

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. )

DEPARTMENT OF DEFENSE, )  
et. al. )

Defendants. )

Case No. 15-cv-9317 (AKH)

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

Plaintiff.<sup>1</sup> 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

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<sup>1</sup> 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.

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.<sup>2</sup> 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

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<sup>2</sup> The initial Vaughn index indicated that clients were included on this communication, but the emails were exchanged between attorneys.



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.

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

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.<sup>3</sup>

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

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<sup>3</sup> 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.



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.<sup>4</sup>

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

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<sup>4</sup> 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.

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.



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.<sup>5</sup> 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.<sup>6</sup>

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

<sup>6</sup> 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.

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

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




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

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

Executed this 6th day of January 2017.

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