

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION and  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

*Plaintiffs,*

v.

DEPARTMENT OF DEFENSE,  
DEPARTMENT OF JUSTICE, and  
DEPARTMENT OF STATE,

*Defendants.*

No. 17 Civ. 09972 (ER)

Hon. Edgardo Ramos  
United States District Judge

**DECLARATION OF CHARLES HOGLE**

I, Charles Hogle, pursuant to 28 U.S.C. § 1746, hereby declare and state under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an attorney at the American Civil Liberties Union Foundation and co-counsel for Plaintiffs the American Civil Liberties Union and American Civil Liberties Union Foundation (together, the “ACLU”) in the above-numbered action.

2. I submit this declaration in support of the ACLU’s Motion for Summary Judgment.

3. On October 30, 2017, the ACLU sent a Freedom of Information Act (“FOIA”) request to the Department of Defense (“Defense Department”), Department of Justice, and Department of State (together, “Defendants”). This request sought the release of the Trump administration’s rules governing the use of lethal force abroad, which the administration reportedly issued in 2017 and which replaced rules issued by the Obama administration in 2013.

A true and accurate copy of Plaintiffs' October 30, 2017 FOIA request is attached hereto as Exhibit 1.

4. The ACLU filed this action on December 21, 2017. *See* Complaint (Dec. 21, 2017), ECF No. 1.

5. In their answer to the ACLU's complaint, Defendants issued what are commonly known as "Glomar responses," stating that they could neither confirm nor deny the existence of records responsive to Plaintiffs' FOIA request. *See* Answer at 9 (Feb. 1, 2018), ECF No. 14.

6. In June 2019, the Defense Department released a public report (the "Report") on the results of an administrative investigation into a military raid in Niger that resulted in multiple casualties. *See* Eric Schmitt, *Pentagon Ends Review of Deadly Niger Ambush, Again Blaming Junior Officers*, N.Y. Times, June 6, 2019, <https://nyti.ms/2XvkROf>.

7. A true and accurate copy of the Report, obtained from the Defense Department's website, is attached hereto as Exhibit 2. Because the Report is organized into seven sections, Exhibit 2 is subdivided into Exhibits 2.1 through 2.7.<sup>1</sup>

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<sup>1</sup> The Report is also archived on the Internet. Part 1 is available at: [https://web.archive.org/web/20190625223903/https://www.esd.whs.mil/Portals/54/Documents/F](https://web.archive.org/web/20190625223903/https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/1_Redacted_CCDDR_Forwarding_Memo.pdf) [OID/Special\\_Collection/Niger/1\\_Redacted\\_CCDDR\\_Forwarding\\_Memo.pdf](https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/1_Redacted_CCDDR_Forwarding_Memo.pdf).

Part 2 is available at: [https://web.archive.org/web/20190625223948/https://www.esd.whs.mil/Portals/54/Documents/F](https://web.archive.org/web/20190625223948/https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/2_Redacted_CCDDR_Action_Memorandum.pdf) [OID/Special\\_Collection/Niger/2\\_Redacted\\_CCDDR\\_Action\\_Memorandum.pdf](https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/2_Redacted_CCDDR_Action_Memorandum.pdf).

Part 3 is available at: [https://web.archive.org/web/20190625224034/https://www.esd.whs.mil/Portals/54/Documents/F](https://web.archive.org/web/20190625224034/https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/3_Redacted_Consolidated_Findings.pdf) [OID/Special\\_Collection/Niger/3\\_Redacted\\_Consolidated\\_Findings.pdf](https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/3_Redacted_Consolidated_Findings.pdf).

Part 4 is available at: [https://web.archive.org/web/20190625224430/https://www.esd.whs.mil/Portals/54/Documents/F](https://web.archive.org/web/20190625224430/https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/4_Redacted_Executive_Summary.pdf) [OID/Special\\_Collection/Niger/4\\_Redacted\\_Executive\\_Summary.pdf](https://www.esd.whs.mil/Portals/54/Documents/F%20OID/Special_Collection/Niger/4_Redacted_Executive_Summary.pdf).

Part 5 is available at:

8. The Report makes express reference to a 2017 Trump administration policy known as the “PSP” that governs the use of force abroad and replaces the Obama administration’s 2013 PPG. *See* Ex. 2.3 at 8; Ex. 2.7 at 109.

9. On June 27, 2019, following the Defense Department’s publication of the Report, the ACLU asked Defendants to withdraw their Glomar responses. A true and accurate copy of that request is attached here as Exhibit 3.

10. On September 13, 2019, Defendants declined to withdraw their Glomar responses. A true and accurate copy of Defendants’ correspondence is attached hereto as Exhibit 4.



Dated: March 24, 2020  
New York, New York

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[https://web.archive.org/web/20190625224107/https://www.esd.whs.mil/Portals/54/Documents/FOID/Special\\_Collection/Niger/5\\_Redacted\\_Legal\\_Review.pdf](https://web.archive.org/web/20190625224107/https://www.esd.whs.mil/Portals/54/Documents/FOID/Special_Collection/Niger/5_Redacted_Legal_Review.pdf).

Part 6 is available at:

[https://web.archive.org/web/20190625224726/https://www.esd.whs.mil/Portals/54/Documents/FOID/Special\\_Collection/Niger/6\\_DA\\_FORM\\_1574.pdf](https://web.archive.org/web/20190625224726/https://www.esd.whs.mil/Portals/54/Documents/FOID/Special_Collection/Niger/6_DA_FORM_1574.pdf).

Part 7 is available at:

[https://web.archive.org/web/20190625224148/https://www.esd.whs.mil/Portals/54/Documents/FOID/Special\\_Collection/Niger/7\\_Redacted\\_Findings\\_of\\_Fact\\_and\\_Recommendations.pdf](https://web.archive.org/web/20190625224148/https://www.esd.whs.mil/Portals/54/Documents/FOID/Special_Collection/Niger/7_Redacted_Findings_of_Fact_and_Recommendations.pdf).