

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

AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, CENTRAL
INTELLIGENCE AGENCY, DEPARTMENT
OF JUSTICE, and DEPARTMENT OF
STATE,

Defendants.

17 Civ. 3391 (PAE)

ECF CASE

DECLARATION OF ANNA DIAKUN

I, Anna Diakun, 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 the American Civil Liberties Union Foundation (together, the “ACLU”) in the above-numbered action.

2. I submit this declaration in support of Plaintiffs’ Motion for Partial Summary Judgment.

3. On March 15, 2017, Plaintiffs sent a Freedom of Information Act (“FOIA”) request to Defendants Department of Defense, Central Intelligence Agency (“CIA”), Department of Justice, and Department of State seeking records concerning: “(1) The legal and policy bases in domestic, foreign, and international law upon which the government evaluated or justified the al Ghayil Raid, including but not limited to records related to the designation of parts of Yemen

as ‘areas of active hostilities,’ and the legal and factual basis that the government uses in designating such areas; (2) The process by which the government approved the al Ghayil Raid, including which individuals possessed decision-making authority and the evidentiary standard by which the factual evidence was evaluated to support the determination; (3) The process by which the decision was made to designate three parts of Yemen as ‘areas of active hostilities’; (4) Before-the-fact assessments of civilian or bystander casualties of the raid and the ‘after-action’ investigation into the raid; and (5) The number and identities of individuals killed or injured in the al Ghayil Raid, including but not limited to the legal status of those killed or injured, with these separated out by individuals intentionally targeted and collateral casualties or injuries.” A true and correct copy of the March 15, 2017 FOIA request is attached as Exhibit 1 to this declaration.

4. Plaintiffs filed this action on May 8, 2017. *See* ECF No. 1.

5. On July 31, 2017, Assistant United States Attorney Elizabeth Tulis, on behalf of Defendant CIA, informed counsel for Plaintiffs that the CIA “cannot confirm or deny the existence or nonexistence of the requested records because to do so would reveal information that is protected by FOIA Exemptions 1 and 3, 5 U.S.C. § 552(b)(1), (b)(3).” A true and correct copy of the July 31, 2017 CIA Response is attached as Exhibit 2 to this declaration.

6. Attached hereto as Exhibit 3 is a true and correct copy of Procedures for Approving Direct Action Against Terrorist Targets Located Outside of the United States and Areas of Active Hostilities (May 22, 2013), https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download.

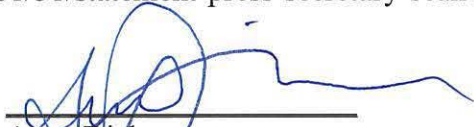
7. Attached hereto as Exhibit 4 is a true and correct copy of Press Briefing, White House Off. of Press Sec’y, Press Briefing #9 by Press Secretary Sean Spicer (Feb. 7, 2017),

<https://www.whitehouse.gov/the-press-office/2017/02/07/press-briefing-press-secretary-sean-spicer-272017-9>.

8. Attached hereto as Exhibit 5 is a true and correct copy of Press Briefing, White House Off. of Press Sec’y, Press Briefing by Press Secretary Sean Spicer #7 (Feb. 2, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/02/press-briefing-press-secretary-sean-spicer-222017-7>.

9. Attached hereto as Exhibit 6 is a true and correct copy of Press Briefing, White House Off. of Press Sec’y, Statement by Press Secretary Sean Spicer (Jan. 31, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/31/statement-press-secretary-sean-spicer>.

Dated: October 11, 2017
New York, New York



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