



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

June 14, 2017

BY ECF & HAND DELIVERY

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007

Re: *ACLU et al. v. Department of Defense et al.*, No. 15 Civ. 9317 (AKH)

Dear Judge Hellerstein:

We write respectfully on behalf of Defendants (the “government”) in response to Plaintiffs’ letter dated June 9, 2017 (Dkt. No. 74), to provide the Court with further information regarding the decision of the U.S. District Court for the Eastern District of Washington in *Salim v. Mitchell*, as it relates to certain documents sought by the Plaintiffs in the above-referenced Freedom of Information Act (“FOIA”) case.

As Plaintiffs note in their letter of June 9, 2012, the court in *Salim v. Mitchell* concluded that the document designated document no. 9 in this case (document no. 157 in *Salim*) is not protected by the deliberative process privilege. The government disagrees with that ruling, and notes that this Court reached a contrary conclusion after reviewing the document *in camera*. See Tr., Mar. 29, 2017, at 14:18-15:9. Nevertheless, the government has reprocessed and released the document to the parties in *Salim* and to the Plaintiffs in this case without redactions of the deliberative process material. A copy of the reprocessed version of document no. 9 is attached for the Court’s reference.

Because the Plaintiffs have not challenged the remaining redactions to document no. 9, which address information withheld under FOIA exemptions 1 and 3, document no. 9 is no longer at issue in this case.

We thank the Court for its consideration of this letter.

Respectfully,

JOON H. KIM
Acting United States Attorney

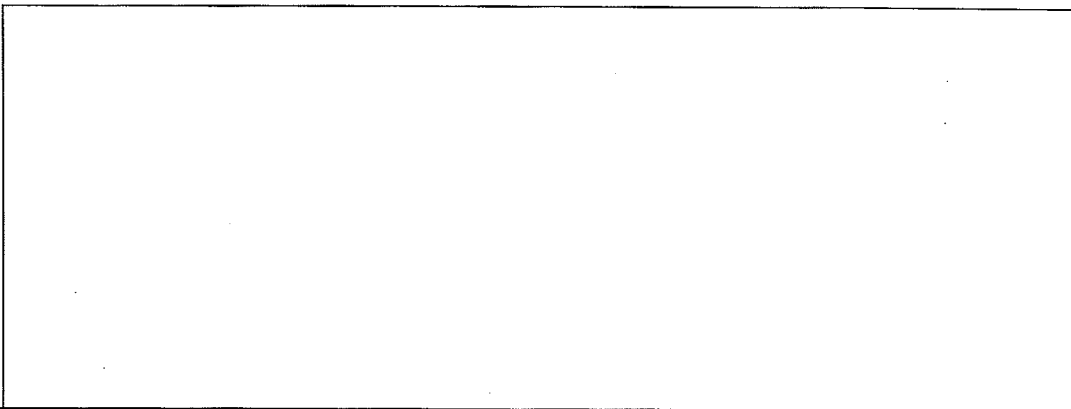
By: /s/
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Encl.

cc: Counsel of record

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CITE [redacted] 10568

TO: IMMEDIATE ALEC INFO DIRECTOR [redacted]

FOR: [redacted]

SLUGS: [redacted]

SUBJECT: EYES ONLY - NEXT PHASE OF ABU ZUBAYDAH INTERROGATIONS

- REF: A. DIRECTOR 381196 | [redacted]
- B. [redacted] 10564 | [redacted]
- C. [redacted] 73208 | [redacted]
- D. DIRECTOR 375769 | [redacted]
- E. ALEC 182613 | [redacted]
- F. [redacted] 10553 | [redacted]

TEXT:

1. ACTION REQUIRED: -- REQUEST ALEC/HEADQUARTERS' GUIDANCE/DECISION IN IMPLEMENTATION OF THE AGGRESSIVE INTERROGATION PHASE AS RECOMMENDED PER PARAS 2-4 BELOW;

-- REQUEST ALEC/HQS CONCURRENCE TO SUGGESTED REF F ADJUSTMENTS TO THE PROTOCOL IN PREPARATION FOR THE NEXT INTERROGATION PHASE (PLS SEE PARA 5 BELOW).

2. IN RESPONSE TO REF A, IT IS [redacted] RECOMMENDATION THAT HQS DECIDE TO AWAIT A FINAL DECISION ON USE OF THE "WATERBOARD" TECHNIQUE PRIOR TO IMPLEMENTATION OF THE AGGRESSIVE PHASE. AS STATED IN PREVIOUS TRAFFIC, OUR UNDERSTANDING OF THE OBJECTIVE OF THE AGGRESSIVE PHASE OF INTERROGATION IS TO ACHIEVE A HIGH DEGREE OF CONFIDENCE THAT ((ABU ZUBAYDAH)) (SUBJECT) IS NOT HOLDING BACK ACTIONABLE INFORMATION CONCERNING THREATS AGAINST THE UNITED STATES. TO ACHIEVE THIS HIGH LEVEL OF CONFIDENCE, THE USE OF AN ABSOLUTELY CONVINCING TECHNIQUE IS REQUIRED. ANYTHING LESS WOULD LEAVE OPEN THE POSSIBILITY THAT SUBJECT IS WITHHOLDING CRITICAL INFORMATION. IN OUR BEST JUDGMENT, THE MEASURES APPROVED, WHILE NECESSARY, ARE NOT

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SUFFICIENT TO ACHIEVE THE REQUIRED HIGH CONFIDENCE LEVEL. IF OUR UNDERSTANDING OF ALEC/HQS INTENT IS CORRECT, RECOMMEND NOT/NOT COMMENCING THE RATCHETING UP OF PRESSURES UNTIL THE WATERBOARD APPROVAL ISSUE IS RESOLVED.

3. WHILE WE CANNOT SCRIPT THE PLAY-BY-PLAY OF THE NEXT PHASE OF INTERROGATIONS, WE DO NOTE THAT USE OF THE WATERBOARD WOULD LIKELY BE EMPLOYED WITHIN 8-12 HOURS OF BEGINNING THE AGGRESSIVE PHASE OF INTERROGATIONS PHASE. THEREFORE, APPROVAL OF THIS TOOL IS NECESSARY IN ORDER TO EFFECTIVELY EMPLOY THE OTHER ITEMS ALREADY APPROVED IN REF A. IN OTHER WORDS, WITHOUT THE WATERBOARD, THE ALREADY APPROVED PRESSURES WOULD CONSTITUTE A 50 PERCENT SOLUTION AND THEIR EFFECTIVENESS WOULD DISSIPATE PROGRESSIVELY OVER TIME AS SUBJECT FIGURES OUT THAT HE WILL NOT BE PHYSICALLY BEATEN AND AS HE ADAPTS TO CRAMPED CONFINEMENT. IF WE USE THESE TECHNIQUES ALONE WE MAY NOT BE ABLE TO APPLY ENOUGH FORCE TO MAKE THEM ABSOLUTELY CONVINCING. IF WE USE THE APPROVED PRESSURES, SUBJECT ADAPTS TO THEM AND THEN ALEC/HQS LATER APPROVES THE WATERBOARD TECHNIQUE, THE INITIAL EFFECTIVENESS OF THE APPROVED PRESSURES HAS BEEN COMPROMISED. INTERROGATORS (IC SERE PSYCHOLOGISTS) WOULD THEN HAVE TO USE THE APPROVED PRESSURES EVEN MORE INTENSELY TO OVERCOME SUBJECT'S EXPANDED CONFIDENCE THAT HE CAN HOLD OUT.

4. THE WATERBOARD TECHNIQUE REMAINS THE IC SERE PSYCHOLOGISTS' RECOMMENDED, ABSOLUTELY CONVINCING TECHNIQUE FOR THE AGGRESSIVE PHASE. IF IT IS DISAPPROVED, HOWEVER, RECOMMEND RELOOKING AT THE INTERROGATION PLAN AS CURRENTLY ENVISIONED RATHER THAN EXERCISE A 50 PERCENT SOLUTION. WOULD WELCOME ALEC/HQS COMMENTS/GUIDANCE RE ABOVE SUGGESTED COURSE OF ACTION.

5. SEPARATELY, AS PRESENTED IN REF F, CRITICAL TO THE NEXT INTERROGATION PHASE AND DIRECTLY RELATED TO SECURITY STAFF BRIEFINGS ARE ALEC/HQS COMMENTS/CONCURRENCE ON THE ADJUSTMENT IN LARGE CONFINEMENT BOX/DRESSING CHANGE PROTOCOLS, WHICH NEED TO BE PROPERLY REHEARSED. REF D ADVISED THAT REF F REQUEST WOULD BE ADDRESSED IN SEPARATE MESSAGE. WOULD APPRECIATE RECEIPT OF CONCURRENCE TO REF F SUGGESTED ADJUSTMENTS TO THE PROTOCOL IN PREPARATION FOR THE NEXT INTERROGATION PHASE. REGARDS.

END OF MESSAGE

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