7)(C). It was argued by the government that release of the

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1 photographs would constitute an unwarranted invasion of  
2 personal property or privacy. It's very interesting to note  
3 that the government at that time did not argue any aspect of  
4 national security or endangerment of any military persons. I  
5 denied the government's motion because I reasoned the  
6 photographs had been redacted to eliminate all identifying  
7 characteristics of the persons shown.

8           The government added its Exemption 7(f) argument,  
9 arguing that publication of the Darby photographs would likely  
10 incite violence against our troops and Iraqi and Afghan  
11 personnel and civilians and that redactions would not avert the  
12 danger. I overruled that objection. That is reflected at  
13 389 F.Supp.2d at 574-79. After thorough review of all the  
14 precedents and all the photographs, I concluded that the core  
15 values that Exemption 7(f) was designed to protect are not  
16 implicated by the release of the Darby photographs but that the  
17 core values under which FOIA commands the disclosure were very  
18 much implicated. Accordingly, I ordered the government to  
19 release the Darby photographs.

20           Following that, a third party published the Darby  
21 photographs online, and that resulted in a withdrawal by the  
22 government of its appeal, at least as to the aspect of the  
23 Darby photographs.

24           However, more and more photographs came into being, or  
25 at least came out of hiding. It appears that there were an

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1 additional 29 photographs and two videos taken by individuals  
2 serving in Iraq and Afghanistan that the government believes  
3 were responsive to the FOIA requests. Again, the government  
4 claimed exemption under Section 6, 7(c), and 7(f).

5 On June 8<sup>th</sup>, 2006, I reviewed the 29 photographs  
6 *ex parte* and *in camera*, and that's reflected in an order,  
7 04-CV-4151, Document 193, June 9, 2006.

8 I just want to interject that at all times during this  
9 case I've been concerned to balance as properly as I could the  
10 commands of secrecy and national defense and the commands of  
11 publicity for a court record. I'm very much concerned that as  
12 a United States district judge, I should be accountable for all  
13 that I do, and at every step along the way I've tried to put on  
14 the public record as much as I could about the subject matter  
15 of my ruling and my rulings themselves. And some of this  
16 required a good deal of intensive negotiations and stubbornness  
17 with various government officials.

18 But in any event, I rejected the government's claimed  
19 exemptions for the same reasons I expressed earlier and I  
20 ordered the release of 21 of the 29 photographs, subject to  
21 redaction to eliminate all identifying facial features. And as  
22 to the other eight photographs, I ruled they were not  
23 responsive to the request. That order was issued, June 9,  
24 2006. It's Document 193. And it's also reflected in 2006 US  
25 District LEXIS 40894 at \*3-4.

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1           That was not the last of the photographs. By letter  
2 of June 29, 2006, the government advised that the Department of  
3 Defense had an additional 23 images of detainees and claimed  
4 exemptions on the same bases as before. However, it was  
5 clearly unnecessary to have further argument and further  
6 opinion writing on the subject because what I said earlier on  
7 several occasions the parties expected and I believe to be  
8 consistently applied so there was a stipulation that these 23  
9 would be governed by the rulings on the 21 for the purposes of  
10 the appeal that followed.

11           So the government appealed my orders for the 21 and  
12 the 29 photographs. On September 22, 2008, a unanimous panel  
13 of the United States Court of Appeals for the Second Circuit  
14 affirmed my order, directing the release of the photographs.  
15 *American Civil Liberties Union v. Department of Defense*,  
16 543 F.3d 59 (2d Cir. 2008), and that was vacated subsequently,  
17 and a hearing *en banc* was denied.

18           The government advised on April 23, 2009, that it  
19 would not seek certiorari review and that it was prepared to  
20 release the 21 and the 23 photographs. There may be somewhat  
21 different numbers, but there were two tranches of photographs  
22 that were involved. And the government added that it was  
23 processing for release a substantial number of other images  
24 contained in the CIC (Criminal Investigation Command) report  
25 that it disclosed during the pendency of the case. The

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1 government represented that it would process these other images  
2 in a manner consistent with the court's previous rulings on  
3 responsive images. Again, the government did not petition for  
4 certiorari.

5 The Second Circuit issued a mandate on April 27, 2009.

6 However, just a few weeks later, matters turned  
7 around. On May 13<sup>th</sup>, 2009, President Barack Obama stated  
8 publicly that he would oppose the release of additional  
9 detainee photographs. That followed -- and I'm not sure this  
10 is in the record or from my recollection of the news reports,  
11 but that followed an urgent request by the Prime Minister of  
12 Iraq to the United States government not to publish the  
13 photographs. The Prime Minister of Iraq, which had a more  
14 fragile governmental structure at the time than it is today,  
15 was concerned that the publication of these photos would fuel  
16 insurrection and make it impossible to have a functioning  
17 government. In reaction to that, President Obama expressed his  
18 belief that the publication of these photos would not add any  
19 additional benefit to the public's understanding of what was  
20 carried out in the past by a small number of individuals;  
21 rather, the most direct consequence of releasing the  
22 photographs, the President added, would be to further inflame  
23 antiAmerican opinion and to put our troops in greater danger.

24 Pursuant to the President's statements, on the  
25 application of the government, the Second Circuit granted the



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1 government's motion to recall the mandate and to stay the  
2 effect of the mandate pending disposition of a new petition for  
3 certiorari. The government filed a petition, and it was three  
4 months later that the Protected National Security Documents Act  
5 of 2009 was signed into law. The PNSDA specifically exempts  
6 from disclosure under FOIA any protected documents, defined as  
7 a photograph taken between September 11, 2001, and January 2,  
8 2009, relating to the treatment of individuals engaged,  
9 captured, or detained, after September 11, 2001, by the United  
10 States armed forces in their operations overseas, and for which  
11 the Secretary of Defense issued a certification stating that  
12 disclosure would endanger United States citizens, military  
13 personnel, or federal government employees. Subsequently, the  
14 Secretary of Defense, Robert M. Gates, issued a certification  
15 of November 13, 2009, addressing a collection of photographs  
16 between the indicated dates and relating to the subject matter  
17 of the law. The collection includes the 23 and 21, or 44,  
18 photographs that were involved in these proceedings. They do  
19 not affect the photographs that were, I think -- I'd like to  
20 confirm.

21 The first tranche of photographs that I ruled on are  
22 out in the public domain, are they not, Mr. Abdo?

23 MR. ABDO: I believe so, your Honor.

24 THE COURT: So we're talking about the second tranche,  
25 third tranche, and the fourth tranche documents?

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1 MR. ABDO: Yes.

2 THE COURT: Do you agree, Ms. Barcelo?

3 MS. BARCELO: I do, your Honor.

4 THE COURT: And I mentioned before on the record the  
5 basis that was cited by Secretary Gates and my ruling that,  
6 given the history of how this came about, it was clear to me  
7 that Secretary Gates had a rational basis for his  
8 certifications and that I could not second-guess it, and  
9 notwithstanding the statement made this week by the ACLU, no  
10 one really wants me to conduct a second review of that which is  
11 in the purview of the Secretary of Defense, beyond looking for  
12 a rational basis the way it did. I find that rational basis.

13 On November 30, 2009, continuing with the history of  
14 the case, the United States Supreme Court granted the  
15 government's petition for certiorari, vacated the Second  
16 Circuit's judgment, and remanded for further consideration, in  
17 light of the enactment of the Protected National Security  
18 Documents Act and the certification of the Secretary of  
19 Defense. 130 U.S. 777 (2009).

20 In turn, the Second Circuit vacated my orders and  
21 remanded for further proceedings. And thus I'm blessed with  
22 another appearance by everyone in this courtroom.

23 So I've expressed my holdings in the discussions we've  
24 had. I hold that Exemption 3 makes clear that an agency need  
25 not disclose records that are, by separate qualifying statute,

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1 specifically exempted from disclosure, and that separate  
2 qualifying statute is the Protected National Security Documents  
3 Act. I hold that the government has satisfied its burden to  
4 support the claimed Exemption 3 from disclosure, and that was  
5 the holding of *A. Michael's Piano, Inc. v. FTC*, which we  
6 discussed earlier today, 18 F.3d 138, 143 (2d Cir. 1994),  
7 implementing 5 U.S.C. § 552(a)(4)(D).

8 I've expressed my disagreement, as applied to the  
9 proceedings before me, of *Long v. United States Internal*  
10 *Revenue Service*, 742 F.2d 1173 (9th Cir. 1984), and I don't  
11 need to elaborate further.

12 And the Second Circuit held, in *A. Michael's Piano*,  
13 which I previously cited, following the Supreme Court decision  
14 in *CIA v. Sims*, 471 U.S. 159, that we look in all statutes to  
15 the plain language of the statute and its legislative history  
16 in order to determine its legislative purpose. The legislative  
17 purpose here was to provide authorizing legislation to support  
18 the President's determination that these images should not be  
19 disclosed, should be exempt from FOIA.

20 We saw before the statements in the Congressional  
21 record of Senator Lieberman and Senator Graham, who sponsored  
22 the bill. There is no legislative history suggesting any  
23 further *de novo* review or any kind of review by the court. The  
24 legislative history is not helpful. The language of the  
25 statute makes clear what has to be done in terms of qualifying

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1 for exemption, that is, the certificate of which we spoke  
2 before by the Secretary of Defense and the objective criteria  
3 of the photographs, 2,000 photographs qualifying by date and by  
4 relation to the criteria of the statute. So therefore I hold  
5 that the photographs now in question are not subject to  
6 disclosure under FOIA.

7 It seems to me that as a judge, my obligation is to  
8 follow the law. We're not involved with the constitutional  
9 determination; we're involved with the application of statutory  
10 law, where, as here, the Executive branches and the Legislative  
11 branches have spoken clearly as to the appropriateness of  
12 exempting these photographs. My job as a judge is to follow  
13 and not arrogate my own thinking and policy considerations and  
14 derogations of the Legislative and Executive branches, which,  
15 after all, have the job of making laws that I have to implement  
16 and that pertain to the national defense.

17 Accordingly, the government's sixth motion for partial  
18 summary judgment is granted.

19 Plaintiff's sixth motion for partial summary judgment  
20 is denied.

21 The clerk shall mark the motions, Documents Number 443  
22 and 456, terminated. These are my findings and conclusions.

23 Thank you very much.

24 ALL COUNSEL: Thank you, your Honor.

25 o0o

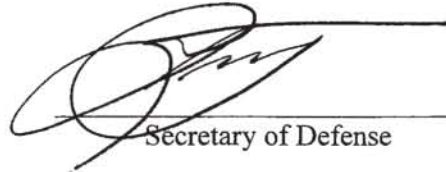
CERTIFICATION RENEWAL OF THE  
SECRETARY OF DEFENSE

This Certification Renewal pertains to a collection of photographs (as that term is defined in Section 565(c)(2) of the Department of Homeland Security Appropriations Act, 2010 (Pub. L. 111-83) ("DHS Appropriations Act")) assembled by the Department of Defense that were taken in the period between September 11, 2001 and January 22, 2009, and that relate to the treatment of individuals engaged, captured, or detained after September 11, 2001 by the Armed Forces of the United States in operations outside the United States. These photographs are contained in, or derived from, records of investigations of allegation of detainee abuse, including the records of investigation processed and released in *American Civil Liberties Union v. Department of Defense*, 04 Civ. 4151 (AKH) (S.D.N.Y.). The photographs include but are not limited to the 44 photographs referred to in the decision of the United States Court of Appeals for the Second Circuit in *American Civil Liberties Union v. Department of Defense*, 543 F.3d 59, 65 & n.2 (2d Cir. 2008), *vacated & remanded*, 130 S. Ct. 777 (2009).

Upon the recommendations of the Chairman of the Joint Chiefs of Staff, the Commander of the U.S. Central Command, and the Commander, International Security Assistance Force/United States Forces-Afghanistan and by the authority vested in me under Section 565(d)(1), (3) of the DHS Appropriations Act, I have determined that public disclosure of these photographs would "endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States."

Therefore, these photographs continue to meet the standard for protected documents, as that term is defined in Section 565(c)(1) of the DHS Appropriations Act and are exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and in all proceedings pursuant to that law. As required by Section 565(d)(4) of the DHS Appropriations Act, I hereby direct that notice of this Certification Renewal be provided to Congress.

Date: NOV 09 2012

  
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Secretary of Defense