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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,  
*et al.*,

*Plaintiffs,*

v.

DEPARTMENT OF DEFENSE, *et al.*,

*Defendants.*

Civil Action No. 17-cv-9972 (ER)

THE NEW YORK TIMES COMPANY,

*Plaintiff,*

v.

DEPARTMENT OF DEFENSE,

*Defendant.*

Civil Action No. 20-cv-0043 (ER)

DECLARATION OF ELLEN J. KNIGHT

Pursuant to 28 U.S.C. § 1746, I, Ellen J. Knight, hereby declare as follows:

1. (U) I am the Senior Director for Records Access and Information Security Management at the National Security Council ("NSC"). I have held this position since December 18, 2019. Prior to being selected as Senior Director, I served as the Acting Senior Director while also holding the position of Director for Access Management at the NSC. I am detailed to the NSC from my current position as Senior Program Analyst in the Classification Management Directorate at the Information Security Oversight Office ("ISOO"), which is organizationally

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located at the National Archives and Records Administration (“NARA”) but reports directly to the Assistant to the President for National Security Affairs at the NSC. I have served at ISOO since 2011. Prior to joining ISOO, I served as an Archivist at the Richard M. Nixon Presidential Library, serving as a classification and declassification reviewer on the White House Tapes Team. I also served as an Archivist at the National Security Agency in the Policy and Records Management Division, which includes the agency’s records management and classification policy offices. I have worked in the realm of classified national security information policy since 2006.

2. (U) I am a senior NSC official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of NSC information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations. Among other things, the purpose of the NSC is to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the Armed Forces and the other departments and agencies of the United States Government to cooperate more effectively in matters involving the national security.

3. (U) Among other things, I am responsible for the classification review of NSC information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

4. (U) Through my exercise of my official duties, I am familiar with the FOIA requests submitted by plaintiffs in these civil actions. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

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5. (U) I am submitting this declaration in support of the consolidated motion for summary judgment filed by defendants the United States Departments of Defense, State, and Justice in these civil actions brought pursuant to FOIA.

6. (U) Plaintiffs in these actions seek a purported document that they allege is titled “Principles, Standards, and Procedures,” or “PSP.” Plaintiffs allege that this purported document provides standards and procedures for direct action against terrorist targets, and replaced a document referred to as the Presidential Policy Guidance (“PPG”), which was issued by President Obama in 2013.

7. (U) Information concerning the current status of the PPG—including whether or not it has been rescinded, modified, or replaced—is currently and properly classified and protected from disclosure by statute. This information is thus exempt from public disclosure under FOIA exemptions 1 and 3, 5 U.S.C. § 552(b)(1) and (3). Accordingly, the NSC directed the defendant agencies to provide a so-called “Glomar” response to the FOIA requests.

8. (U) On May 22, 2013, President Obama implemented standards and procedures for direct action against certain terrorist targets abroad. These standards were set out in Presidential Policy Guidance titled “Procedures for Approving Direction Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities” (“PPG”).

9. (U) The NSC originally classified the PPG pursuant to Executive Order 13526, Classified National Security Information, 75 Fed. Reg. 707 (Dec. 29, 2009) (“EO 13526”). The existence of the PPG was not originally classified, and President Obama publicly described the PPG in general terms.



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10. (U) In 2016, following an intensive inter-agency review, redacted portions of the PPG were publicly disclosed in response to a FOIA request. The complete, unredacted version of the PPG remains classified.

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12. (U) In 2017, an original classification authority at NSC classified the current standards and procedures for direct action against terrorist targets, including whether or not the PPG remains in place, or has been modified, rescinded or replaced. The determination to classify the current standards and procedures for direct action against terrorist targets, including whether or not the PPG remains in place, was made to avoid disclosing information to potential terrorist targets and other foreign adversaries about the process used by the U.S. Government to govern direct action against terrorist targets.

13. (U) The current status of the PPG—including whether or not the PPG remains in place, or has been rescinded, modified, or replaced—is currently and properly classified. *See* EO 13526 § 1.1(a). This information was classified by an original classification authority at the NSC. *Id.* § 1.1(a)(1). The PPG—as well as information concerning its current status—is owned by, was produced by, and is under the control of the United States Government. *Id.* § 1.1(a)(2).

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14. (U) Information concerning the current status of the PPG falls within one of the classification categories set out in § 1.4 of EO 13526. *Id.* § 1.1(a)(3). This information pertains to both military plans or operations and intelligence activities, sources, or methods. *See* EO 13526 § 1.4(a), (c). The PPG details standards and procedures for direct action against terrorist targets. Disclosure of its current status, including whether or not it has been rescinded, modified or replaced, would convey information pertaining to current military plans or operations and intelligence activities.

15. (U) The NSC has determined that the unauthorized disclosure of the current standards and procedures for direct action against terrorists, including whether or not the PPG remains in place, or has been modified, rescinded or replaced, reasonably could be expected to result in serious damage to the national security, including defense against transnational terrorism. *Id.* § 1.1(a)(4). Revealing the existence or absence of new guidance issued by the President to the military and intelligence agencies concerning operations against transnational terrorism could reasonably be expected to undermine military operations and intelligence operations by allowing potential terrorist targets to modify their operations to avoid detection or targeting by the U.S. Government. Military and intelligence operations would be undermined by confirming the existence or non-existence of revised priorities of the current administration concerning direct action against certain terrorist targets or by revealing the existence or non-existence of updated policies regarding capture or kill operations against transnational terrorist targets. The more information that terrorists have about the standards and procedures currently in place, the more easily they will be able to modify their behavior to avoid detection or targeting, or otherwise thwart military or intelligence operations.



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19. (U) Except for limited circumstances that do not apply here, under Executive Order 13526, national security information can be declassified or downgraded only by (1) the official who authorized the original classification, (2) his or her current successor in function, (3) a supervisory official of the originator or successor, or (4) an official delegated declassification authority in writing by the agency head or the senior agency official of the originating agency. E.O. 13526 § 3.1(b). No NSC official has declassified information concerning the current status of the PPG, nor delegated declassification authority, in writing or otherwise, to any other agency or person. To my knowledge, there has been no authorized official disclosure of information concerning the current status of the PPG.

20. (U) Plaintiffs have made certain allegations concerning a document released by the Department of Defense (“DoD”). DoD does not have authority to declassify information about the current status of the PPG. Any disclosure, by DoD or any other agency, of information about the current status of the PPG would have been unauthorized.

21. (U) Pursuant to Executive Order 13526, “classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.” Executive Order 13526 § 1.1(c). Thus, regardless of any alleged disclosure by DoD, information regarding the current status of the PPG remains currently and properly classified.

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22. (U) Pursuant to Executive Order 13526, “[i]t is presumed that information that continues to meet the classification requirements under this order requires continued protection.” *Id.* § 3.1(d). Information concerning the current status of the PPG continues to meet the classification requirements of the Executive Order regardless of any alleged disclosure by DoD. In particular, it remains true that revelation of the current status of the PPG could reasonably be expected to harm national security for the reasons discussed above.

23. (U) The asserted disclosure cited by plaintiffs consists of an oblique reference on what appears to be an investigatory report in connection with a specific operation in Niger; it is not an official statement of policy by the White House. According to plaintiffs, the report is no longer available on the DoD’s website. That is materially different from an official acknowledgment by the NSC, or by the defendant agencies with the consent of the NSC, of the current status of the PPG. We know that terrorist organizations and other adversaries monitor statements by the White House to learn information, or confirm information that may have been reported in the media, about U.S. government policy. In addition, foreign governments may feel compelled to respond to official White House statements of policy. The asserted DoD disclosure does not eliminate the harms, described above, that could reasonably be expected to result from an official disclosure of the current status of the PPG.

24. (U) Accordingly, information concerning the current status of the PPG is protected from disclosure by FOIA exemption 1, 5 U.S.C. § 552(b)(1).

25. (U) Separate and apart from the classification of the current status of the PPG, information concerning the current status of the PPG is also protected from disclosure by statute.

26. (U) Pursuant to the National Security Act, 50 U.S.C. § 3024(i)(1), as amended, the “Director of National Intelligence shall protect intelligence sources and methods from

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unauthorized disclosure.” This provision of the National Security Act is an exempting statute under FOIA exemption 3.

27. (U) As described above, the current status of the PPG relates to intelligence sources and methods because revealing the existence or non-existence of updated guidance could undermine intelligence operations against transnational terrorist targets, which by their nature involve intelligence sources and methods. Invocation of the National Security Act does not require any showing of harm to national security. As explained above, however, disclosure of the current status of the PPG reasonably could be expected to result in harm to national security.

28. (U) Accordingly, information concerning the current status of the PPG is protected from disclosure by the National Security Act and FOIA exemption 3, 5 U.S.C. § 552(b)(3).

29. (U) The FOIA requests sought disclosure of a purported document that allegedly replaced the PPG. The defendant agencies could not respond to plaintiffs’ FOIA requests without revealing information that is classified and statutorily protected from disclosure, namely whether or not the PPG has been replaced. The agencies therefore properly provided Glomar responses to the FOIA requests pursuant to exemptions 1 and 3, 5 U.S.C. § 552(b)(1), (3).

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

Executed at Washington, D.C.

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this 26 day of February, 2020.

A handwritten signature in cursive script, appearing to read "Ellen J. Knight".

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ELLEN J. KNIGHT  
Senior Director for Records Access  
and Information Security Management  
National Security Council

