

Exhibit 3

June 27, 2019

By Email

Sarah S. Normand
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
sarah.normand@usdoj.gov

Re: *ACLU v. DOD*, No. 17 Civ. 9972 (ER) (S.D.N.Y.)

Dear Sarah,

We write concerning the ACLU's FOIA request for "the Trump administration's rules governing the use of lethal force abroad, known as the 'Principles, Standards, and Procedures' ['PSP'], as well as any cover letter or other document attached thereto." Compl. ¶ 21, ECF No. 1 (Dec. 21, 2017). In Defendants' Answer, the agencies issued *Glomar* responses, refusing "to confirm or deny the existence of responsive records without revealing information that is exempt from disclosure under FOIA." Answer at 9, ECF No. 14 (Feb. 1, 2018).

It has come to our attention that in a newly released DOD report on the Niger "15-6" investigation, the government officially acknowledged that "the PSP supersede[d] the CT-PPG and ma[de] substantive changes to the standards and procedures for approval of U.S. direct action missions" The acknowledgment comes in the second paragraph on page 8 of Part 3 of the report, which is available on the DOD's website.^{*} The relevant page from the report is attached.

Given this acknowledgment, we ask the agencies to withdraw their *Glomar* responses and search for responsive records. We are happy to discuss this at your convenience.

Sincerely,

/s/ Brett Max Kaufman
Brett Max Kaufman
ACLU Foundation
125 Broad Street, 18th Floor
New York, New York 10004
T: 212.549.2500
bkaufman@aclu.org



National Office
125 Broad Street, 18th floor
New York NY 10004
(212) 549-2500
aclu.org

^{*} https://www.esd.whs.mil/Portals/54/Documents/FOID/Special_Collection/Niger/3_Redacted_Consolidated_Findings.pdf

SECRET//NOFORN

FINDING 2

(U//FOUO) INVESTIGATION FINDING 2: Operational constraints meant to minimize the likelihood of USSOF engaging in direct combat are insufficient; USSOF in Niger are planning, directing, and executing direct action operations rather than advising Nigerien-led operations.

(U) DISCUSSION:

(S//NF) On 3 October 2017, the Executive Policy governing U.S. direct action against terrorists on the continent of Africa was codified in the “U.S. Policy Standards and Procedures for the use of force in counterterrorism operations outside the United States and areas of active hostilities,” (CT-PPG). Since 3 October, the President has issued new guidance on (b)(1) 1.4a

(b)(1) 1.4a
(b)(1) 1.4a The PSP supersedes the CT-PPG and makes substantive changes to the standards and procedures for approval of U.S. direct action missions, but the core principle remains the same: decisions to use U.S. forces to conduct (b)(1) 1.4a will be made at the most senior levels after reasonable review and considerable oversight.

(U//FOUO) Advise, assist, and accompany operations that Team OUALLAM and Team ARLIT were conducting and AOB Niger was approving more closely resembled U.S. direct action than foreign partner-led operations aided by U.S. advice and assistance. Team OUALLAM’s initial mission was developed, planned, and executed entirely at the direction of the Team Commander and the AOB. The subsequent re-missioning of Team OUALLAM and Team ARLIT was also developed, planned, and executed at the direction of USSOF. No Nigerien partner forces were involved in the VTC directed by the SOCCE commander.

(S) Advise, assist, and accompany operations are authorized in CJCS EXORDS (b)(1) 1.4a
(b)(1) 1.4a
(b)(1) 1.4a

(S) (b)(1) 1.4a, (b)(1) 1.4g the SOCAFRICA Commander permits USSOF to accompany foreign forces on operations including movement to contact, ambushes, and raids. (b)(1) 1.4a, (b)(1) 1.4g

(b)(1) 1.4a, (b)(1) 1.4g

(S) (b)(1) 1.4a, (b)(1) 1.4g
(b)(1) 1.4a, (b)(1) 1.4g

SECRET//NOFORN