

18-2265

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 18-2265



AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION FOUNDATION,

Plaintiffs-Appellees,

—v.—

CENTRAL INTELLIGENCE AGENCY,

Defendant-Appellant,

UNITED STATES DEPARTMENT OF DEFENSE, UNITED STATES
DEPARTMENT OF STATE, UNITED STATES DEPARTMENT OF JUSTICE,
INCLUDING ITS COMPONENTS THE OFFICE OF LEGAL COUNSEL
AND OFFICE OF INFORMATION POLICY,

Defendants.

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

JOINT APPENDIX

GIBBONS P.C
Attorney for Plaintiffs-Appellees
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(973) 596-4731

GEOFFREY S. BERMAN,
*United States Attorney for the
Southern District of New York,
Attorney for Defendant-Appellant.*
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(212) 637-2709

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CLOSED,APPEAL,ECF,RELATED

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:15-cv-09317-AKH**

American Civil Liberties Union et al. V. Department of
Defense et al.

Assigned to: Judge Alvin K. Hellerstein

Related Case: [1:04-cv-04151-AKH](#)

Cause: 05:552 Freedom of Information Act

Date Filed: 11/25/2015

Date Terminated: 09/28/2017

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: Federal Question

Plaintiff

American Civil Liberties Union

represented by **Beth Haroules**

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TERMINATED: 09/15/2016

Lawrence S. Lustberg

Gibbons, Del Deo, Dolan, Griffinger &
Vecchione (Newark)

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ATTORNEY TO BE NOTICED

Plaintiff

**American Civil Liberties Union
Foundation**

represented by **Beth Haroules**
(See above for address)
ATTORNEY TO BE NOTICED

Hina Shamsi
(See above for address)
ATTORNEY TO BE NOTICED

Jameel Jaffer
(See above for address)
TERMINATED: 09/15/2016

Lawrence S. Lustberg
(See above for address)
ATTORNEY TO BE NOTICED

Dror Ladin
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ATTORNEY TO BE NOTICED

V.

Defendant

Department of Defense

represented by **Tara Marie La Morte**
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Email: tara.lamorte2@usdoj.gov
LEAD ATTORNEY

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ATTORNEY TO BE NOTICED

Elizabeth Tulis

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ATTORNEY TO BE NOTICED

Sarah Sheive Normand

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ATTORNEY TO BE NOTICED

Defendant

Department of State

represented by **Tara Marie La Morte**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Tulis

(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Department of Justice
*including its components the Office of
Legal Counsel and Office of
Information Policy*

represented by **Tara Marie La Morte**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Tulis

(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand

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ATTORNEY TO BE NOTICED

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Defendant**Central Intelligence Agency**

represented by **Tara Marie La Morte**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth Tulis
 (See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/25/2015	<u>1</u>	COMPLAINT against Central Intelligence Agency, Department of Defense, Department of Justice, including its components the Office of Legal Counsel and Office of Information Policy, Department of State. (Filing Fee \$ 400.00, Receipt Number 0208-11674060)Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Attachments: # <u>1</u> Exhibit FOIA Request)(Ladin, Dror) (Entered: 11/25/2015)
11/25/2015	<u>2</u>	FILING ERROR - PDF ERROR CIVIL COVER SHEET filed. (Ladin, Dror) Modified on 11/30/2015 (pc). (Entered: 11/25/2015)
11/25/2015	<u>3</u>	RELATED CASE AFFIRMATION of Dror Ladin re: that this action be filed as related to 04 Civ. 4151. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Ladin, Dror) (Entered: 11/25/2015)
11/25/2015	<u>4</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Ladin, Dror) (Entered: 11/25/2015)
11/25/2015	<u>5</u>	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Department of Defense, re: <u>1</u> Complaint,. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) Modified on 11/30/2015 (pc). (Entered: 11/25/2015)
11/25/2015	<u>6</u>	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Department of Justice, re: <u>1</u> Complaint,. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) Modified on 11/30/2015 (pc). (Entered: 11/25/2015)
11/25/2015	<u>7</u>	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Department of State, re: <u>1</u> Complaint,. Document filed by American Civil

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		Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) Modified on 11/30/2015 (pc). (Entered: 11/25/2015)
11/25/2015	8	FILING ERROR - DEFICIENT PLEADING - SUMMONS REQUEST PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Central Intelligence Agency, re: 1 Complaint,. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) Modified on 11/30/2015 (pc). (Entered: 11/25/2015)
11/30/2015		***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Dror Ladin. The party information for the following party/parties has been modified: American Civil Liberties Union, American Civil Liberties Union Foundation, Department of Defense, Department of State, Department of Justice, including its components the Office of Legal Counsel and Office of Information Policy and Central Intelligence Agency. The information for the party/parties has been modified for the following reason/reasons: party name contained a typographical error; party role was entered incorrectly. (pc) (Entered: 11/30/2015)
11/30/2015		***NOTICE TO ATTORNEY REGARDING DEFICIENT CIVIL COVER SHEET. Notice to attorney Dror Ladin to RE-FILE Document No. 2 Civil Cover Sheet. The filing is deficient for the following reason(s): Civil cover sheet does not have a signature (pc) (Entered: 11/30/2015)
11/30/2015		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Unassigned. (pc) (Entered: 11/30/2015)
11/30/2015		Case Designated ECF. (pc) (Entered: 11/30/2015)
11/30/2015		CASE REFERRED TO Judge Alvin K. Hellerstein as possibly related to 04cv4151. (pc) (Entered: 11/30/2015)
11/30/2015	9	CIVIL COVER SHEET filed. (Ladin, Dror) (Entered: 11/30/2015)
11/30/2015		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney to RE-FILE Document No. 5 Request for Issuance of Summons, 6 Request for Issuance of Summons, 7 Request for Issuance of Summons, 8 Request for Issuance of Summons,. The filing is deficient for the following reason(s): Each defendant's name on the caption for each summons must be typed out completely. No acronyms. (pc) (Entered: 11/30/2015)
12/01/2015	10	FILING ERROR - DEFICIENT PLEADING -PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Central Intelligence Agency, re: 1 Complaint,. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) Modified on 12/2/2015 (moh). (Entered: 12/01/2015)
12/01/2015	11	FILING ERROR - DEFICIENT PLEADING -PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Department of Defense, re: 1 Complaint,. Document filed by American Civil Liberties Union, American

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		Civil Liberties Union Foundation. (Ladin, Dror) Modified on 12/2/2015 (moh). (Entered: 12/01/2015)
12/01/2015	12	FILING ERROR - DEFICIENT PLEADING -PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Department of Justice, re: 1 Complaint,. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) Modified on 12/2/2015 (moh). (Entered: 12/01/2015)
12/01/2015	13	FILING ERROR - DEFICIENT PLEADING -PDF ERROR - REQUEST FOR ISSUANCE OF SUMMONS as to Department of State, re: 1 Complaint,. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) Modified on 12/2/2015 (moh). (Entered: 12/01/2015)
12/01/2015	14	NOTICE OF APPEARANCE by Beth Haroules on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Haroules, Beth) (Entered: 12/01/2015)
12/01/2015	15	NOTICE OF APPEARANCE by Beth Haroules on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Haroules, Beth) (Entered: 12/01/2015)
12/02/2015		***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney to RE-FILE Document No. 10 Request for Issuance of Summons, 13 Request for Issuance of Summons, 12 Request for Issuance of Summons, 11 Request for Issuance of Summons. The filing is deficient for the following reason (s): the PDF attached to the docket entry for the issuance of summons is not correct; the first named defendant must be listed on the caption followed by an "et al."; a rider should only be attached when the summons is serving multiple defendants. Re-file the document using the event type Request for Issuance of Summons found under the event list Service of Process - select the correct filer/filers - and attach the correct summons form PDF. (moh) (Entered: 12/02/2015)
12/02/2015		CASE ACCEPTED AS RELATED. Create association to 1:04-cv-04151-AKH. Notice of Assignment to follow. (wb) (Entered: 12/02/2015)
12/02/2015		NOTICE OF CASE ASSIGNMENT to Judge Alvin K. Hellerstein. Judge Unassigned is no longer assigned to the case. (wb) (Entered: 12/02/2015)
12/02/2015		Magistrate Judge Frank Maas is so designated. (wb) (Entered: 12/02/2015)
12/02/2015	16	REQUEST FOR ISSUANCE OF SUMMONS as to Department of Defense; Department of Justice; Department of State; Central Intelligence Agency, re: 1 Complaint,. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 12/02/2015)
12/03/2015	17	ELECTRONIC SUMMONS ISSUED as to Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (rch) (Entered: 12/03/2015)
12/30/2015	18	

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		AFFIDAVIT OF SERVICE. Department of Defense served on 12/9/2015, answer due 2/8/2016. Service was made by Mail. Document filed by American Civil Liberties Union; American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 12/30/2015)
12/30/2015	19	AFFIDAVIT OF SERVICE. Central Intelligence Agency served on 12/9/2015, answer due 2/8/2016. Service was made by Mail. Document filed by American Civil Liberties Union; American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 12/30/2015)
12/30/2015	20	AFFIDAVIT OF SERVICE. Department of Justice served on 12/9/2015, answer due 2/8/2016. Service was made by Mail. Document filed by American Civil Liberties Union; American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 12/30/2015)
12/30/2015	21	AFFIDAVIT OF SERVICE. Department of State served on 12/9/2015, answer due 2/8/2016. Service was made by Mail. Document filed by American Civil Liberties Union; American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 12/30/2015)
12/30/2015	22	AFFIDAVIT OF SERVICE. U.S. Attorney for the Southern District of New York served on 12/9/2015, answer due 2/8/2016. Service was made by Mail. Document filed by American Civil Liberties Union; American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 12/30/2015)
12/30/2015	23	AFFIDAVIT OF SERVICE. Attorney General of the United States served on 12/9/2015, answer due 2/8/2016. Service was made by Mail. Document filed by American Civil Liberties Union; American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 12/30/2015)
01/15/2016	24	NOTICE OF APPEARANCE by Sarah Sheive Normand on behalf of Attorney General of the United States, Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, U.S. Attorney for the Southern District of New York. (Normand, Sarah) (Entered: 01/15/2016)
01/15/2016	25	ANSWER to 1 Complaint,. Document filed by Attorney General of the United States, Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, U.S. Attorney for the Southern District of New York.(Normand, Sarah) (Entered: 01/15/2016)
01/22/2016	26	NOTICE OF APPEARANCE by Tara Marie La Morte on behalf of Attorney General of the United States, Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, U.S. Attorney for the Southern District of New York. (La Morte, Tara) (Entered: 01/22/2016)
03/21/2016	27	NOTICE OF APPEARANCE by Lawrence S. Lustberg on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Lustberg, Lawrence) (Entered: 03/21/2016)
03/21/2016	28	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 03/21/2016 re: Scheduling. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Lustberg, Lawrence) (Entered: 03/21/2016)

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03/22/2016	29	MEMO ENDORSEMENT on re: 28 Letter filed by American Civil Liberties Union, American Civil Liberties Union Foundation. ENDORSEMENT: So ordered. The conf. set for 3/25/16 is canceled. (Signed by Judge Alvin K. Hellerstein on 3/22/2016) (tn) (Entered: 03/22/2016)
05/20/2016	30	LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated May 20, 2016 re: Request for Extension of Time. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State.(La Morte, Tara) (Entered: 05/20/2016)
05/23/2016	31	MEMO ENDORSEMENT on re: 30 Letter, filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency. ENDORSEMENT: So Ordered. (Signed by Judge Alvin K. Hellerstein on 5/23/2016) (cf) (Entered: 05/23/2016)
06/10/2016	32	LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated June 10, 2016 re: Request for Extension of Time Regarding Processing and Production of Two Documents. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (La Morte, Tara) (Entered: 06/10/2016)
06/13/2016	33	MEMO ENDORSEMENT on re: 32 Letter, filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency. ENDORSEMENT: So ordered. (Signed by Judge Alvin K. Hellerstein on 6/13/2016) (tn) (Entered: 06/13/2016)
06/30/2016	34	LETTER addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated June 30, 2016 re: Joint Proposed Briefing Schedule. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State.(La Morte, Tara) (Entered: 06/30/2016)
07/01/2016	35	MEMO ENDORSEMENT on re: 34 Letter, filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency. ENDORSEMENT: Motions, if any, shall be filed according to the schedule set below. (Motions due by 9/19/2016., Responses due by 10/17/2016, Replies due by 11/9/2016.) (Signed by Judge Alvin K. Hellerstein on 7/1/2016) (cf) (Entered: 07/01/2016)
07/22/2016	36	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 7/22/2016 re: Briefing Schedule. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Lustberg, Lawrence) (Entered: 07/22/2016)
07/22/2016	37	MEMO ENDORSEMENT on re: 36 Letter filed by American Civil Liberties Union, American Civil Liberties Union Foundation. ENDORSEMENT: Upon reconsideration, cross-motions are allowed, but with only three rounds of briefs. Submit proposed schedule. (Signed by Judge Alvin K. Hellerstein on 7/22/2016) (tn) (Entered: 07/22/2016)
08/03/2016	38	MEMO ENDORSEMENT on re: 36 Letter filed by American Civil Liberties Union, American Civil Liberties Union Foundation. ENDORSEMENT: Having reconsidered, I adhere to my previous order requiring a 3-sequence, rather than a 4-sequence schedule. If desired, a cross-motion can be deferred; it

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		is not waived. (Signed by Judge Alvin K. Hellerstein on 8/2/2016) (mro) (Entered: 08/03/2016)
08/31/2016	39	MOTION for Jameel Jaffer to Withdraw as Attorney . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Jaffer, Jameel) (Entered: 08/31/2016)
09/12/2016	40	NOTICE OF APPEARANCE by Elizabeth Tulis on behalf of Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Tulis, Elizabeth) (Entered: 09/12/2016)
09/12/2016	41	LETTER MOTION for Extension of Time to File <i>Motion for Summary Judgment</i> addressed to Judge Alvin K. Hellerstein from Tara M. LaMorte, Sarah S. Normand, and Elizabeth Tulis dated September 12, 2016. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State.(Tulis, Elizabeth) (Entered: 09/12/2016)
09/14/2016	42	ORDER granting 41 Letter Motion for Extension of Time to File Motion for Summary Judgment. So ordered. (Signed by Judge Alvin K. Hellerstein on 9/14/2016) (cla) (Entered: 09/14/2016)
09/14/2016		Set/Reset Deadlines: Motions due by 9/30/2016. Responses due by 10/28/2016 Replies due by 11/21/2016. (cla) (Entered: 09/14/2016)
09/14/2016	43	NOTICE OF APPEARANCE by Hina Shamsi on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Shamsi, Hina) (Entered: 09/14/2016)
09/15/2016	44	MEMO ENDORSEMENT granting 39 Motion to Withdraw as Attorney. ENDORSEMENT: So Ordered. Attorney Jameel Jaffer terminated. (Signed by Judge Alvin K. Hellerstein on 9/15/2016) (tn) (Entered: 09/15/2016)
09/28/2016	45	SECOND LETTER MOTION for Extension of Time <i>to File Motion for Summary Judgment</i> addressed to Judge Alvin K. Hellerstein from Tara M. La Morte dated 09/29/2016. Document filed by Attorney General of the United States, Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, U.S. Attorney for the Southern District of New York.(La Morte, Tara) (Entered: 09/28/2016)
09/29/2016	46	ORDER granting 45 Letter Motion for Extension of Time to File Motion for Summary Judgment. So Ordered. (Motions due by 10/14/2016.) (Signed by Judge Alvin K. Hellerstein on 9/28/2016) (cla) (Entered: 09/29/2016)
09/29/2016		Set/Reset Deadlines: Responses due by 11/11/2016, Replies due by 12/5/2016. (cla) (Entered: 09/29/2016)
10/14/2016	47	MOTION for Summary Judgment . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. Responses due by 11/11/2016(La Morte, Tara) (Entered: 10/14/2016)
10/14/2016	48	DECLARATION of Antoinette B. Shiner in Support re: 47 MOTION for Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Index)(La Morte, Tara) (Entered: 10/14/2016)

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10/14/2016	49	DECLARATION of Paul P. Colborn in Support re: 47 MOTION for Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(La Morte, Tara) (Entered: 10/14/2016)
10/14/2016	50	MEMORANDUM OF LAW in Support re: 47 MOTION for Summary Judgment . . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (La Morte, Tara) (Entered: 10/14/2016)
10/14/2016	51	NOTICE of Classified Filing re: 47 MOTION for Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (La Morte, Tara) (Entered: 10/14/2016)
10/14/2016	52	DECLARATION of Tara M. La Morte in Support re: 47 MOTION for Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (La Morte, Tara) (Entered: 10/14/2016)
10/17/2016	53	DECLARATION of LaMorte in Support re: 47 MOTION for Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Exhibit A-part 1, # 2 Exhibit A-part 2, # 3 Exhibit A-part 3, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G-part 1, # 10 Exhibit G-part 2, # 11 Exhibit G-part 3, # 12 Exhibit H, # 13 Exhibit I-part 1, # 14 Exhibit I-part 2, # 15 Exhibit I-part 3, # 16 Exhibit I-part 4, # 17 Exhibit I part 5, # 18 Exhibit I part 6, # 19 Exhibit I part 7, # 20 Exhibit J, # 21 Exhibit K, # 22 Exhibit L-part 1, # 23 Exhibit L-part 2, # 24 Exhibit L-part 3, # 25 Exhibit L-part 4, # 26 Exhibit L-part 5, # 27 Exhibit L-part 6, # 28 Exhibit L-part 7, # 29 Exhibit M)(Normand, Sarah) (Entered: 10/17/2016)
10/18/2016	54	LETTER addressed to Judge Alvin K. Hellerstein from AUSA Sarah S. Normand dated 10/18/2016 re: courtesy copies of Defendants' motion for summary judgment. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Table of Contents)(Normand, Sarah) (Entered: 10/18/2016)
11/09/2016	55	FIRST LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated November 9, 2016. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Lustberg, Lawrence) (Entered: 11/09/2016)
11/09/2016	56	ORDER granting 55 Letter Motion for Extension of Time to File Response/Reply. So Ordered. Responses due by 11/18/2016 Replies due by 12/12/2016. (Signed by Judge Alvin K. Hellerstein on 11/9/2016) (mro) (Entered: 11/09/2016)
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		MEMORANDUM OF LAW in Opposition re: 47 MOTION for Summary Judgment . . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 11/18/2016)
11/18/2016	58	DECLARATION of Dror Ladin in Opposition re: 47 MOTION for Summary Judgment .. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14)(Ladin, Dror) (Entered: 11/18/2016)
11/28/2016	59	ORDER PROPOSING PROCEDURE FOR RESOLVING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT: The court seeks advice of counsel how to conduct argument for defendants' motion for summary judgment, filed on October 14, 2016 (Dkt. No. 47). The supporting and opposition papers have been filed. Defendants' reply is due December 12, 2016. Oral argument will be held on January 23, 2017 at 10:00 a.m., and. continue throughout that day. Defendants have invoked a number of statutory exemptions to disclosure under FOIA. To determine whether defendants have carried their burden to show that the exemptions were properly invoked, I will have to understand how the propositions of law applicable to those exemptions apply to the specific documents that defendants seek to withhold or redact. To that end, I propose the following procedure: (as further set out in the order). The parties shall consult as to these proposed procedures and, by December 8, 2016, advise the court in a jointly written letter if the proposed procedures are acceptable, and if not, set out any objections, proposed modifications, or disagreements. In the event there is disagreement as to how to proceed, the court will resolve all outstanding issues regarding the procedure at a conference to be held on December 13, 2016 at 11:00 a.m. (Oral Argument set for 1/23/2017 at 10:00 AM before Judge Alvin K. Hellerstein., Status Conference set for 12/13/2016 at 11:00 AM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 11/28/2016) (cla) (Entered: 11/28/2016)
12/06/2016	60	LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge Alvin K. Hellerstein from Elizabeth M. Tulis, Tara M. LaMorte, and Sarah S. Normand dated December 6, 2016. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State.(Tulis, Elizabeth) (Entered: 12/06/2016)
12/07/2016	61	ORDER granting 60 Letter Motion for Extension of Time to File Response/Reply. So ordered. Replies due by 12/19/2016. (Signed by Judge Alvin K. Hellerstein on 12/7/2016) (cf) (Entered: 12/07/2016)
12/08/2016	62	LETTER addressed to Judge Alvin K. Hellerstein from AUSA Sarah Normand dated December 8, 2016 Document filed by Attorney General of the United States, Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, U.S. Attorney for the Southern District of New York.(Normand, Sarah) (Entered: 12/08/2016)
12/13/2016	63	ORDER Setting Hearing on Motion 47 MOTION for Summary Judgment . Having received the parties' comments and advice in response to my order dated November 28, 2016, the following procedures will be followed to help

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		<p>me resolve defendants' motion for summary judgment filed October 14, 2016 (ECF No. 47). 1. The motion will be argued January 23, 2017, at 10:00 a.m. in Courtroom 14D, 500 Pearl Street, New York, NY 10007. The courtroom will be open to the public and a verbatim transcript of the proceeding may be obtained by the public. 2. Immediately following argument, I will continue the proceeding in chambers. Defendants' counsel and persons participating with counsel shall attend and bring with them all documents in issue. I will inspect each document, question defendants' counsel as necessary to understand the claims and arguments of exemption, and rule as to each document. My law clerk will be present to assist me, but shall not see the documents. No others will be present. 3. A verbatim transcript of this portion of the proceeding will be made. The transcript will remain under seal, available only to defendants and to me, but subject to the following condition. The transcript shall remain sealed until defendants have had the opportunity to segregate that which should be made public from that which should remain under seal. Defendants shall endeavor to perform that segregation within 20 days following argument. I will then rule on defendants' proposal and order the disposition of the transcript. Disputed portions of the transcript shall remain under seal through prompt appeal and final determination. 4. Promptly following the in camera session, the public hearing will re-open to permit me to enter a summary order regarding such of the exempted documents, and portions thereof, that I may order defendants to disclose. (Motion Hearing set for 1/23/2017 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 12/13/2016) (cla) (Entered: 12/13/2016)</p>
12/15/2016	64	LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge Alvin K. Hellerstein from Elizabeth M. Tulis, Sarah S. Normand, and Tara M. LaMorte dated December 15, 2016. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State.(Tulis, Elizabeth) (Entered: 12/15/2016)
12/16/2016	65	ORDER granting 64 Letter Motion for Extension of Time to File Response/Reply re 47 MOTION for Summary Judgment . Defendants' request to file its reply on January 6, 2017 is granted, as is Defendants' request to submit a supplemental public declaration. Following their review of the reply papers, plaintiffs are granted leave to request permission to file a surreply. SO ORDERED. (Replies due by 1/6/2017.) (Signed by Judge Alvin K. Hellerstein on 12/16/2016) (cla) (Entered: 12/16/2016)
01/06/2017	66	DECLARATION of Elizabeth Tulis in Support re: 47 MOTION for Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T) (Tulis, Elizabeth) (Entered: 01/06/2017)
01/06/2017	67	DECLARATION of Antoinette B. Shiner in Support re: 47 MOTION for Summary Judgment .. Document filed by Central Intelligence Agency,

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		Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Exhibit Amended Vaughn Index)(Tulis, Elizabeth) (Entered: 01/06/2017)
01/06/2017	68	REPLY MEMORANDUM OF LAW in Support re: 47 MOTION for Summary Judgment . . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Tulis, Elizabeth) (Entered: 01/06/2017)
01/12/2017	69	ORDER ADJOURNING ORAL ARGUMENT: Oral argument on defendants' motion for summary judgment is currently scheduled for January 23, 2017 at 10:00 a.m. However, Defendants' reply submission included a new declaration and a revised Vaughn Index, to which plaintiffs are entitled to respond. Plaintiffs' surreply shall be filed by February 1, 2017. The hearing will now be held on March 8, 2017 at 10:00 a.m. The procedures set out in my order dated December 13, 2016 (ECF No. 63) shall still apply. (Surreplies due by 2/1/2017., Oral Argument set for 3/8/2017 at 10:00 AM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 1/12/2017) (cla) (Entered: 01/12/2017)
02/01/2017	70	REPLY MEMORANDUM OF LAW in Opposition re: 47 MOTION for Summary Judgment . . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 02/01/2017)
02/24/2017	71	FIRST LETTER MOTION to Adjourn Conference <i>Oral Argument on Motion for Summary Judgment</i> addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated February 24, 2017. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Lustberg, Lawrence) (Entered: 02/24/2017)
02/27/2017	72	ORDER granting 71 FIRST LETTER MOTION to Adjourn Conference Oral Argument on Motion for Summary Judgment addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated February 24, 2017. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. The oral argument currently scheduled for March 8, 2017 (see ECF #69) is adjourned to March 29, 2017 at 10 a.m. SO ORDERED. Oral Argument set for 3/29/2017 at 10:00 AM before Judge Alvin K. Hellerstein. (Signed by Judge Alvin K. Hellerstein on 2/27/2017) (tjm) (Entered: 02/27/2017)
03/29/2017		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Oral Argument held on 3/29/2017 re: 47 MOTION for Summary Judgment . filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency. (Court Reporter Rebecca Forman) (Jones, Brigitte) (Entered: 04/03/2017)
03/30/2017		Minute Entry for proceedings held before Judge Alvin K. Hellerstein: Motion Hearing held on 3/30/2017 re: 47 MOTION for Summary Judgment . filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency. (Court Reporter Rebecca Forman) (Jones, Brigitte) (Entered: 04/03/2017)

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06/01/2017	73	LETTER addressed to Judge Alvin K. Hellerstein from Sarah S. Normand and Elizabeth Tulis dated June 1, 2017 re: Supplemental Authority Concerning the Government's Assertion of Exemption 5 with Respect to Document No. 66. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Exhibit A - Order Re: Third and Fourth Motion to Compel (E.D. Wash. May 31, 2017)) (Tulis, Elizabeth) (Entered: 06/01/2017)
06/09/2017	74	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated June 9, 2017 re: New and Relevant Authority from Salim v. Mitchell. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Lustberg, Lawrence) (Entered: 06/09/2017)
06/14/2017	75	LETTER addressed to Judge Alvin K. Hellerstein from Elizabeth Tulis and Sarah S. Normand dated June 14, 2017 re: Plaintiffs' letter dated June 9, 2017 (Dkt. No. 74). Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Exhibit Document No. 9 (reprocessed version))(Tulis, Elizabeth) (Entered: 06/14/2017)
07/31/2017	76	ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS WITH RESPECT TO DOCUMENT 1, UPHOLDING EXEMPTIONS: On July 27, 2017, I held a second ex parte session with the Government in my chambers, at which I delivered my final rulings with respect to Document 1, providing a more detailed, public explanation for that decision. The transcript of the July 27 session, which is attached to this Order as Appendix A, contains no redactions, and serves as my final ruling with respect to Document 1. An opinion addressing the remaining documents at issue, including Documents 10 and 66, will be forthcoming. SO ORDERED. (Signed by Judge Alvin K. Hellerstein on 7/31/2017) (ras) (Entered: 07/31/2017)
09/27/2017	77	OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT. For these reasons, the Government's motion is granted in part and denied in part. The Government shall timely produce versions of Documents 8, 10, 13, 15, and 66 that comply with this Order. The Clerk shall terminate the motion (Dkt. No. 47), and mark the case closed. So ordered. re: 47 MOTION for Summary Judgment filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency. (Signed by Judge Alvin K. Hellerstein on 9/27/2017) (rjm) (Entered: 09/27/2017)
09/27/2017		Transmission to Judgments and Orders Clerk. Transmitted re: 77 Memorandum & Opinion to the Judgments and Orders Clerk. (rjm) (Entered: 09/27/2017)
09/28/2017	78	CLERK'S JUDGMENT: It is, ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated September 27, 2017, the Government's motion is granted in part and denied in part. The Government shall timely produce versions of Documents 8, 10, 13, 15, and 66 that comply with the Order; accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on 9/28/2017) (Attachments: # 1 Right to Appeal, # 2 Right to Appeal)(km) (Main Document 78 replaced on 11/7/2017) (km). (Entered: 09/28/2017)

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10/26/2017	79	MOTION to Alter Judgment re: 78 Clerk's Judgment, 77 Memorandum & Opinion,, <i>and for Reconsideration</i> . Document filed by Central Intelligence Agency.(Normand, Sarah) (Entered: 10/26/2017)
10/26/2017	80	MEMORANDUM OF LAW in Support re: 79 MOTION to Alter Judgment re: 78 Clerk's Judgment, 77 Memorandum & Opinion,, <i>and for Reconsideration</i> . . Document filed by Central Intelligence Agency. (Normand, Sarah) (Entered: 10/26/2017)
11/03/2017	81	MEMORANDUM OF LAW in Opposition re: 79 MOTION to Alter Judgment re: 78 Clerk's Judgment, 77 Memorandum & Opinion,, <i>and for Reconsideration</i> . . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Ladin, Dror) (Entered: 11/03/2017)
11/13/2017	82	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO ALTER JUDGMENT OR FOR RECONSIDERATION granting in part and denying in part 79 Motion to Alter Judgment. Defendant has not made a sufficient showing to warrant reconsideration under well-settled case-law. See <i>Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust</i> , 729 F.3d 99, 104 (2d Cir. 2013) (motion for reconsideration warranted where the moving party identifies "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice). However, in the interest of justice, I grant the Government's motion for leave to supplement one more time, consistently with its requests, as described above. Issues of national security are involved, and technical rules of judicial convenience should not prevent the Government from making full and proper arguments to support its position. Defendant's motion for reconsideration will be considered following the Court's review of Defendant's supplemental submission. Defendant will file supplemental papers by November 28, 2017. Because the submission will be ex parte, there will be no opposition papers, except as ordered. A hearing, in camera and on the record, will be held on December 6, 2017, at 2:30 P.M. (Signed by Judge Alvin K. Hellerstein on 11/13/2017) (mro) (Entered: 11/13/2017)
11/13/2017		Set/Reset Hearings: Status Conference set for 12/6/2017 at 02:30 PM before Judge Alvin K. Hellerstein. (mro) (Entered: 11/13/2017)
11/28/2017	83	LETTER MOTION for Extension of Time to File <i>Supplemental Classified Submission</i> addressed to Judge Alvin K. Hellerstein from AUSA Sarah S. Normand dated November 28, 2017. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Normand, Sarah) (Entered: 11/28/2017)
11/30/2017	84	ORDER granting 83 Letter Motion for Extension of Time to File. So ordered. (Signed by Judge Alvin K. Hellerstein on 11/29/2017) (ras) (Entered: 11/30/2017)
12/01/2017	85	NOTICE of Lodging of Classified Submission. Document filed by Central Intelligence Agency. (Normand, Sarah) (Entered: 12/01/2017)
12/05/2017	86	

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		LETTER addressed to Judge Alvin K. Hellerstein from AUSA Sarah Normand dated December 6, 2017 re: amended supplemental declaration. Document filed by U.S. Attorney for the Southern District of New York. (Attachments: # 1 Exhibit)(Normand, Sarah) (Entered: 12/05/2017)
12/13/2017	87	NOTICE OF CHANGE OF ADDRESS by Elizabeth Tulis on behalf of Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. New Address: U.S. Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Ave., NW, Washington, DC, 20530, (202) 514-9237. (Tulis, Elizabeth) (Entered: 12/13/2017)
01/11/2018	88	SCHEDULING ORDER: The in camera hearing scheduled for January 18, 2018, shall begin at 2:30 P.M. (Status Conference set for 1/18/2018 at 02:30 PM before Judge Alvin K. Hellerstein.) (Signed by Judge Alvin K. Hellerstein on 1/11/2018) (ras) (Entered: 01/11/2018)
02/16/2018	89	NOTICE of Filing of Classified Submission. Document filed by Attorney General of the United States, Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, U.S. Attorney for the Southern District of New York. (Normand, Sarah) (Entered: 02/16/2018)
03/27/2018	90	ORDER AND NOTICE ON REDACTED TRANSCRIPT. On January 18, 2018, I held an in camera hearing in my chambers to reconsider my previous rulings on Document 66 and 8. On February 26, 2018, the government provided a redacted transcript of that hearing for public filing. I have reviewed the redacted transcript and approve same, subject to the following exceptions, which shall not be redacted from the public filing, and as further specified and set forth in this Order and Notice on Redacted Transcript. The government shall comment on this order by April 10, 2018. So ordered. (Signed by Judge Alvin K. Hellerstein on 3/27/2018) (rjm) (Entered: 03/27/2018)
04/11/2018	91	NOTICE of Lodging of Classified Submission. Document filed by Attorney General of the United States, Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, U.S. Attorney for the Southern District of New York. (Normand, Sarah) (Entered: 04/11/2018)
04/17/2018	92	ORDER ON REDACTED TRANSCRIPT: The following are my rulings on the government's objections: Page 5: The objections are overruled. Page 6: The objections are sustained, except with respect to line 20 and the first word of line 21, which may not be redacted. Page 12: The objections are overruled. Page 12 shall contain no redactions except for the proposed redactions on line 2. Page 13: The objections are overruled, except with respect to lines 11-12, which may be redacted. Page 14: The objections are overruled. Page 17: The objections are overruled. Page 21: The objection is sustained. Within 10 days, the Government shall prepare and docket a transcript consistent with my order dated March 27, 2018, as modified herein. (Signed by Judge Alvin K. Hellerstein on 4/17/2018) (ras) (Entered: 04/17/2018)
04/27/2018	93	LETTER MOTION to Stay re: 92 Order,, <i>Directing Government to File Redacted Transcript With Certain Redactions Lifted and Motion to Enter Amended Final Judgment</i> addressed to Judge Alvin K. Hellerstein from AUSA Sarah S. Normand dated April 27, 2018. Document filed by Central

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		Intelligence Agency, Department of Defense, Department of Justice, Department of State.(Normand, Sarah) (Entered: 04/27/2018)
05/01/2018	94	LETTER addressed to Judge Alvin K. Hellerstein from Lawrence S. Lustberg dated 05/01/2018 re: Ex Parte transcripts redactions. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Lustberg, Lawrence) (Entered: 05/01/2018)
05/01/2018	95	ORDER ON DOCUMENTS 8 AND 66, AMENDING JUDGMENT AND RECONSIDERING OPINION AND ORDER DATED SEPTEMBER 27, 2017 terminating 93 Letter Motion to Stay. On January 18, 2018, I held an in camera hearing in my chambers where I reviewed and heard arguments on the version of Document 66 containing the Government's proposed redactions. I reviewed Document 66 page by page and noted my approval, disapproval, or modification of the redactions. Pursuant to my orders of March 27 and April 17, see Dkt. Nos. 90, 92, I ordered a redacted transcript of that hearing to be filed for public viewing. The rulings contained in that transcript serve as my final rulings with respect to Document 66 and Document 8, amending my September 27 order. The Government shall produce, consistent with these rulings, Document 66, Document 8, the redacted January 18 transcript, and the other documents ordered to be produced in my prior rulings. The Clerk shall amend the final judgment, and all issues in this case are now ripe for appeal. The Government's disclosure obligations are stayed for 60 days, or 10 days following the filing of a notice of appeal, whichever is later. In the interim, the Government shall file the redacted transcript provided to the Court on April 11, 2018. The Clerk shall terminate Dkt. No. 93. (Signed by Judge Alvin K. Hellerstein on 5/1/2018) (ras) Modified on 5/4/2018 (ras). (Entered: 05/01/2018)
05/10/2018	96	LETTER addressed to Judge Alvin K. Hellerstein from AUSA Sarah S. Normand dated May 10, 2018 re: Filing Redacted Transcript in Accordance with Court's May 1, 2018 Order. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State. (Attachments: # 1 Exhibit Redacted Transcript part 1, # 2 Exhibit Redacted Transcript part 2)(Normand, Sarah) (Entered: 05/10/2018)
06/15/2018	97	LETTER MOTION to Stay <i>Government's Disclosure Obligations for an Additional 30 Days, and to Direct Entry of Amended Final Judgment</i> , addressed to Judge Alvin K. Hellerstein from AUSA Sarah S. Normand dated June 15, 2018. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State.(Normand, Sarah) (Entered: 06/15/2018)
06/19/2018	98	AMENDED JUDGMENT: amending 78 Clerk's Judgment, 95 Order on Motion to Stay,in favor of Central Intelligence Agency, Department of Defense, Department of Justice, Department of State against American Civil Liberties Union, American Civil Liberties Union Foundation. That for the reasons stated in the Court's Order dated May 1, 2018, the Government shall produce, consistent with these rulings, Document 66, Document 8, the redacted January 18 transcript, and other documents ordered to be produced in the Court's prior rulings; the Government's disclosure obligations are stayed for 60

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		days, or 10 days following the filing of a notice of appeal, whichever is later; in the interim, the Government shall file the redacted transcript provided to the Court on April 11, 2018. (Signed by Clerk of Court Ruby Krajick on 06/19/2018) (Attachments: # 1 Notice of Right to Appeal)(dt) (Entered: 06/19/2018)
06/20/2018	99	ORDER granting in part and denying in part 97 Letter Motion to Stay. 1. The Clerk will issue an amended judgment. 2. The motion for an extension of the stay of execution, from 7/2/18 to Aug. 1, 2018 is granted. 3. The stay request following the filing of an appeal by the gov't beyond 10 days is denied, without prejudice to an application to the Court of Appeals. So ordered. (Signed by Judge Alvin K. Hellerstein on 6/19/2018) (anc) (Entered: 06/20/2018)
06/29/2018	100	LETTER addressed to Judge Alvin K. Hellerstein from AUSA Sarah S. Normand dated June 29, 2018 re: Clarification of Date on which Stay Will Expire. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State.(Normand, Sarah) (Entered: 06/29/2018)
07/09/2018	101	MEMO ENDORSEMENT on re: 100 Letter, filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency. ENDORSEMENT: The stay will expire August 1, 2018 and if the gov't appeals, 10 days thereafter. (Signed by Judge Alvin K. Hellerstein on 7/6/2018) (ne) (Entered: 07/09/2018)
08/01/2018	102	NOTICE OF APPEAL from 98 Amended Judgment,,,, Document filed by Central Intelligence Agency. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Normand, Sarah) (Entered: 08/01/2018)
08/02/2018		Appeal Fee Not Required for 102 Notice of Appeal. Appeal filed by U.S. Government. (tp) (Entered: 08/02/2018)
08/02/2018		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 102 Notice of Appeal. (tp) (Entered: 08/02/2018)
08/02/2018		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 102 Notice of Appeal filed by Central Intelligence Agency were transmitted to the U.S. Court of Appeals. (tp) (Entered: 08/02/2018)
08/08/2018	103	TRUE COPY ORDER of USCA as to 102 Notice of Appeal filed by Central Intelligence Agency USCA Case Number 18-2265. USCA Case Number 18-2265. IT IS HEREBY ORDERED a temporary stay pending determination of the motion by a three-judge panel is GRANTED. The motion is REFERRED to a three-judge motions panel. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 8/8/2018. (tp) (Entered: 08/08/2018)
08/08/2018		Transmission of USCA Mandate/Order to the District Judge re: 103 USCA Order. (tp) (Entered: 08/08/2018)

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

American Civil Liberties Union and the American
Civil Liberties Union Foundation,

Plaintiffs,

v.

Department of Defense; Department of Justice,
including its components the Office of Legal Counsel
and Office of Information Policy; Department of State;
and Central Intelligence Agency,

Defendants.

Civil Action No. _____

COMPLAINT

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is a lawsuit seeking the release of records pertaining to the CIA's now-discontinued program of rendition, detention, and torture ("RDI program").
2. In the years after September 11, 2001, under a program developed and authorized by officials at the highest levels of government, the CIA tortured suspected terrorists, including in a network of secret overseas prisons known as "black sites." The program was halted by President George W. Bush in 2008, and in 2009 President Barack Obama ordered the black sites closed.
3. Because of the continuing and extraordinary public interest in and controversy surrounding the CIA's RDI program, the Senate Select Committee on Intelligence ("SSCI") conducted a comprehensive review of the CIA's post-9/11 conduct—examining millions of pages of government documents in the process. The SSCI completed a 6,000-page investigative report, *Study of the CIA's Detention and Interrogation Program* ("SSCI Report"), documenting its findings and conclusions.

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4. On December 9, 2014, following Executive Branch declassification review, the SSCI released the SSCI Report summary to the public. The summary describes widespread abuses that took place in the RDI program, as well as details concerning the CIA's evasions and misrepresentations about its activities to Congress, the White House, the courts, the media, and the American public. The SSCI Report immediately became the subject of widespread public controversy and debate, as well as media attention.

5. In the months since the SSCI Report's release, the debate about the CIA's RDI program has intensified. The legality and wisdom of the CIA's practices—as well as the resulting harm to individuals' human rights, our nation's values, and our national security—are currently debated in Congress and in the context of the 2016 Presidential campaign.

6. In response to the public release of the SSCI Report summary, the CIA declassified and released its June 2013 response to the SSCI's Study. CIA Director Brennan also released a public statement on December 9, 2014, acknowledging that the “the detention and interrogation program had shortcomings,” “that the Agency made mistakes,” and that it “did not always live up to the high standards that we set for ourselves and that the American people expect of us.”

7. On January 28, 2015, the CIA issued new guidance that declassified numerous aspects of the RDI program in response to the SSCI Report.

8. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking injunctive and other appropriate relief, including the immediate processing and release of records sought by Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (collectively “ACLU”) from Defendants Department of Justice (“DOJ”), Department of Defense (“DOD”), Department of State (“DOS”), and CIA

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(collectively “Defendants”) through a FOIA request (“Request”) made by the ACLU. The Request sought records and categories of records either identified in the SSCI Report or whose classification status is implicated by the Report’s public release, the CIA’s public response, and the accompanying change in classification guidance.

9. Plaintiffs submitted the Request to the DOD, DOS, and CIA, as well as to specific components of the DOJ, including the Office of Legal Counsel (“OLC”) and Office of Information Policy (“OIP”). Plaintiffs sought expedited processing and a waiver of fees.

10. To date, no agency has released any record in response to the Request.

Jurisdiction and Venue

11. This Court has subject-matter and personal jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii), 28 U.S.C. § 1331, and 5 U.S.C. §§ 701-706.

12. Venue is premised on the place of business of the ACLU and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

13. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the U.S. government acts in compliance with the Constitution and laws, including international legal obligations. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the

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public (in both its raw and analyzed form) is a critical and substantial component of the ACLU's work and one of its primary activities.

14. Plaintiff American Civil Liberties Union Foundation is a separate § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

15. Defendant DOJ is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The OLC and OIP, from which the ACLU has also requested records, are components of DOJ.

16. Defendant DOD is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

17. Defendant DOS is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

18. Defendant CIA is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

The ACLU's Request

19. On August 14, 2015, the ACLU submitted the Request for sixty-nine records and categories of records identified in the SSCI Report or whose classification status is implicated by its public release, by the CIA response, and by the accompanying change in classification guidance. The requested records include (1) emails, cables, memoranda, letters, and reports identified and excerpted in the SSCI Report; (2) records of Combatant Status Review Tribunals; and (3) reports previously released in redacted form before the public disclosure of the SSCI Report. A copy of the request is attached to this complaint as Exhibit A.

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20. The ACLU sought expedited processing, contending that the records were urgently needed to inform the public about actual or alleged government activity and that the ACLU was primarily engaged in disseminating information. *See* 5 U.S.C. § 552(a)(6)(E)(v); *see also* 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1900.34(c)(2). The ACLU also sought expedited processing on the grounds that the records related to a “breaking news story of general public interest.” 32 C.F.R. § 286.4(d)(3)(ii)(A); *see also* 28 C.F.R. § 16.5(d)(1)(iv).

21. The ACLU sought a waiver of search, review, and duplication fees on the basis that disclosure of the requested records was in the public interest because it was “likely to contribute significantly to public understanding of the operations or activities of the government and [was] not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.11(k)(1); 32 C.F.R. § 286.28(d); 32 C.F.R. § 1900.13(b)(2). The ACLU also sought the waiver on the basis that the ACLU constituted a “representative of the news media” and that the records were not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 32 C.F.R. § 286.28(e)(7); 32 C.F.R. § 1900.13(i)(2); 28 C.F.R. § 16.11(d).

The Government’s Response to the Request

22. None of the defendant agencies has released any record in response to the Request. The agencies have responded inconsistently to the ACLU’s request for expedited processing and waiver of fees.

DOJ Office of Legal Counsel

23. On August 28, 2015, OLC denied the ACLU’s request for expedited processing under 28 C.F.R. § 16.5(d)(1)(ii) (“An urgency to inform the public about an actual or alleged

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federal government activity, if made by a person primarily engaged in disseminating information.”), but referred the request to the Director of the Office of Public Affairs to determine whether to grant expedited processing under 28 C.F.R. 16.5(d)(1)(iv) (“A matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.”). The OLC deferred its decision on the request for a fee waiver. It has not rendered any decision since that time, or provided any records.

24. On September 16, 2015, OLC was informed that the Office of Public Affairs granted the ACLU’s request for expedited processing under 28 C.F.R. 16.5(d)(1)(iv). By letter dated September 17, 2015, OLC informed the ACLU that its request had been granted expedited processing. However, no documents have been provided or, to the ACLU’s knowledge, processed. Indeed, the ACLU has received no further response or correspondence from OLC.

DOJ Office of Information Policy

25. On August 28, 2015, OIP denied the ACLU’s request for expedited processing under 28 C.F.R. § 16.5(d)(1)(ii) (“An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”), but referred the request to the Director of the Office of Public Affairs to determine whether to grant expedited processing under 28 C.F.R. 16.5(d)(1)(iv) (“A matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.”). By letter dated September 16, 2015, OIP informed the ACLU that its request had been granted expedited processing under this section. In the same letter, OIP advised the ACLU that “unusual circumstances” would impact

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the time required to process the Request, and that no decision had been made on the ACLU's fee waiver request. The ACLU has received no further response or correspondence from OIP.

Department of Defense

26. On September 15, 2015, DOD denied the ACLU's request for expedited processing and advised the ACLU that "unusual circumstances" would impact the time required to process the Request. The response did not address ACLU's request for a fee waiver. The ACLU has received no further response or correspondence from DOD.

Department of State

27. On August 21, 2015, DOS's Office of Information Programs & Services denied the ACLU's request for expedited processing, stating that the ACLU had failed to demonstrate a "compelling need" for the requested records. DOS granted the request for a fee waiver. The ACLU has received no further response or correspondence from DOS.

Central Intelligence Agency

28. On August 26, 2015, the CIA denied the ACLU's request for expedited processing. The ACLU has received no further response or correspondence from the CIA.

Causes of Action

29. Defendants' failure to make a reasonable effort to search for records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3), and Defendants' corresponding regulations.

30. Defendants' failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

31. The failure of Defendants DOD, DOS, and CIA to grant the ACLU's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E) and the Defendants' corresponding regulations.

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32. The failure of Defendants OLC, OIP, DOD and CIA to grant the ACLU's request for a limitation of fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II) and the Defendants' corresponding regulations.

33. The failure of Defendants OLC, OIP, DOD and CIA to grant the ACLU's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 52(a)(4)(A)(iii), and the Defendants' corresponding regulations.

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants immediately to produce all records responsive to the Request;
- B. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

November 25, 2015

Respectfully submitted,

/s/ Dror Ladin

Dror Ladin

Jameel Jaffer

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Exhibit A

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August 14, 2015

Ms. Michele Meeks
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Mr. Paul Jacobsmeyer
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
Department of Defense
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Ms. Sheryl L. Walter
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**Re: Request Under Freedom of Information Act
(Expedited Processing Requested)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU")¹ submit this Freedom of

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations

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Information Act (“FOIA”) request (the “Request”)² for specific records identified or discussed in the Executive Summary of the Senate Select Committee on Intelligence (“SSCI”) *Study of the CIA’s Detention and Interrogation Program* (“SSCI Report”); and for records implicated by the declassification and release of the Executive Summary, the CIA’s June 2013 response to an earlier version of the SSCI Report, and the January 30, 2015 CIA classification guidance with respect to the former Rendition, Detention, and Interrogation (“RDI”) program.

I. Background

On December 9, 2014, following Executive Branch declassification review, the SSCI released the SSCI Report summary to the public. The summary describes widespread abuses that took place in the RDI program, as well as details concerning the CIA’s evasions and misrepresentations about its activities to Congress, the White House, the courts, the media, and the American public. The SSCI Report immediately became the subject of widespread public controversy, debate, and media attention.

In response to the public release of the SSCI Report summary, the CIA declassified and released its June 2013 response to the SSCI’s Study. CIA Director Brennan also released a public statement on December 9, 2014, acknowledging that the “the detention and interrogation program had shortcomings,” “that the Agency made mistakes,” and that it “did not always live up to the high standards that we set for ourselves and that the American people expect of us.”³

In addition to the voluminous and extensive official disclosures of the CIA’s detention and interrogation program contained in the SSCI Report summary and the CIA’s response, the CIA further declassified additional aspects of the RDI Program in response to the SSCI Report. On January 30,

in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators.

² The ACLU submits this request pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, the Department of Defense implementing regulations, 32 C.F.R. § 286.1 *et seq.*, the Department of Justice implementing regulations, 28 C.F.R. § 16.1 *et seq.*, the Department of State implementing regulations, 22 C.F.R. § 171.1 *et seq.*, the Central Intelligence Agency implementing regulations, 32 C.F.R. § 1900.01 *et seq.*, and the President’s Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009) and the Attorney General’s Memorandum of March 19, 2009, 74 Fed. Reg. 49 892 (Sep. 29, 2009).

³ Statement from Director Brennan on the SSCI Study on the Former Detention and Interrogation Program, Central Intelligence Agency News & Information (Dec. 9, 2014), <https://www.cia.gov/news-information/press-releases-statements/2014-press-releases-statements/statement-from-director-brennan-on-ssci-study-on-detention-interrogation-program.html>.

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2015, the CIA provided new classification guidance with respect to the RDI program that specifically declassified:

- The fact that the former RDI Program was a covert action program authorized by the President. The fact that the former RDI Program was authorized by the 17 September 2001 Memorandum of Notification (MON).
- General allegations of torture by [High Value Detainees] unless such allegations reveal the identities (e.g., names, physical descriptions, or other identifying information) of CIA personnel or contractors; the locations of detention sites (including the name of any country in which the detention site was allegedly located); or any foreign intelligence service involvement in the HVDs' capture, rendition, detention, or interrogation.
- The names and descriptions of the thirteen Enhanced Interrogation Techniques (EITs) that were approved for use, and the specified parameters within which the EITs could be applied.
- EITs as applied to the 119 individuals mentioned in Appendix 2 of the SSCI Executive Summary acknowledged to have been in CIA custody.
- Information regarding the conditions of confinement as applied to the 119 individuals mentioned in Appendix 2 of the SSCI Executive Summary acknowledged to have been in CIA custody.
- Information regarding the treatment of the 119 individuals mentioned in Appendix 2 of the SSCI Executive Summary acknowledged to have been in CIA custody, including the application of standard interrogation techniques.
- Information regarding the conditions of confinement or treatment during the transfer ("rendition") of the 119 individuals mentioned in Appendix 2 of the SSCI Executive Summary acknowledged to have been in CIA custody.

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Government's Mot. to Amend Protective Order, *U.S. v. Mohammad*, Dkt. No. AE 013RRR (U.S. Mil. Comm. Jan. 30, 2015).⁴

The ACLU seeks certain documents that are identified in the SSCI Report or implicated by its public release. These records are of clear and enormous public importance. For much of the last decade, the CIA's RDI program has been a matter of intense public interest. The American public's interest in the torture and abusive treatment of CIA detainees has only increased in the wake of the release of the SSCI Report summary.⁵ A fair

⁴ [http://www.mc.mil/Ponals/0/pdfs/KSM2/KSM%20II%20\(AE013RRR\(Gov\)\).pdf](http://www.mc.mil/Ponals/0/pdfs/KSM2/KSM%20II%20(AE013RRR(Gov)).pdf)

⁵ See, e.g., Carol Rosenberg, *Human Rights Groups Ask Attorney General to Order New CIA Torture Probe*, Miami Herald, June 23, 2015, <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article25313905.html>; Alex Rogers, *Another 2016 GOP Fault Line: Torture*, National Journal, June 16, 2015, <http://www.nationaljournal.com/2016->

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public debate about the CIA's RDI program must be informed by the government's own records relating to the program.

Release of these documents is critical to ensure meaningful public access to and debate about the government interrogation and detention practices after 9/11. These records will contribute to the American public's understanding of governmental policy and current and future public discussion about the legality and wisdom of the CIA's practices, as well as the resulting harm to individuals' human rights, our nation's values, and our national security.

II. Requested Records

The ACLU seeks the release of the records listed in the attached table. For identification purposes, the list contains the date of the document's creation, its title, the page (if any) on which it is mentioned in the SSCI Report, a link to a public version of the document if it has previously been released in redacted form, and additional identifying information (for example, text that appears in the document). The ACLU is not seeking production of any documents that have been previously released in full, unredacted form.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(e); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b). There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged

elections/another-2016-gop-fault-line-torture-20150616; David Welna, *'Torture Report' Reshapes Conversation in Guantanamo Courtroom*, NPR (Feb. 25, 2015), <http://n.pr/1DkinzCz>; Associated Press, *CIA Torture Report by Senate Revives Legal Debate on Harsh Interrogation Methods*, Times-Picayune, Dec. 14, 2014, <http://s.nola.com/1oq87pe>; Michael Muskal, *Q&A: Senate Torture Report Opens Political Wounds*, L.A. Times, Dec. 11, 2014, <http://fw.to/elphFD>; Evan Perez, *Senate Torture Report Restarts Debate on Bush Terrorism Policies*, CNN, Dec. 9, 2014, <http://www.cnn.com/2014/12/05/politics/senate-torture-report-restarts-debate-on-bush-terrorism-policies/index.html>; Paul Shinkman, *Troubling Details of CIA Torture Report Prompt Intense Debate*, U.S. News, Dec. 9, 2014, <http://t.usnews.com/Z4pg2k>.

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government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(e)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). In addition, the records sought relate to a “breaking news story of general public interest.” 22 C.F.R. § 171.12(b)(2)(i); *see also* 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when “the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity”); 32 C.F.R. § 286.4(d)(3)(ii)(A).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. *See id.* Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation and quotation marks omitted)).⁶

The ACLU regularly publishes a newsletter that reports on and analyzes civil liberties-related current events. The newsletter is disseminated to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail. The electronic newsletter is disseminated to approximately 300,000 people. Both of these newsletters often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.⁷

⁶ Courts have found that other organizations with missions similar to the ACLU and that engage in information dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (*Leadership Conference on Civil Rights*); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

⁷ *See, e.g.,* Press Release, American Civil Liberties Union, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, Justice Department White Paper Details Rationale for Targeted Killing of Americans (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale->

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and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁸

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. Since 2011 alone, ACLU national projects have published and disseminated dozens of reports, many of which include a description and analysis of government documents obtained through FOIA requests.⁹ The ACLU also regularly publishes books,

targeted-killing-americans; Press Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012); Press Release, American Civil Liberties Union, FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering (Mar. 27, 2012), <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach” (Dec. 1, 2011), <https://www.aclu.org/news/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community-outreach>; Press Release, American Civil Liberties Union, FOIA Documents from FBI Show Unconstitutional Racial Profiling (Oct. 20, 2011), <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem (Oct. 19, 2011), <http://www.aclu.org/inmigrants-rights-prisoners-rights-prisoners-rights-documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, ACLU Lawsuit Seeks Information from FBI on Nationwide System for Collecting “Suspicious Activity” Information (Aug. 25, 2011), <https://www.aclu.org/national-security/aclu-lawsuit-seeks-information-fbi-nationwide-system-collecting-suspicious>; Press Release, American Civil Liberties Union, New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU (June 24, 2009), <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>

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⁸ See, e.g., Brad Knickerbocker, *ACLU: FBI Guilty of “Industrial Scale” Racial Profiling*, *The Christian Science Monitor*, Oct. 21, 2011, <http://bit.ly/1MwkjPx>; Joshua E.S. Phillips, *Inside the Detainee Abuse Task Force*, *The Nation*, May 13, 2011, <http://bit.ly/skUHD1> (quoting ACLU staff attorney Alexander Abdo); Scott Shane & Benjamin Weiser, *Dossier Shows Push for More Attacks After 9/11*, *N.Y. Times*, Apr. 25, 2011, <http://nyti.ms/ty47ZA> (quoting ACLU project director Hina Shamsi); Eric Lichtblau, *Court Revives Lawsuit Over Government Surveillance*, *N.Y. Times*, Mar. 21, 2011, <http://nyti.ms/tgFpkd> (quoting ACLU deputy legal director Jameel Jaffer).

⁹ See, e.g., ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems* (Oct. 29, 2013), available at <https://www.aclu.org/aclu-eye-fbi-documents-reveal-lack-privacy-safeguards-and-guidance-governments-suspicious-activity-0>; ACLU, *Unleashed and Unaccountable: The FBI’s Unchecked Abuse of Authority* (Sept. 2013), available at <https://www.aclu.org/unleashed-and-unaccountable-fbis-unchecked-abuse-authority>; Yale Law School and ACLU, *Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by U.S. Government Contractors* (June 2012), available at https://www.aclu.org/sites/default/files/field_document/hrp_traffickingreport_web_0.pdf; Human Rights Watch and ACLU, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System* (July 2010), available at

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“know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <http://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <http://www.aclu.org/multimedia/>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA, and further in-depth analytic and educational multi-media features.

In the national security arena alone, the ACLU website includes many features on information obtained through the FOIA.¹⁰ For example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national->

https://www.aclu.org/files/assets/usdeportation0710_0.pdf; ACLU, Reclaiming Patriotism: A Call to Reconsider the Patriot Act (March 2009), *available at* https://www.aclu.org/files/pdfs/safefree/patriot_report_20090310.pdf; ACLU, The Excluded: Ideological Exclusion and the War on Ideas (Oct. 2007), *available at* https://www.aclu.org/sites/default/files/field_document/the_excluded_report.pdf; ACLU, History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement (May 2007), *available at* https://www.aclu.org/sites/default/files/field_document/asset_upload_file893_29902.pdf; ACLU, No Real Threat: The Pentagon’s Secret Database on Peaceful Protest (Jan. 2007), *available at* <https://www.aclu.org/report/no-real-threat-pentagons-secret-database-peaceful-protest>; ACLU, Unpatriotic Acts: The FBI’s Power to Rifle Through Your Records and Personal Belongings Without Telling You (July 2003), *available at* http://www.aclu.org/FilesPDFs/spies_report.pdf.

¹⁰ *See, e.g.*, <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-of-defense>; <https://www.aclu.org/feature/mapping-fbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <https://www.aclu.org/issues/national-security/privacy-and-surveillance/nsa-surveillance>; <https://www.aclu.org/patriot-foia>; <http://www.aclu.org/spyfiles>; <https://www.aclu.org/national-security-letters>; <https://www.aclu.org/national-security/ideological-exclusion>.

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security/predator-drones-foia, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online "Torture Database," a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.¹¹

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA—the ACLU created an original chart that provides the public and news media with a comprehensive summary of index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition and surveillance.¹² Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act,¹³ and a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA.¹⁴

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about actual or alleged government activity; moreover, the records sought relate to a breaking news story of general public interest. See 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(e)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2).

There is enormous current public interest and debate about the CIA's rendition, detention and interrogation program and its authorization of abusive techniques between 2002 and 2009. Notably, the CIA has claimed that the SSCI Report does not accurately characterize aspects of the RDI program; release of the records the ACLU requests will aid the American public in

¹¹ <http://www.torturedatabase.org>. See also <https://www.aclu.org/national-security/aclu-v-department-defense>.

¹² https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf

¹³ <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>

¹⁴ https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

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drawing its own conclusions about the legitimacy and legality of the Program. This public interest and ongoing debate is reflected in extensive media coverage of the CIA's RDI program. See e.g., Melissa Locker, *John Oliver Conscripts Helen Mirren to Read the Senate's Report on Torture*, Time, June 15, 2015, <http://ti.me/1BcNz9W>; David Rohde, *Exclusive: Detainee Alleges CIA Sexual Abuse, Torture Beyond Senate Findings*, Reuters, June 2, 2015, <http://reut.rs/1I9bvux>; *Secrets, Politics and Torture* (PBS Frontline documentary May 19, 2015); James Risen, *American Psychological Association Bolstered C.I.A. Torture Program, Report Says*, N.Y. Times, April 30, 2015, <http://nyti.ms/1P9mntA>; Mark Mazzetti, *C.I.A. Report Found Value of Brutal Interrogation Was Inflated*, N.Y. Times, Jan. 20, 2015, <http://nyti.ms/1E0eq8K>; Associated Press, *CIA Torture Report by Senate Revives Legal Debate on Harsh Interrogation Methods*, Times-Picayune, Dec. 14, 2014, <http://s.nola.com/loq87pe>; Scott Shane, *Backing C.I.A., Cheney Revisits Torture Debate From Bush Era*, N.Y. Times, Dec. 14, 2014, <http://nyti.ms/1zRB6VE>; Ashley Killough, *Former CIA Chief Michael Hayden Slams Feinstein, Torture Report Response*, CNN, Dec. 12, 2014, <http://www.cnn.com/2014/12/10/politics/hayden-torture-report-response/index.html>; Michael Muskal, *Q&A: Senate Torture Report Opens Political Wounds*, L.A. Times, Dec. 11, 2014, <http://fw.to/elphFhD>; Taylor Wofford, *CIA Director Brennan Defends CIA After Torture Report*, Newsweek, Dec. 11, 2014, <http://www.newsweek.com/cia-director-brennan-defends-cia-after-torture-report-291218>; George Tenet, Porter Goss, Michael Hayden, John McLaughlin, Albert Calland, and Stephen Kappes, *Ex-CIA Directors: Interrogations Saved Lives*, Wall St. J., Dec. 10, 2014, <http://on.wsj.com/12nyOjQ>; Evan Perez, *Senate Torture Report Restarts Debate on Bush Terrorism Policies*, CNN, Dec. 9, 2014, <http://www.cnn.com/2014/12/05/politics/senate-torture-report-restarts-debate-on-bush-terrorism-policies/index.html>; Paul Shinkman, *Troubling Details of CIA Torture Report Prompt Intense Debate*, U.S. News, Dec. 9, 2014, <http://t.usnews.com/Z4pg2k>; Peter Baker, *Bush Team Approved C.I.A. Tactics, but Was Kept in Dark on Details, Report Says*, N.Y. Times, Dec. 9, 2014, <http://nyti.ms/1ugh803>; Mark Mazzetti, *Panel Faults C.I.A. Over Brutality and Deceit in Terrorism Interrogations*, N.Y. Times, Dec. 9, 2014, <http://nyti.ms/1zot2v4>; Rebecca Kaplan, *Senate Report: CIA Mised Lawmakers, Public on Enhanced Interrogation*, CBS News, Dec. 9, 2014, <http://www.cbsnews.com/news/senate-report-cia-mised-lawmakers-public-on-enhanced-interrogation>.

The media interest in the CIA's RDI program makes clear that there is an urgent need to inform the public and allow it to meaningfully participate in the ongoing debate about this federal government activity. This debate is particularly urgent as the American public's representatives debate the McCain-Feinstein Amendment to the National Defense Authorization Act.

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which would “reaffirm the prohibition on torture.”¹⁵ The records sought relate to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv). Given the foregoing, expedited processing should be granted for this request.

IV. Application for Waiver or Limitation of Fees

We request a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” See 5 U.S.C. § 552(a)(4)(A)(iii).¹⁶

As discussed above, news accounts underscore the substantial public interest in the records we seek. Given the ongoing and widespread media attention to this issue, the records sought in the instant Request will significantly contribute to public understanding of an issue to which the government is devoting increasing attention. Little information about the government’s CVE programs is publicly available, so the records sought are certain to contribute significantly to the public’s understanding of, *inter alia*, the policies that government agencies have adopted regarding CVE efforts, the specific measures that government agencies are taking to counter what they perceive as violent extremism, and the extent to which such programs are infringing on the civil rights and/or liberties of Americans.

Such disclosure is not in the ACLU’s commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”) (citation omitted).

We also request a waiver of search fees on the grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. See 6 C.F.R. § 5.11(d)(1). The ACLU meets the

¹⁵ Emmarie Huetteman, *Senate Votes to Turn Presidential Ban on Torture Into Law*, N.Y. Times, June 16, 2015, <http://nyti.ms/1GXRqKl>; Paul Lewis, *Senate Passes Torture Ban Despite Republican Opposition*, The Guardian, June 16, 2015, <http://gu.com/p/49pcq/stw>; Ted Barrett, *Senate Overwhelmingly Bans Torture Across U.S. Government*, CNN, June 16, 2015, <http://cnn.it/1Slq7M9>; Conor Friedersdorf, *Today’s Senate Vote on Torture Is a Moral Test*, The Atlantic, June 16, 2015, <http://www.theatlantic.com/politics/archive/2015/06/senate-vote-torture-moral-test/395954/>.

¹⁶ See also 6 C.F.R. § 5.11(d); 28 C.F.R. § 16.11(d); 22 C.F.R. § 171.17; 32 C.F.R. § 1700.6(b); 45 C.F.R. § 5.45; 34 C.F.R. § 5.33.

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statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Service Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

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Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).¹⁷

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”¹⁸ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

¹⁷ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information/public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

¹⁸ In April 2013, the National Security Division of the Department of Justice (“DOJ”) granted a fee waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee waiver request regarding a

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* * *

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 28 C.F.R. § 16.5(e)(4); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific exemptions to FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

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UNION FOUNDATION

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American Civil Liberties Union
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New York, NY 10004
Tel: 212.284.7303
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dladin@aclu.org

FOIA request for documents related to national security letters issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU on a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

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I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,



Dror Ladin
American Civil Liberties Union Foundation

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	Date of document	Document	Page of SSCI Study or other source	Additional information to identify document
1	9/17/01	Memorandum of Notification	SSCI Study 11 n.7	
2	11/7/01	Draft of Legal Appendix, "Handling Interrogation."	SSCI Study 12 n.14	Includes the following language: "permissible so long as they generally comport with commonly accepted practices deemed lawful by U.S. courts."
3	11/26/01	Draft of Legal Appendix, "Hostile Interrogations: Legal Considerations for CIA Officers."	SSCI Study 19 n.51	Includes the following language: "CIA could argue that the torture was necessary to prevent imminent, significant, physical harm to persons, where there is no other available means to prevent the harm," and that "states may be very unwilling to call the U.S. to task for torture when it resulted in saving thousands of lives."
4	2/1/02, 01:02:12 PM	Email from: [REDACTED]; to [REDACTED]; subject: POW's and Questioning	SSCI Study 20 n.54	Includes the following language: "then the optic becomes how legally defensible is a particular act that probably violates the convention, but ultimately saves lives."
5	7/8/02, 4:15:15 PM	Email from: [REDACTED]; to: [REDACTED]; subject: Description of Physical Pressures	SSCI Study 32 n.136	
6	7/8/02	Email from: [REDACTED]; to [REDACTED]; subject: EYES ONLY - DRAFT	SSCI Study 33 n.140	Includes the following language: "a formal declination of prosecution, in advance, for any employees of the United States, as well as any other personnel acting on behalf of the United States, who may employ methods in the interrogation of Abu Zubaydah that otherwise might subject those individuals to prosecution."
7	7/02	Cable: [REDACTED]10536 (151006Z JUL 02)	SSCI Study 35 n.153	Includes the following language: "regardless which

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				[disposition] option we follow however, and especially in light of the planned psychological pressure techniques to be implemented, we need to get reasonable assurances that [Abu Zubaydah] will remain in isolation and incommunicado for the remainder of his life.”
8	7/02	Cable: ALEC [REDACTED] (182321Z JUL 02)	SSCI Study 35 n.155	Includes the following language: “There is a fairly unanimous sentiment within HQS that [Abu Zubaydah] will never be placed in a situation where he has any significant contact with others and/or has the opportunity to be released.”
9	7/02	Cable: [REDACTED]10568 (261101Z JUL 02)	SSCI Study 36 n.159	Includes the following language: “absolutely convincing technique”
10	7/26/02	Email from: [REDACTED]; to: Jose Rodriguez, [REDACTED]; subject: EYES ONLY – Where we stand re: Abu Zubaydah	SSCI Study 37 n.162	
11	8/1/02	Memorandum for John Rizzo from Jay S. Bybee, Standards of Conduct for Interrogation under 18 USC 2340-2340A		
12	8/1/02	OLC Memo: Memorandum for John Rizzo from Jay S. Bybee, Interrogation of al Qaeda Operative (DTS #2009-1810).	SSCI Study 111 and throughout. Previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC000780.pdf	
13	8/12/02	Email from: Jose Rodriguez; to: [REDACTED]; subject: [DETENTION SITE GREEN]; with attachment of earlier email from: [REDACTED]; to: [REDACTED].	SSCI Study 43 n.199	Includes the following language: “Strongly urge that any speculative language as to the legality of given activities or, more precisely, judgment calls as to their

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				legality vis-à-vis operational guidelines for this activity agreed upon and vetted at the most senior levels of the agency, be refrained from in written traffic (email or cable traffic). Such language is not helpful.”
14	8/15/02, 06:54 AM	Email from: [REDACTED]; to: [REDACTED]; subject: 15 Aug Clinical	SSCI Study 111 n.649	Includes the following language: “We are currently providing absolute minimum wound care (as evidenced by the steady deterioration of the wound)”
15	8/26/02	Cable: [REDACTED]10644 (201235Z AUG 02)	SSCI Study 46 n.217	Includes the following language: “should be used as a template for future interrogation of high value captives”
16	11/02	Memorandum for: [REDACTED], Subject: Legal Analysis of [REDACTED] Personnel Participating in Interrogation at the CIA Detention Facility in [REDACTED] (aka “[DETENTION SITE COBALT]”)	SSCI Study 53 n.263	Includes the following language: “isolation in total darkness; lowering the quality of his food; keeping him at an uncomfortable temperature (cold)”
17	1/9/03	Draft memorandum for Scott Mueller [sic], General Counsel of the Central Intelligence Agency, from John C. Yoo, re: Application of the President's February 7, 2002 Memorandum on the Geneva Convention (III) of 1949 to the Release of an al Qaeda Detainee to the Custody of the CIA.	SSCI Study 115-16 n.686	
18	1/22/03	Email from: [REDACTED], [REDACTED], [REDACTED]; subject: CONCERNS OVER REVISED INTERROGATION PLAN FOR NASHIRI	SSCI Study 71 n.360	Includes the following language: “we have serious reservations with the continued use of enhanced techniques”
19	1/22/03	Email from: [REDACTED]; to	SSCI Study 71	Includes the following

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		[REDACTED]; cc: [REDACTED]; subject: Re: date: January 22, 2003	n.359	language: "I intend to get the hell off the train before it happens."
20	1/28/03	Memorandum for Deputy Director of Operations, Subject: Death Investigation – Gul RAHMAN	SSCI Study 56 n.278; SSCI Study 190 n.1122	Includes the following language: "rough takedowns"
21	1/28/03	Guidelines on Interrogations Conducted Pursuant to the Presidential Memorandum of Notification of 17 September 2001, signed by George Tenet	SSCI Study 62 n.306; Previously released with redactions: https://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc12.pdf	
22	3/7/03	Memorandum for DDCIA from Scott Muller, Subject: Proposed Response to Human Rights Watch Letter	SSCI Study 115 n.685	
23	6/16/03, 4:54:32 PM	Email from: [REDACTED]; to: [REDACTED], [REDACTED]; subject: [REDACTED] RDG Tasking for IC Psychologists DUNBAR and SWIGERT	SSCI Study 66 n.328	Includes the following language: "from detainees with whom they previously interacted as interrogators will always be suspect"
24	6/20/03, 2:19:53 PM	OMS email to management of the Renditions Group, subject includes: "RDG tasking for IC Psychologists"	SSCI Study 66 n.329	Includes the following language: "no professional in the field would credit"
25	6/30/03	Memorandum for the Record from [REDACTED], Subject: White House Meeting on Enhanced Techniques (DTS #2009-2659)	SSCI Study 116 n.690	Memorandum from the CIA's CTC Legal
26	10/29/03	CIA Office of Inspector General, Report of Investigation: Unauthorized Interrogation Techniques at [DETENTION SITE BLUE], (2003-7123-IG)	SSCI Study 70 n.352	
27	1/04	Draft CIA Inspector General, Special Review, Counterterrorism Detention and Interrogation Program (2003-7123-IG).	Responses to the draft are mentioned throughout the SSCI report	
28	Likely early 2004	Memorandum for Inspector General, Attention: Assistant IG for Investigations,	SSCI Study 66 n.331	Includes the following language: "were nowhere more graphic than in the

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		[REDACTED], from [REDACTED], M.D., [REDACTED] Medical Services [REDACTED] re Draft Special Review-Counterterrorism Detention and Interrogation Program (2003-7123-IG)		setting in which the same individuals applied an EIT which only they were approved to employ, judged both its effectiveness and detainee resilience, and implicitly proposed continued use of the technique – at a daily compensation reported to be \$1800/day, or four times that of interrogators who could not use the technique.”
29	2/04	Email from: Scott Muller; to: James Pavitt; cc: George Tenet, John McLaughlin; subject: CIA Detainees at GITMO	SSCI Study 141 n.853	
30	2/24/04	Memorandum for: Inspector General; from: James Pavitt, Deputy Director for Operations; subject: re (S) Comments to Draft IG Special Review, "Counterterrorism Detention and Interrogation Program" (2003-7123-IG); date: February 27, 2004; attachment: February 24, 2004, Memorandum re Successes of CIA's Counterterrorism Detention and Interrogation Activities.	SSCI Study 193 n.1138	Includes the following language: “make it clear as well that the EITs (including the waterboard) have been indispensable to our successes.”
31	3/2/04	Letter from Scott Muller, CIA, to Jack Goldsmith, OLC, re: legal principles applicable to the CIA interrogation program	Previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001058.pdf	
32	5/7/04	CIA Office of Inspector General Special Review: Counterterrorism Detention and Interrogation Activities	Referenced throughout SSCI report and previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/CIA000349.pdf	

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33	5/12/04	Memorandum for Deputy Director for Operations from [REDACTED], Chief, Information Operations Center, and Henry Crumpton, Chief, National Resources Division, via Associate Deputy Director for Operations re Operational Review of CIA Detainee Program.	SSCI Study 125 n.738	Includes the following language: "The Directorate of Operations (DO) should not be in the business of running prisons or 'temporary detention facilities.' The DO should focus on its core mission: clandestine intelligence operations."
34	5/27/04	Letter from Assistant Attorney General Goldsmith to General Counsel Muller	SSCI Study 135 n.801	
35	8/11/04	Letter from [REDACTED], Assistant General Counsel, to Dan Levin	SSCI Study 138 n.830	Includes the following language: "providing these preliminary biographies in preparation for a future request for a legal opinion on their subsequent interrogation in CIA control."
36	8/11/04	Letter from [REDACTED], Assistant General Counsel, to Dan Levin, Acting Assistant Attorney General, Office of Legal Counsel	SSCI Study 416 n.2333	
37	8/27/04	Memorandum for the Record from [REDACTED] Re: Meeting with Department of Justice Attorneys on 13 August, 2004, Regarding Specific Interrogation Techniques, Including the Waterboard.	SSCI Study 416 n.2333	
38	9/6/04	Letter to John A. Rizzo, Acting General Counsel, CIA; from Daniel Levin, September 6, 2004 (DTS #2009-1810, Tab 7)	SSCI Study 418 n. 2352; previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001104.pdf	
39	9/20/04	Letter to John A. Rizzo, Acting	SSCI Study 418 n.	

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		General Counsel, CIA; from Daniel Levin, September 20, 2004 (DTS #2009-1810, Tab 8)	2352; previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001100.pdf	
40	12/04	CIA Memorandum to "National Security Advisor," from "Director of Central Intelligence," Subject: "Effectiveness of the CIA Counterterrorist Interrogation Techniques."	SSCI Study 127 n.744	Includes the following language: "This memorandum responds to your request for an independent study of the foreign intelligence efficacy of using enhanced interrogation techniques. There is no way to conduct such a study."
41	Various dates, including 5/17/04 and 12/04	CIA Memo: OMS GUIDELINES ON MEDICAL AND PSYCHOLOGICAL SUPPORT TO DETAINEE RENDITION, INTERROGATION, AND DETENTION	5/17/04 version identified at SSCI Study 415 n.2328; 12/04 version, which was attached to CIA fax sent 1/15/05, previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001145.pdf	
42	3/2/05	Memorandum for Steve Bradbury from [REDACTED], [REDACTED] Legal Group, DCI Counterterrorist Center re: Effectiveness of the CIA Counterterrorist Interrogation Techniques.	SSCI Study 211 n.1216	
43	4/11/05, 10:12 AM	Email from [REDACTED]; to [REDACTED]; subject, 8 April Draft Opinion from DOJ - OMS Concerns	SSCI Study 420 n.2361	Includes the following language: "OMS is not in the business of saying what is acceptable in causing discomfort to other human beings, and will not take on that burden"

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44	4/20/05, 5:58:47 PM	Email from: [REDACTED] to [REDACTED], subject: Re: Interrogation Program--Going Public Draft Talking Points--Comments Due to [REDACTED]me by COB TODAY. Thanks.	SSCI Study 405 n.2276	CIA email includes the following language: "Glomar figleaf is getting pretty thin."
45	4/21/05, 07:24 AM	Email from: [REDACTED]to [REDACTED], subject: Re: Interrogation Program--Going Public Draft Talking Points--Comments Due to [REDACTED]me by COB TODAY. Thanks.	SSCI Study, 405 n.2277	CIA email includes the following language: "declaration I just wrote about the secrecy of the interrogation program a work of fiction"
46	4/25/05, 11:41:07 AM	Email from [REDACTED]to [REDACTED], subject: Re: Interrogation Program--Going Public Draft Talking Points--Comments Due to [REDACTED]me by COB TODAY. Thanks."	SSCI Study, 405 n.2278	CTC Legal email includes the following language: "confront the inconsistency"
47	4/27/05	CIA Inspector General, Report of Investigation, Death of a Detainee [REDACTED] (2003-7402-IG)	SSCI Study 63 n.314	
48	5/4/05	Letter from [REDACTED], Associate General Counsel, CIA, to Steve Bradbury, Acting Assistant Attorney General, Office of Legal Counsel	SSCI Study 420 n.2358	Includes the following language: "all pain is subjective, not objective"
49	5/10/05	OLC Memo: Memorandum for John Rizzo from Steve Bradbury, Re: Application of 18 §§ USC 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of a High Value al Qaeda Detainees	Previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC000683.pdf	
50	5/26/05	Memorandum for Director, CIA, from John Helgerson, IG, re: Recommendation for Additional Approach to DOJ Concerning Legal Guidance on Interrogation Techniques.	SSCI Study 145 n.876	Includes the following language: "a strong case can be made that the Agency's authorized interrogation techniques are the kinds of actions that Article 16 undertakes to prevent"
51	5/30/05	OLC Memo: Memorandum for	Previously released	

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		John Rizzo from Steve Bradbury Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees	with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC000864.pdf	
52	9/2/05	Memorandum from [REDACTED] to Director Porter Goss, CIA re Assessment of EITs Effectiveness.	SSCI Study 128 n.748	
53	9/23/05	Memorandum from [REDACTED] to the Honorable Porter Goss, Director, Central Intelligence Agency re Response to Request from Director for Assessment of EIT Effectiveness.	SSCI Study 128 n.749	
54	6/06	CIA memorandum from the CIA's Office of General Counsel, "Hamdan v. Rumsfeld"	SSCI Study 159 n.969	Includes the following language: "opinion 'calls into real question' whether CIA could continue its CT interrogation program involving enhanced interrogation techniques"
55	6/7/06	Email from: Grayson SWIGERT; to: [REDACTED], subject: Dr. SWIGERT's 7 June meeting with DCI	SSCI Study 40 n.180	Includes the following language: "image of a detainee, chained to the ceiling, clothed in a diaper, and forced to go to the bathroom on himself."
56	6/14/06	Report of Audit, CIA-controlled Detention Facilities Operated Under the 17 September 2001 Memorandum of Notification, Report No. 2005-0017-AS	SSCI Study 144 n.873	
57	8/31/06	Memorandum for John Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, August 31, 2006, Re: Application of the Detainee Treatment Act to Conditions of Confinement at Central	SSCI Study 429 n.2411; previously released with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC000997.pdf	

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		Intelligence Agency Detention Facilities (DTS #2009-1810, Tab 13).		
58	9/1/06	Memorandum of Agreement Between the Department of Defense (DOD) and the Central Intelligence Agency (CIA) Concerning the Detention by DOD of Certain Terrorists at a Facility at Guantanamo Bay Naval Station.	SSCI Study 140 n.848	
59	9/2/06	Fax from [REDACTED], DD/CTC, to Steve Bradbury, John Bellinger III, Steve Cambone, forwarding September 1, 2006 Memorandum, "Anticipated Foreign Reactions to the Public Announcement of the US Secret Terrorist Detention Center."	SSCI Study 153 n.924	
60	11/9/06, 12:25 PM	Email from: John A. Rizzo; to: Michael V. Hayden, Stephen. R. Knappes, Michael J. Morell; subject: Fw: 8 November 2006 Meeting with ICRC Reps	SSCI Study 160 n.979	Includes the following language: "what the detainees allege actually does not sound that far removed from the reality"
61	12/6/06	CIA OIG Disposition Memo, "Alleged Use of Unauthorized Interrogation Techniques." 2004-77717-16.	SSCI Study 108 n.626	
62	12/6/06	CIA OIG Disposition Memorandum, "Alleged Use of Unauthorized Interrogation Techniques" OIG Case 2004-7604-IG	SSCI Study 106 n.621	
63	2/9/07	Letter from John B. Bellinger III, Legal Adviser, Department of State, to Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice.	SSCI Study 162 n.993	
64	7/16/07	CIA Office of Inspector General, Report of Investigation, The Rendition and Detention of German Citizen Khalid al-Masri (2004-7601-IG)	SSCI Study 129 n.755	
65	7/20/07	OLC Memo: Memorandum for	Previously released	

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		John A. Rizzo, Re: Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques that May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees	with redactions: https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC000904.pdf	
66	Undated, but updated through 2007	CIA document entitled, Summary and Reflections of Chief of Medical Services on OMS Participation in the RDI Program.	SSCI Study 154, n.932	
67	2007	<p>The six Combatant Status Review Tribunal transcripts of the “high value detainees” and three documents submitted to the Tribunals.</p> <p>The transcripts relate to the following detainees:</p> <ol style="list-style-type: none"> 1. Mustafa Al Hawsawi 2. Abd al-Rahim Al Nashiri 3. Abu Zubaydah 4. Ammar Al Baluchi 5. Majid Khan 6. Khalid Sheikh Muhammad <p>The three submitted documents are:</p> <ol style="list-style-type: none"> a. A two-page written statement of Khalid Sheikh Muhammad; b. A seven-page written statement of Hambali; c. A one-page written statement of Bashir Bin Lap responding to particular items of evidence. 	Redacted versions of the six Combatant Status Review Tribunal transcripts were released to the ACLU in ACLU v. DOD, Case 1:08-cv-00437 (D.D.C. 2009) and are described here: https://www.aclu.org/sites/default/files/images/torture/asset_upload_file53_40875.pdf	
68	7/29/09	Department of Justice Office of Professional Responsibility Report, Investigation into the Office of Legal Counsel’s	Previously released with redactions: https://www.thetorturedatabase.org/file	

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		Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of Enhanced Interrogation Techniques on Suspected Terrorists	s/foia_subsite/20090729_opr_final_report_with_20100719_declassifications_0.pdf	
69	1/5/10	Memorandum for the Attorney General from David Margolis, Associate Deputy Attorney General, subject: Memorandum of Decision Regarding the Objections to the Findings of Professional Misconduct in the Office of Professional Responsibility's Report of Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of Enhanced Interrogation Techniques on Suspected Terrorists	Previously released with redactions: https://www.aclu.org/files/pdfs/natsec/opr20100219/20100105_DAG_Margolis_Memo.pdf	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
AMERICAN CIVIL LIBERTIES UNION and
THE AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

15 Civ. 9317 (AKH)

DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, including its
components the OFFICE OF LEGAL COUNSEL
and OFFICE OF INFORMATION POLICY,
DEPARTMENT OF STATE, and CENTRAL
INTELLIGENCE AGENCY,

NOTICE OF MOTION

Defendants.

.....X

PLEASE TAKE NOTICE that, upon the accompanying (1) Memorandum of Law in Support of Defendants' Motion for Partial Summary Judgment; (2) Declaration of Antoinette B. Shiner dated October 14, 2016, and accompanying index; (3) Declaration of Paul P. Colborn dated October 14, 2016; (4) Declaration of Tara M. La Morte dated October 14, 2016, and exhibits; and (5) Classified Declaration of Antoinette B. Shiner dated October 14, 2016, submitted *ex parte* and *in camera*, and upon all prior proceedings herein, Defendants Department of Defense, Department of Justice, including its components the Office of Legal Counsel and Office of Information Policy, Department of State, and Central Intelligence Agency, by and through their attorney, Preet Bharara, United States Attorney for the Southern District of New York, will move this Court for summary judgment in the above-captioned action pursuant to Rule 56 of the Federal Rules of Civil Procedure.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's order dated September 29, 2016, opposition papers are to be served by November 11, 2016, and reply papers are to be served by December 5, 2016.

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Dated: New York, New York
October 14, 2016

PREET BHARARA
United States Attorney for the
Southern District of New York,
Attorney for Defendants

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____)	
AMERICAN CIVIL LIBERTIES)	
UNION and THE AMERICAN CIVIL)	
LIBERTIES FOUNDATION)	
)	
Plaintiffs,)	
)	
v.)	Case No. 15-cv-9317 (AKH)
)	
DEPARTMENT OF DEFENSE,)	
et. al.)	
)	
Defendants.)	
_____)	

DECLARATION OF ANTOINETTE B. SHINER
INFORMATION REVIEW OFFICER
FOR THE LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I assumed this position effective 19 January 2016.

2. Prior to becoming the IRO for LIRO, I served as the IRO for the Directorate of Support ("DS") for over sixteen months. In that capacity, I was responsible for making classification and release determinations for information originating within the DS. Prior to serving in the DS, I was the Deputy IRO for the Director's Area of the CIA ("DIR Area") for over three years. In that role, I was responsible for making

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classification and release determinations for information originating within the DIR Area, which included, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of General Counsel. I have held other administrative and professional positions within the CIA since 1986, and have worked in the information review and release field since 2000.

3. As the IRO for the LIRO, I am a senior CIA 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), reprinted in 50 U.S.C. § 3161 note ("E.O. 13526"). Among other things, I am responsible for the classification review of CIA documents and 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. This declaration supports the government's motion for summary judgment by providing details regarding the 24 documents challenged by the ACLU. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

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I. RECORDS AT ISSUE

5. By letter dated 14 August 2015, the ACLU requested 69 documents that were referenced in the Executive Summary to the Senate Select Committee on Intelligence's ("SSCI's") study on the CIA's former detention and interrogation program, which was released by SSCI in December 2014. The ACLU attached a chart to the request identifying each of these records by description and footnote. The request also asked for a fee waiver and requested expedited processing.

6. By letter dated 26 August 2015, the CIA denied the ACLU's request for expedited treatment.

7. The ACLU filed this lawsuit on 25 November 2015.

8. After conducting searches for responsive material, the Agency located copies of all of the CIA-originated documents. In addition, separate searches conducted by other federal agencies uncovered the remainder of the responsive documents. On 13 June 2016 and 30 September 2016, the Agency produced non-exempt, segregable portions of the CIA-originated records to the ACLU. The ACLU has indicated that they intend to challenge the redactions associated with twenty-four of the requested records. The attached *Vaughn* index describes those documents and indicates the basis for any redactions made by the Agency.¹

¹ The documents numbers in the *Vaughn* index correspond with the document numbering convention used by the ACLU in its initial request. Because the

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9. I note that, in conjunction with SSCI's study, the CIA declassified certain information related to the former detention and interrogation program. I have carefully considered the records at issue in this case in light of those declassifications and I have determined that, notwithstanding those disclosures, each of these documents contains certain details that remain exempt from disclosure pursuant to Exemptions 1, 3, 5 and 6. 5 U.S.C. § 552 (b) (1), (b) (3), (b) (5) and (b) (6). The exempt information is discussed below.²

II. FOIA EXEMPTIONS PROTECTING CLASSIFIED INFORMATION

A. EXEMPTION 1

10. Exemption 1 provides that FOIA does not require the production of records 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). Here, the information withheld pursuant to Exemption 1 satisfies the procedural and the substantive requirements of Executive Order 13526, which governs classification. See E.O. 13526 § 1.1(a), § 1.4(c).

ACLU is not challenging certain records produced in the course of this litigation, those documents are not listed in the attached index.

² Additionally, I note that in connection with a separate civil action brought by the ACLU against two contractors associated with the former detention and interrogation program, the Agency, as a matter of discretion, released additional material that would have been subject to one or more FOIA exemptions.

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11. As an original classification authority, I have determined that discrete portions of the records at issue in this litigation are currently and properly classified. Additionally, this information is owned by, and is under the control of, the U.S. Government. As described below, the information falls under classification categories § 1.4(c) and § 1.4(d) of the Executive Order because it concerns "intelligence activities (including covert action), [or] intelligence sources or methods" and pertains to "foreign relations or foreign activities of the United States, including confidential sources." Further, unauthorized disclosure of this material could reasonably be expected to result in damage to national security. None of the information at issue has been classified in order to conceal violations of law, inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security. Further, the responsive documents are properly marked in accordance with § 1.6 of the Executive Order.

12. More specifically, the classified material contained in the reports consists of details about foreign liaison services; identities of covert personnel; current locations of covert CIA installations and former detention centers located

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abroad; and descriptions of specific intelligence methods and activities, including certain counterterrorism techniques; code words and pseudonyms; and classification and dissemination control markings. See CIA *Vaughn* index, doc. nos. 1, 2, 6-10, 13-15, 17-19, 28, 29, 37, 43-46, 50 and 66. To the greatest extent possible, I have attempted to explain on the public record the nature of the information subject to Exemption 1 from the records at issue. Should the court require additional details about the classified and statutorily-protected national security information, the Agency is prepared to submit an *in camera, ex parte* declaration for that purpose. As described below, disclosure of these details, which would reveal intelligence sought by the Agency and the means by which it is acquired, could reasonably be expected to cause harm, and in some instances exceptionally grave damage, to the CIA's continued ability to collect this information and to the Agency's relationships with foreign partners.

13. *Foreign Liaison and Government Information.* The documents at issue contain foreign liaison and government information. Foreign liaison services and foreign government officials, including those whose information is contained in the documents at issue, provide sensitive intelligence to the CIA in confidence. In order to ensure the uninterrupted flow of that information, the Agency protects the content of those

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communications as well as the mere fact of the existence of the U.S. Government's relationships with particular intelligence services and foreign government officials. Disclosure of these details could damage the relations with the entities mentioned in the records and with other foreign partners working with the Agency, who may discount future assurances that information will be kept confidential. This, in turn, could reasonably be expected to harm intelligence sharing and cooperation on other areas of importance to the national security.

14. Covert Personnel. The records also contain names and personally-identifying details related to covert CIA employees. As part of the CIA's mission, the Agency places certain employees undercover to protect the fact, nature, and details of its intelligence activities. Disclosing the identity of a covert employee could expose those activities as well as intelligence sources with whom the employee has had contact. Moreover, disclosing the identity of a covert employee could jeopardize the safety of the employee, his or her family, and others with whom he or she has had contact. Given the sensitivity of the CIA's former detention and interrogation program, there is a significant concern that the release of any information about these officers mentioned in the documents could place them and their associates in danger. In order for the Agency to effectively carry out its foreign intelligence

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gathering mission, it is imperative that the identities of covert personnel remain protected.

15. Field Installations. The records also contain details regarding the current locations of covert CIA installations and former detention centers located abroad. The places where the CIA maintains a presence constitute intelligence methods of the Agency. Official acknowledgment that the CIA has a facility in a particular location abroad could cause the government of the country in which the installation is or was located to take countermeasures, either on its own initiative or in response to public pressure, to eliminate the CIA's presence within its borders or curtail cooperation with the CIA. Disclosing the location of a particular CIA facility could result in terrorists and foreign intelligence services targeting that installation and the persons associated with it. Moreover, given the politically charged nature of the former detention and interrogation program, even releasing information about the location of former facilities could harm relationships with foreign countries that housed those installations. In order to protect bilateral relations with these foreign partners, the CIA has consistently refused to confirm or deny the location of these facilities. In fact, these details were redacted from the Executive Summary publicly released by SSCI because of this sensitivity. As discussed above, damage to those relationships

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with foreign governments could harm the CIA's continued ability to obtain accurate and timely foreign intelligence.

16. Intelligence Methods and Activities. The documents at issue also contain details that would disclose other intelligence methods and activities of the CIA. Intelligence methods are the means by which the CIA accomplishes its mission. Intelligence activities refer to the actual implementation of intelligence methods in an operational context. Intelligence activities are highly sensitive because their disclosure often would reveal details regarding specific methods which, in turn, could provide adversaries with valuable insight into CIA operations that could impair the effectiveness of CIA's intelligence collection.

17. For example, the CIA protected undisclosed details about certain intelligence gathering techniques and Agency tradecraft, which have been, and continue to be, used in range of CIA operations and activities including current counterterrorism operations. Revealing this information would tend to show the breadth, capabilities, and limitations of the Agency's intelligence collection or activities. Such disclosures could provide adversaries with valuable insight into CIA operations that would damage their effectiveness. Adversaries could use this information to develop measures to

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detect and counteract the Agency's intelligence methods and the operational exercise of those methods.

18. Code Words and Pseudonyms. Some of the information redacted from the records consists of code words and pseudonyms. The use of code words is an intelligence method whereby words and letter codes are substituted for actual names, identities, or programs in order to protect intelligence sources and other intelligence methods. Specifically, the CIA and other federal agencies use code words in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest, such as a source, a foreign liaison service, or a covert program. As discussed above, the CIA also uses pseudonyms, which are essentially code names, in many of its internal communications.

19. When obtained and matched to other information, code words and pseudonyms possess a great deal of meaning for someone able to fit them into the proper framework. For example, the reader of a message is better able to assess the value of its contents if the reader can identify a source, an undercover employee, or an intelligence activity by the code word or pseudonym. By using these code words, the CIA and other federal agencies add an extra measure of security, minimizing the damage that would flow from an unauthorized disclosure of intelligence information. The disclosure of code words and pseudonyms --

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especially in context or in the aggregate -- can permit foreign intelligence services and other groups to fit disparate pieces of information together and to discern or deduce the identity or nature of the person or project for which the code word or pseudonym stands.

20. Classification and Dissemination-Control Markings. The documents also contain classification and dissemination-control markings, which are among the intelligence methods used to control the dissemination of intelligence-related information and protect it from unauthorized disclosure. These markings indicate the overall classification level as well as the classification of discrete portions of a document, the presence of any compartmented information, and the limits on disseminating the information, which, in turn, would reveal details about the sensitivity and content of the underlying intelligence and indicate restrictions on access and handling. Disclosure of these markings would reveal or highlight areas of particular intelligence interest, sensitive collection sources or methods, foreign sensitivities, and procedures for gathering, protecting, and processing intelligence. Accordingly, the release of this information could reasonably be expected to cause damage to national security.

21. For all of the reasons discussed above, the CIA cannot disclose certain information contained in the responsive records

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that pertains to intelligence sources, intelligence methods, intelligence activities, and foreign relations or foreign activities. I have determined that this information remains currently and properly classified pursuant to the criteria of Executive Order 13526, as its disclosure could reasonably be expected to cause damage to the national security of the United States.

B. EXEMPTION 3

22. Exemption 3 protects information that is specifically exempted from disclosure by statute. A withholding statute under Exemption 3 must (A) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3).

23. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), which provides that the Director of National Intelligence "shall protect intelligence sources and methods from unauthorized disclosure," has been widely recognized by courts to constitute a withholding statute in accordance with Exemption 3. All of the information withheld pursuant to Exemption 1 constitutes intelligence sources and methods (as well as the operational exercise of those methods) of the

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Agency. See CIA *Vaughn* index, doc. nos. 1, 2, 6-10, 13-15, 17-19, 28, 29, 37, 55 and 66. Having reviewed the material, I find it to be properly exempt from disclosure under the National Security Act. Although no harm rationale is required, for the reasons discussed above, the release of this information could significantly impair the CIA's ability to carry out its core missions.

24. Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the "CIA Act"), has also been widely recognizes as withhold statute under Exemption 3. Section 6 of the CIA Act protects from disclosure information that would reveal the CIA's organization, functions, including the function of protecting intelligence sources and methods, names, official titles, salaries, or numbers of personnel employed by the CIA. Here, the CIA Act applies to identifying information of Agency personnel, including covert personnel. See CIA *Vaughn* index, doc. nos. 2, 4, 6-10, 13-15, 17-19, 28, 29, 37, 43-46, 50, 55 and 66. Although the CIA Act requires no showing of harm, releasing details regarding Agency personnel, particularly in the context of the former detention and interrogation program, could subject them to harassment, intimidation and possibly physical harm.

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III. FOIA EXEMPTIONS PROTECTING PRIVILEGED INFORMATION

A. DELIBERATIVE PROCESS PRIVILEGE

25. The deliberative process privilege protects Agency communications that are pre-decisional and deliberative. The purpose of the privilege is to prevent injury to the quality of agency decision-making. Here, the CIA invoked the deliberative process privilege in conjunction with the attorney-client privilege (as well as the national security exemptions) to protect certain communications between attorneys in the CIA's Office of General Counsel and Agency employees and between Department of Justice attorneys to CIA officials consisting of legal advice provided by attorneys to Agency clients or information gathered from Agency personnel in furtherance of providing legal advice. See *CIA Vaughn* index, doc. nos. 2, 4, 6-10, 15, 17, 18, 26, 29, 37, and 43-46. The attorney's role, in these instances, was to provide legal counsel in connection with specific proposals. These communications reflect interim stages associated with given deliberations. In the contexts in which these deliberations occurred, the lawyers presented a range of legal options and this advice served as one consideration for decision-makers when deciding whether to pursue a certain course of action. The legal advice itself was one part of that decision-making process and did not constitute

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the Agency's final decision to undertake a particular operation or action.

26. Additionally, the CIA invoked the deliberative process privilege for draft documents, comments related to draft documents, proposals, assessments of ongoing activities and recommendations for future steps. See CIA Vaughn index, doc. nos. 2, 13, 14, 17, 19, 28, 50, 55 and 66. Each of these documents reflect interim stages associated with a given deliberation concerning to how to handle different policies related to the former detention and interrogation program. These communications do not convey final Agency viewpoints on a particular matter, but rather reflect different considerations, opinions, options and approaches that preceded an ultimate decision or are part of a policy-making process.

27. Further, I have examined all of the documents withheld pursuant to the deliberative process privilege and have determined that to the extent there is any factual material it is part and parcel of the deliberations and cannot be segregated. The selection of facts in these documents would reveal the nature of the preliminary recommendations and opinions preceding the final determinations. In the case of draft documents, disclosure of these records would allow for the comparison between the wording in the final version and the drafts thereby revealing what information was considered

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significant or was discarded in the course of the drafting process. Although no showing of harm is required for invoking the deliberative process privilege, disclosure of these documents would significantly hamper the ability of Agency personnel to candidly discuss and assess the viability of certain courses of action. Additionally, revealing this information could mislead or confuse the public by disclosing rationales that were not the basis for the Agency's final decisions. None of the information withheld by the CIA pursuant to the deliberative process privilege has been expressly adopted or incorporated by reference into any final policy statement. Additionally, none of this information was released in the public version of SSCI's study or otherwise publicly disclosed.

B. ATTORNEY-CLIENT PRIVILEGE

28. The attorney-client privilege protects confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought professional advice. In this case, the attorney-client privilege applies to confidential communications between Agency employees and attorneys within the CIA's Office of General Counsel and between CIA officials and Department of Justice lawyers on issues related to the former detention and interrogation program. See CIA *Vaughn* index, doc. nos. 2, 4, 6-10, 15, 18, 29, 37, and 43-46. Here, Agency employees requested

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legal advice related to certain proposed courses of action or operations. These confidential communications consist of factual information supplied by the clients in connection with their requests for legal advice, discussions between attorneys that reflect those facts, and legal analysis and advice provided to the clients. The confidentiality of these communications was maintained. If this confidential information were to be disclosed, it would inhibit open communication between CIA personnel and their attorneys, thereby depriving the Agency of full and frank legal counsel. None of the withheld attorney-client communications have been released in connection with SSCI's study or otherwise publicly disclosed.

C. PRESIDENTIAL COMMUNICATIONS PRIVILEGE

29. In addition, the presidential communications privilege applies to the Memorandum of Notification ("MON") exchanged between the President and CIA. See CIA Vaughn index, doc. no. 1. This document is a direct, confidential communication from the President to Agency officials on sensitive topics, and disclosure would inhibit the President's ability to engage in effective communications and decisionmaking. The MON was issued on 17 September 2001 by President George W. Bush. It made certain findings and authorized the CIA to capture and detain terrorists. Consistent with the requirements of National

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Security Act, 50 U.S.C. § 3093, Congress was notified of the MON. However, given the extraordinary sensitivity of the MON, the notification to Congress was strictly limited to certain members of Congress, as provided in 50 U.S.C. § 3093(c)(2). The MON also has been closely held within the Executive Branch. The MON is also withheld in full on the basis of Exemptions 1 and 3.

IV. PRIVACY EXEMPTIONS

30. Exemption 6 provides that the FOIA's information-release requirements do not apply to "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Courts have broadly construed the term "similar files" to cover any personally identifying information. Here, Exemption 6 applies to personally-identifying information of covert and overt CIA personnel and other individuals mentioned in the documents, such as names, positions, contact information, unique Agency identifiers (such as pseudonyms and Agency identification numbers) and similar identifying details.

31. Each of these individuals mentioned in these documents maintains a strong privacy interest in this information because its release could subject them to intimidation, harassment, reputational damage or physical harm merely due to their association with the former detention and interrogation program. The extensive media coverage and the sensitivity and controversy

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surrounding the former detention and interrogation program further heighten those privacy concerns. Conversely, the release of individuals' identities or other personal information would not further the core purpose of the FOIA -- informing the public as to the operations or activities of the government. Because there are significant privacy concerns and no corresponding qualifying public interest in disclosure, I have determined that the release of this information would constitute a clearly unwarranted invasion of these individuals' personal privacy under Exemption 6. I note that to the extent that the identifying information is that of Agency personnel or associates protections of Exemption 3 in conjunction with the CIA Act jointly apply.

V. SEGREGABILITY

32. In evaluating the responsive documents, the CIA conducted a document-by-document and line-by-line review and released all reasonably segregable non-exempt information to plaintiffs. In instances where no segregable, non-exempt portions of documents could be released without potentially compromising classified, statutorily-protected or privileged information, then such documents were withheld from plaintiffs in full. In this case, the withheld information is protected by at least one of the exemptions and, in many instances, by

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several overlapping and coextensive FOIA exemptions. For example, legal advice withheld pursuant to the deliberative process and attorney-client privileges of Exemption 5, may also contain classified information covered by Exemption 1 as well as intelligence sources and methods and Agency employee information that are protected by the Exemption 3 statutes - the National Security Act and the CIA Act. After reviewing all of the records at issue, I have determined that no additional information can be released without compromising classified or privileged material, and/or other protected information that falls within the scope of one or more FOIA exemptions.

* * *

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

Executed this 14th day of October 2016.



ANTOINETTE B. SHINER
Information Review Officer
Litigation Information Review
Office
Central Intelligence Agency

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
1	C06541502	This document is a Memorandum of Notification. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods. Exemption (b)(5) was asserted to protect presidential communications provided from the President to the Executive Branch.	9/17/2001	--	(b)(1) (b)(3) Nat'l Sec Act (b)(5)	DIF (Denied in Full)
2	C06541504	This is a document marked "draft" entitled "Handling Interrogations." This document is an unfinished outline authored by a CIA attorney containing legal guidance related to interrogations. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (classified information related to Agency intelligence activities generally and dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information gathered in furtherance of providing legal advice.	11/7/2001	3	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	DIF

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
4	C06552082	This document consists of email exchanges between CIA attorneys and Agency component personnel regarding the POW status and questioning of detainees. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	2/1/2002	3	(b)(3) CIA Act (b)(5) (b)(6)	RIP (Released in Part)

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
6	C06541505	This document is an email from a CIA attorney to Agency component personnel forwarding a draft letter to the Attorney General regarding the former detention and interrogation program. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles, email addresses, Agency identification numbers and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains a preliminary request for legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	7/8/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
7	C06541506	<p>This document is a cable entitled "Eyes Only – Additional Operational and Security Considerations for the Next Phase of Abu Zubaydah Interrogation." This is a communication between an Agency client and OGC attorney providing information in connection with a request for legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (titles, office information, functions and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice.</p>	7/15/2002	6	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
8	C06541507	This document is a cable entitled "Eyes Only – HQS Feedback on Issues Pending for Interrogation of Abu Zubaydah." This is a communication between an Agency client and OGC attorney providing information in connection with a request for legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles, office information and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice.	7/18/2002	5	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
9	C06541508	<p>This document is a cable entitled "Eyes Only – Next Phase of Abu Zubaydah Interrogations." This is a communication between an Agency client and OGC attorney providing information in connection with a request for legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (detention locations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (titles, office information, Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice.</p>	7/26/2002	3	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
10	C06541711	This document consists of email exchanges from CIA attorneys to Agency component personnel providing legal guidance provided by DOJ attorneys. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (detention location and classification block). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles, email addresses, Agency identification numbers, telephone numbers, office information). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which conveys legal advice provided by DOJ attorneys. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	7/26/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
13	C06551084	This document is an email between Agency employees providing opinions and assessments of ongoing issues about, and recommending next steps for, detention and interrogation activities. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names and email addresses). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	8/12/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP
14	C06541509	This document is an email between Agency component personnel providing opinions and assessments of ongoing issues about, and recommending next steps for, detention and interrogation activities. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installation). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	8/15/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
15	C06541510	This document is a cable entitled "Eyes Only – Statue of Interrogation Phase." This is a communication between Agency component personnel and OGC attorney providing information in connection with a request for legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (foreign liaison and government information, field installations, code word and pseudonyms, and dissemination and control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (titles, functions and office information). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice.	8/20/2002	5	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
17	C06541515	This document is a draft memorandum from Deputy Assistant Attorney General to CIA General Counsel. CIA made one discrete redaction pursuant to Exemptions (b)(1) and (b)(3) (National Security Act), which applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (CIA intelligence activities). CIA is also asserting Exemption (b)(5) to protect pre-decisional inter-agency deliberations and legal advice protected by the attorney-client privilege for the reasons set forth in the Declaration of Paul Colborn dated October 14, 2016	1/9/2003	8	(b)(1) (b)(3) Nat'l Sec Act (b)(5)	RIP (Referred record)

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
18	C06541511	This document is an email with the subject "Concerns Over Revised Interrogation Plan for Nashiri." This is a communication between an Agency component personnel and OGC attorney providing information in connection with a request for legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installation). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, internal offices, Agency identification numbers and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	1/22/2003	3	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
19	C06541516	This document consists of email exchanges between Agency component personnel discussing proposed internal training. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (name of covert employee). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	1/22/2003	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
28	C06541527	This document is a comments provided by the Office of Medical Services to the CIA Office of Inspector General regarding the OIG's "Draft Special Review – Counterterrorism Detention and Interrogation Program." The final version of the Special Review appeared as document no. 32 on the ACLU's list. The ACLU is not challenging any of the redactions to the Special Review. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installation and dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect the names of individuals named in the report.	1/13/2004	18	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
29	C06552087	This document is an email with the subject "CIA Detainees at GITMO." This is a communication from a CIA General Counsel to Agency clients providing legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (sources and methods related to the former detention and interrogation program). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names and email addresses). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	2/3/2004	1	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
37	C06541533	This document is a memorandum for the record documenting a discussions between Department of Justice attorneys, OGC attorneys and Agency officials regarding specific interrogation techniques. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	8/27/2004	4	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
43	C06552088	This document is an email with the subject "8 April Draft Opinion from DOJ – OMS Concerns." This is a communication from Agency clients to a CIA attorney providing factual details in the course of requesting legal guidance. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email address and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/11/2005	3	(b)(3) CIA Act (b)(5) (b)(6)	RIP
44	C06552089	This document consists of email exchanges between CIA attorneys and CIA Office of Public Affairs personnel providing legal advice on draft talking points related to the interrogation program. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and office locations). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/20/2005	2	(b)(3) CIA Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
45	C06541520	This document consists of email exchanges between CIA attorneys and CIA Office of Public Affairs personnel providing legal advice on draft talking points related to the interrogation program. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/21/2005	1	(b)(3) CIA Act (b)(5) (b)(6)	RIP
46	C06541521	This document consists of email exchanges between CIA attorneys and legal staff discussing a filing in a criminal matter. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/25/2005	1	(b)(3) CIA Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
50	C06541716	This document is a memorandum from Inspector General John Helgerson to the Director of the CIA with the subject "Recommendation for Additional Approach to the Department of Justice Concerning Legal Guidance on Interrogation Techniques." Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations in the form of recommendations made by the Inspector General.	5/26/2005	5	(b)(3) CIA Act (b)(5) (b)(6)	RIP
55	C06552090	This document is an email between Agency employees with the subject "Dr. Mitchell's 7 June Meeting with DCI." Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (covert personnel). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names and email addresses). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations consisting of recommendations and discussions related to how to handle certain aspects of the interrogation program. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	6/7/2006	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
66	C06541727	This is a document entitled "Summary and Reflections of Chief of Medical Services on OMS Participation in the RDI Program" stamped "draft." Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (dissemination/control markings, CIA intelligence activities, counterterrorism techniques, field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	Undated	89	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____)	
AMERICAN CIVIL LIBERTIES)	
UNION and THE AMERICAN CIVIL)	
LIBERTIES FOUNDATION)	
)	
Plaintiffs,)	
)	
v.)	Case No. 15-cv-9317 (AKH)
)	
DEPARTMENT OF DEFENSE,)	
et. al.)	
)	
Defendants.)	
_____)	

SUPPLEMENTAL DECLARATION OF ANTOINETTE B. SHINER
INFORMATION REVIEW OFFICER
FOR THE LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

1. I am the Chief of the Litigation Information Review Office of the Central Intelligence Agency ("CIA" or "Agency"). Through the exercise of my official duties, I am familiar with this civil action and the underlying Freedom of Information Act ("FOIA") requests. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

2. The purpose of this declaration is to provide additional detail about the privileged information contained in the twenty-one of the twenty-two documents challenged by

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Plaintiff.¹ As described below, these documents were withheld pursuant to the deliberative process and/or attorney-client privilege because they contain pre-decisional and deliberative communications, recommendations, client confidences and/or legal advice.

3. As a threshold matter, in terms of the attorney-client privileged material at issue here, I want to clarify that CIA attorneys provided legal advice to Agency clients throughout the duration of the former detention and interrogation program. Those lawyers were acting in their legal capacity and not as policymakers. Rather, Agency employees sought legal advice on a range of issues, including the lawfulness of day-to-day operations of the program, and CIA attorneys provided counsel as to the legality of the client's proposed courses of actions. I further note that for all documents for which the attorney-client privilege was asserted, the confidentiality of those communications has been maintained.

4. Document No. 2 is a draft outline, expressly marked "draft," authored by a CIA attorney. The outline contains legal research related to the handling of interrogations. This document is pre-decisional and deliberative because it contains

¹ Specifically, Plaintiffs have challenged document nos. 1, 2, 4, 6, 7, 8, 9, 10, 13, 14, 15, 18, 19, 28, 29, 37, 43, 44, 45, 46, 55 and 66. The CIA has already provided details in the form of a classified, ex parte declaration for document no. 1 and, accordingly, it is not discussed in this declaration.

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draft attorney work product that precedes the attorney's ultimate legal advice to the client on this subject. The attorney-client privilege applies because it was drafted for the purpose of conveying legal advice to the client on this subject.

5. Document No. 4 consists of email exchanges between CIA attorneys entitled "POW's and Questioning," containing legal advice about questioning detainees who are granted POW status.² The document is pre-decisional and deliberative because it contains legal analysis relevant to the client/decisionmaker's ultimate decision as to how to handle interrogations in light of a detainee's status. The attorney-client privilege is also applicable because the emails contain legal advice requested by the Agency client.

6. Document No. 6 is an email forwarding the text of a draft letter to the Attorney General requesting a formal declination of prosecution, expressly designated as a "draft," written by an Agency attorney and forwarded to Agency clients for comment. The document is pre-decisional and deliberative because it is an unfinished, first draft of a letter, which shows the author's initial thought processes. The attorney-client privilege is applicable because it contains information

² The Initial Vaughn index indicated that clients were included on this communication, but the emails were exchanged between attorneys.

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exchanged between the CIA attorney and clients in the furtherance of providing requested legal advice.

7. Document No. 7 is a cable from Agency employees in the field requesting guidance from Headquarters employees regarding the next phase of interrogation of Abu Zubaydah. The cable is pre-decisional and deliberative because it discusses a number of operational and security considerations relevant to the final decisions from Headquarters regarding how to conduct the next phase of the interrogation. The attorney-client privilege is applicable because the communication was sent to CIA attorneys for their legal review of the proposed course of action.

8. Document No. 8 is a cable from Headquarters employees and lawyers to Agency employees in the field providing initial feedback on pending issues related to Abu Zubaydah's interrogation. This cable is pre-decisional and deliberative because it provides preliminary input in advance of a final decision from Headquarters as to how to conduct the next phase of Abu Zubaydah's interrogation and requests additional information from employees in the field for the purpose of making a final decision on the interrogation. The attorney-client privilege is applicable because the cable contains information exchanged by the client under consideration by CIA attorneys for the purpose of providing legal advice on the proposed course of action.

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9. Document No. 9 is a cable from employees in the field to Headquarters requesting guidance/decisions on the next phase of the interrogation of Abu Zubaydah. The cable is pre-decisional and deliberative because it reflects an interim stage of the decisionmaking process - employees in the field are providing their recommendations to Headquarters for approval as to how to conduct the next stage of interrogations. The attorney-client privilege is applicable because the communication is sent to CIA attorneys for their legal review of the proposed course of action.

10. Document No. 10 consists of email exchanges containing communications from CIA attorneys to Agency clients discussing legal advice from the Department of Justice's Office of Legal Counsel on the interrogation of Abu Zubaydah. This document is pre-decisional and deliberative because the legal advice constitutes one consideration for final decisionmakers regarding the conduct of the interrogation, but is not a final Agency decision on the matter. The attorney-client privilege applies because the emails contain legal advice conveyed by CIA/DOJ attorneys to the clients.

11. Document No. 13 consists of two email exchanges containing a communication from an employee at Headquarters to an Agency employee in the field providing information for his consideration on certain activities in the field and a separate

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email from another employee discussing a recommendation for the CIA Director. These emails are pre-decisional and deliberative because they contain recommendations and represent interim stages of decisionmaking.³

12. Document No. 14 is an email from an Agency employee in the field providing an assessment of the situation on the ground to the head of the CIA's Office of Medical Services (OMS). The document is pre-decisional and deliberative because it provides an employee's assessment of ongoing medical issues related to interrogations for the purpose of future decisionmaking by the head of OMS.

13. Document No. 15 is a cable from an Agency employee in the field to Headquarters containing a summary of Abu Zubaydah's interrogation, an assessment of the situation and a recommendation for a plan of action based on that information. The cable requests Headquarters' concurrence with the proposed plan. The document is pre-decisional and deliberative because it recommends a plan of action and requests Headquarters' final decision with respect to that proposal. The attorney-client privilege is applicable because the communication is sent to CIA

³ The ACLU inaccurately characterizes this communication as an admonishment from then-Director of CIA's Counterterrorism Center Jose Rodriguez to "(apparently subordinate) recipients." However, this communication was not authored by Rodriguez.

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attorneys for their legal review of the proposed course of action.

14. Document No. 18 is an email from an Agency employee to his supervisor with the subject "Concerns Over Revised Interrogation Plan for Nashiri" transmitting a draft cable. This document is pre-decisional and deliberative because it is a draft cable submitted to the supervisor for review before finalizing.⁴

15. Document No. 19 is an email containing a memorandum from one Agency employee to another discussing plans for proposed internal training. The memorandum is pre-decisional and deliberative because it provides one employee's recommendation for future training and the development of a curriculum - it is not Agency approved training nor does it represent a final Agency determination.

16. Document No. 28 is a memorandum from OMS providing comments and recommendations to the Office of Inspector General (OIG) regarding a draft version of the OIG's Special Review on the Counterterrorism and Detention Program. This memorandum is pre-decisional and deliberative because it provides one office's recommendations, edits and comments for the OIG's consideration

⁴ The redaction on the first page should simply cite Exemption 6 to protect personally-identifying details. Although an attorney was included in the communication, the attorney-client privilege was incorrectly cited in the original Vaughn index for this document -- only the deliberative process privilege applies.

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in drafting its next version of the Special Review. The final Special Review was produced as part of this litigation (Document No. 32) and the redactions were not challenged by Plaintiffs.

17. Document No. 29 is an email from the CIA General Counsel to Agency clients providing legal advice regarding moving CIA detainees at Guantanamo Bay, Cuba in light of a pending Supreme Court case. The communication is pre-decisional and deliberative because the legal advice constitutes one consideration for final decisionmakers regarding treatment of certain detainees, but is not a final Agency decision on the matter. The attorney-client privilege applies because the emails contain legal advice from an Agency attorney to Agency employees.

18. Document No. 37 is a memorandum for the record documenting discussions between Department of Justice attorneys, CIA attorneys and CIA personnel regarding the use of specific interrogation techniques. The memorandum is pre-decisional and deliberative because it reflects discussions that preceded DOJ's final decision regarding its assessments as to the lawfulness of certain proposed techniques. The attorney-client privilege applies because Agency employees are providing additional details about those techniques to their attorneys in connection with a request for legal advice.

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19. Document No. 43 is an email from OMS employees to CIA attorneys providing comments and concerns regarding a draft of a DOJ legal opinion. The email is pre-decisional and deliberative because it provides input on draft DOJ work product. The attorney-client privilege applies because the communication shows information provided by the client to CIA attorneys, for passage to DOJ attorneys, in furtherance of a request for legal advice.

20. Document Nos. 44, 45 and 46 are emails between CIA attorneys and the Office of Public Affairs (OPA) personnel containing comments on OPA's draft press briefing.⁵ The documents are pre-decisional and deliberative because they consist of recommendations to OPA as to whether and how to present certain information about the detention and interrogation program to the public. These comments reflect interim discussions preceding OPA's proposal to do a press briefing on this subject. The attorney-client privilege applies because CIA attorneys are providing legal advice and highlighting legal concerns and considerations at the request of OPA.⁶

⁵ Document No. 46 contains discussions of OPA's talking points in the context of an Agency's filing in particular criminal matter.

⁶ A portion of this Document No. 44 was inadvertently marked "not responsive." That portion is the request from OPA employees to CIA attorneys requesting their advice on the draft talking points. Accordingly, it is also withheld pursuant to Exemption 5.

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21. Document No. 55 is an email from James Mitchell, an Agency contractor, to Agency supervisors recounting his impressions of a meeting with the CIA Director. This email is pre-decisional and deliberative because it consists of information requested by the Director at the meeting and Mitchell's recommendations on aspects of the detention and interrogation program. This email shows interim discussions related to use of enhanced interrogation methods - it does not reflect a final decision by the Director about the use of those methods.

22. Document No. 66 is a draft memorandum, expressly marked "draft," entitled "Summary and Reflections of Chief Medical Services on OMS Participation in the RDI Program." The document is pre-decisional and deliberative because it is a selective, draft account of one Agency officer's impressions of the detention and interrogation program. This document remained a working draft and was never finalized. It is not the Agency's or OMS's final official history, or assessment, of the program. No medical details were withheld pursuant to Exemptions 1 and 3.

SEGREGABILITY

23. As I explained in the previous declaration, the CIA has conducted a document-by-document and line-by-line review and released all reasonably segregable non-exempt information from

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the above-referenced documents to Plaintiffs. Additional disclosures would reveal classified, privileged and/or statutorily protected information.

24. I note that Plaintiffs assert that factual material should be reasonably segregable from the documents at issue. However, to the extent that records protected by the deliberative process privilege contained factual information, I have determined that those facts are not segregable from the underlying deliberations. During the course of the former interrogation program, there was considerable back-and-forth between Headquarters and the field, supervisors and their reports, and attorneys and clients about handling different aspects of the interrogations. These discussions necessarily required employees to convey facts and situational assessments to the decisionmakers for the purpose of receiving a final decision on outstanding matters. The facts formed an integral part of the decisionmaking process and their disclosure would reveal the deliberations at issue. Furthermore, in over half the documents discussed above, the information withheld pursuant to the deliberative process privilege is also protected by the attorney-client privilege. For attorney client privileged material, factual information was communicated for the purpose of receiving legal advice on a particular subject or conveyed to attorneys for their legal review to ensure that proposed conduct

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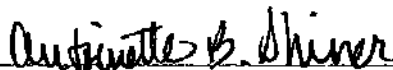
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complied with appropriate legal standards. Accordingly, there are no additional reasonably, segregable information that can be released from these documents.

* * *

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

Executed this 6th day of January 2017.



ANTOINETTE B. SHINER
Information Review Officer
Litigation Information Review
Office
Central Intelligence Agency

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
1	C06541502	This document is a Memorandum of Notification. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods. Exemption (b)(5) was asserted to protect presidential communications provided from the President to the Executive Branch.	9/17/2001	--	(b)(1) (b)(3) Nat'l Sec Act (b)(5)	DIF (Denied in Full)
2	C06541504	This is a document marked "draft" entitled "Handling Interrogations." This document is an unfinished outline authored by a CIA attorney containing legal research related to interrogations. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (classified information related to Agency intelligence activities generally and dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which was drafted for the purpose of conveying legal advice.	11/7/2001	3	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	DIF

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
4	C06552082	This document consists of email exchanges between CIA attorney's personnel regarding the POW status and questioning of detainees. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	2/1/2002	3	(b)(3) CIA Act (b)(5) (b)(6)	RIP (Released in Part)

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
6	C06541505	This document is an email from a CIA attorney to Agency component personnel forwarding a draft letter to the Attorney General regarding the former detention and interrogation program. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles, email addresses, Agency identification numbers and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged between the Agency attorney and Agency clients in furtherance of providing requested legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	7/8/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
7	C06541506	This document is a cable entitled "Eyes Only – Additional Operational and Security Considerations for the Next Phase of Abu Zubaydah Interrogation." This is a communication between an Agency client and OGC attorney providing information in connection with a request for legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (titles, office information, functions and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requested legal advice.	7/15/2002	6	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
8	C06541507	This document is a cable entitled "Eyes Only - HQS Feedback on Issues Pending for Interrogation of Abu Zubaydah." The cable is from Headquarters employees and lawyers to Agency employees in the field providing initial feedback on pending issues related to Abu Zubaydah's interrogation. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles, office information and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requested legal advice.	7/18/2002	5	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
9	C06541508	This document is a cable entitled "Eyes Only - Next Phase of Abu Zubaydah Interrogations." This is a communication between an Agency client and OGC attorney providing information in connection with a request for legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (detention locations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (titles, office information, Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice.	7/26/2002	3	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
10	C06541711	This document consists of email exchanges from CIA attorneys to Agency component personnel providing legal guidance provided by DOJ attorneys. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (detention location and classification block). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles, email addresses, Agency identification numbers, telephone numbers, office information). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which conveys legal advice provided by DOJ attorneys. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	7/26/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
13	C06551084	This document is an email between Agency employees providing opinions and assessments of ongoing issues about, and recommending next steps for, detention and interrogation activities. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names and email addresses). Exemption (b)(5) was asserted to protect pre-decisional Intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	8/12/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP
14	C06541509	This document is an email between Agency component personnel providing opinions and assessments of ongoing issues about, and recommending next steps for, detention and interrogation activities. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installation). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	8/15/2002	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
15	C06541510	This document is a cable entitled "Eyes Only - Statue of Interrogation Phase." This is a communication from an Agency employee in the field to Headquarters containing a summary of Abu Zubaydah's interrogation, an assessment of the situation and a recommendation based on that information. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (foreign liaison and government information, field installations, code word and pseudonyms, and dissemination and control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (titles, functions and office information). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice.	8/20/2002	5	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
17	C06541515	This document is a draft memorandum from Deputy Assistant Attorney General to CIA General Counsel. CIA made one discrete redaction pursuant to Exemptions (b)(1) and (b)(3) (National Security Act), which applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (CIA intelligence activities). CIA is also asserting Exemption (b)(5) to protect pre-decisional inter-agency deliberations and legal advice protected by the attorney-client privilege for the reasons set forth in the Declaration of Paul Colborn dated October 14, 2016	1/9/2003	8	(b)(1) (b)(3) Nat'l Sec Act (b)(5)	RIP (Referred record)
18	C06541511	This document is an email from an Agency employee to a supervisor with the subject "Concerns Over Revised Interrogation Plan for Nashiri." Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installation). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, internal offices, Agency identification numbers and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	1/22/2003	3	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
19	C06541516	This document consists of an email containing a memorandum from one Agency employee to another discussing proposed internal training. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (name of covert employee). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	1/22/2003	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
28	C06541527	This document is a memorandum provided by the Office of Medical Services to the CIA Office of Inspector General containing comments on the OIG's "Draft Special Review – Counterterrorism Detention and Interrogation Program." The final version of the Special Review appeared as document no. 32 on the ACLU's list. The ACLU is not challenging any of the redactions to the Special Review. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (field installation and dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect the names of individuals named in the report.	1/13/2004	18	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
29	C06552087	This document is an email with the subject "CIA Detainees at GITMO." This is a communication from the CIA General Counsel to Agency clients providing legal guidance. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (sources and methods related to the former detention and interrogation program). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names and email addresses). Exemption (b)(5) was asserted to protect pre-decisional analysis, recommendations and deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	2/3/2004	1	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
37	C06541533	This document is a memorandum for the record documenting a discussions between Department of Justice attorneys, OGC attorneys and Agency officials regarding specific interrogation techniques. Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (dissemination/control markings). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains information exchanged in furtherance of requesting legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	8/27/2004	4	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
43	C06552088	This document is an email with the subject "8 April Draft Opinion from DoJ – OMS Concerns." This is a communication from Agency clients to a CIA attorney providing comments and concerns on a draft DOJ legal opinion. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email address and telephone numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/11/2005	3	(b)(3) CIA Act (b)(5) (b)(6)	RIP
44	C06552089	This document consists of email exchanges between CIA attorneys and CIA Office of Public Affairs personnel providing legal advice on draft talking points related to the interrogation program. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and office locations). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/20/2005	2	(b)(3) CIA Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
45	C06541520	This document consists of email exchanges between CIA attorneys and CIA Office of Public Affairs personnel providing legal advice on draft talking points related to the interrogation program. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/21/2005	1	(b)(3) CIA Act (b)(5) (b)(6)	RIP
46	C06541521	This document consists of email exchanges between CIA attorneys and legal staff containing comments on OPA's draft press briefing. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. In addition, the attorney client privilege was also asserted to protect this document, which contains legal advice. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	4/25/2005	1	(b)(3) CIA Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
50	C06541716	This document is a memorandum from Inspector General John Helgerson to the Director of the CIA with the subject "Recommendation for Additional Approach to the Department of Justice Concerning Legal Guidance on Interrogation Techniques." Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, email addresses, telephone numbers and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations in the form of recommendations made by the Inspector General.	5/26/2005	5	(b)(3) CIA Act (b)(5) (b)(6)	RIP
55	C06552090	This document is an email between Agency employees with the subject "Dr. Mitchell's 7 June Meeting with DCI." Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (cover personnel). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names and email addresses). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations consisting of recommendations and discussions related to how to handle certain aspects of the interrogation program. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	6/7/2006	2	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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Doc. No.	CADRE No.	Description	Date of Doc.	No. of Pages	Exemptions Cited	Disposition
66	C06541727	This is a document entitled "Summary and Reflections of Chief of Medical Services on OMS Participation in the RDI Program" stamped "draft." Exemptions (b)(1) and (b)(3) (National Security Act) applies to certain material that is classified under 1.4(c) of E.O. 13526 and reflects intelligence sources and methods (dissemination/control markings, CIA intelligence activities, counterterrorism techniques, field installations). Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names, titles and Agency identification numbers). Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations. Exemption (b)(6) was asserted to protect personally identifying information of individuals.	Undated	89	(b)(1) (b)(3) CIA Act (b)(3) Nat'l Sec Act (b)(5) (b)(6)	RIP

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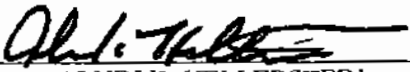
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review, and on July 27, 2017, I held a second *ex parte* session with the Government in my chambers, at which I delivered my final rulings with respect to Document 1, providing a more detailed, public explanation for that decision. The transcript of the July 27 session, which is attached to this Order as Appendix A, contains no redactions, and serves as my final ruling with respect to Document 1.

An opinion addressing the remaining documents at issue, including Documents 10 and 66, will be forthcoming.

SO ORDERED.

Dated: July 31, 2017
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge

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Appendix A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES
UNION, et al.,

Plaintiffs,

v.

15 CV 9317 (AKH)

THE DEPARTMENT OF DEFENSE, et
al.,

Defendants.
-----x

New York, N.Y.
July 27, 2017
12:00 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
BY: SARAH NORMAND
Assistant United States Attorney

ALSO PRESENT: Michael Sochynsky, law clerk

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1 (In chambers)

2 THE COURT: This is an ex parte in camera session
3 convened pursuant to my request. Present is Sarah Normand, who
4 is representing the government; my law clerk, Michael
5 Sochynsky, who has been cleared for all but the particular
6 document in issue; and the court reporter, who is not cleared
7 to read the particular document. The reporter who is cleared
8 is not available today. However, my rulings will not describe
9 the document, except that which already has been used to
10 describe it publically.

11 Therefore, after having discussed the particular issue
12 with Ms. Normand, we thought it appropriate to issue these
13 rulings publically but subject to a caveat without the need to
14 exclude my law clerk and to use Ms. Thun as the reporter. The
15 caveat is that although I intend this to be public, the
16 government wishes 24 hours to review the transcript to make
17 sure that there has been no error in allowing it to be public.
18 Therefore, the government has leave to make that review and to
19 make whatever application it thinks fit by, let us say, the
20 close of business Monday.

21 MS. NORMAND: Thank you, your Honor.

22 THE COURT: This proceeding came about because I
23 wanted to delay issuing my opinion on the rulings I made when I
24 last heard this case on March 29th, 2017. Because of the
25 importance of the various rulings I made in respect to the

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1 importance of the documents I reviewed, I wanted time to ask so
2 that the initial responses I made would have time to sit and I
3 could then as necessary conduct additional reviews. To that
4 end I asked Ms. Normand if she would bring to chambers the
5 particular document, which we are discussing now, the
6 presidential memorandum of notification, which has been argued
7 by the government to qualify as exempt from production.

8 Regarding this document, the government states that it
9 made certain findings and authorized the CIA to capture and
10 detain terrorists, and in the amended Vaughn Index exemptions
11 were justified on the argument that the material was properly
12 classified because it reflects intelligence sources and
13 methods. The government stated that the memorandum of
14 notification was a highly classified and extraordinarily
15 sensitive document. In a document submitted to me *in camera* --
16 may I identify the declaration?

17 MS. NORMAND: Yes.

18 THE COURT: -- Ms. Shiner's declaration, the
19 government states that its identification was sufficient
20 because the very description of the document would necessarily
21 disclose the classified information it seeks to protect.

22 ACLU argued that the government did not sufficiently
23 justify its withholding under Exemptions 1 and 3 with
24 reasonable specificity and without resort to conclusory and
25 generalized allegations of exemption. The ACLU argued that the

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1 Court is required to require the agency to create as full a
2 public record as possible concerning the nature of the
3 documents and the justification for nondisclosure.
4 Furthermore, in camera affidavits should be discouraged because
5 of their negative impact on the effective functioning of the
6 adversarial system. The ACLU argued that it did not have a
7 meaningful opportunity to challenge the grounds for withholding
8 set out in an affidavit it could not see and the ACLU argued
9 that there already is in the public sphere a more detailed
10 description of this same memorandum of notification.

11 In related litigation, 04-cv-4151, there is the Dorn
12 declaration found at Docket NO. 226 at paragraph 67, in which
13 the government identified the length of the document, the fact
14 that the author of the document was the President, to whom the
15 document was distributed, who authored the 2-page cover
16 memorandum, and the substance of the memorandum generally.
17 Additionally, the Senate Report quoted a sentence from the
18 memorandum of notification and the citation is Docket No. 53-22
19 at page 36 as follows: "On September 17, 2001, President Bush
20 issued a memorandum of notification that authorized the CIA,
21 among other things -- and there is something redacted -- to
22 conduct operations designed to capture and detain persons
23 posing continuing serious threats of violence or death to U.S.
24 persons of interest or who are planning terrorists activities.
25 In light of this, the ACLU argued that the government's