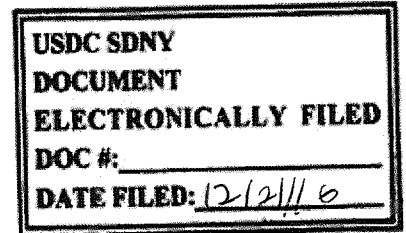


LEGAL DEPARTMENT



December 19, 2016

By ECF

Hon. Kimba Wood
United States District Judge
United States Courthouse
500 Pearl Street, Rm. 1610
New York, NY 10007

Re: *ACLU, et al. v. National Security Agency, et al.*,
13 Civ. 9198 (KMW)

Dear Judge Wood:

In light of the recent reassignment of the above-captioned case from the Hon. Analisa Torres to this Court, Plaintiffs and Defendants write jointly to update the Court on the status of the case and to request that their cross-motions for partial summary judgment be reinstated.

Plaintiffs, the American Civil Liberties Union and American Civil Liberties Union Foundation, brought this suit under the Freedom of Information Act, 5 U.S.C. § 552, seeking the release of records concerning the legal boundaries of the government's surveillance under Executive Order (EO) 12,333. As modified through negotiations with Defendants,¹ Plaintiffs' requests seek EO 12333 implementing regulations, formal training materials, official authorizations of surveillance programs, and legal opinions addressing surveillance under EO 12333 that implicates Americans.

Following Defendants' document productions, the parties engaged in discussions to narrow the scope of the litigation over the hundreds of documents that Defendants withheld in full or produced with redactions. The parties agreed to limit litigation to a subset of representative documents, and they subsequently cross-moved for partial summary judgment on two issues: (1) the lawfulness of the agencies' withholdings and redactions, and (2) the adequacy of the searches conducted by all agencies, except for OLC. *See* ECF Nos. 58 & 69.

¹ The seven defendant agencies are the Central Intelligence Agency ("CIA"), the Defense Intelligence Agency ("DIA"), the State Department, the Federal Bureau of Investigation ("FBI"), the National Security Agency ("NSA"), the National Security Division of the Department of Justice ("NSD"), and the Office of Legal Counsel of the Department of Justice ("OLC").

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In the government's reply memorandum, the State Department explained that it had recently identified 35 boxes of files that had not been reviewed for documents responsive to Plaintiffs' request. *See* Def. Reply Mem. 56-57 (ECF No. 75). On August 18, 2016, the Court ordered the State Department to review those materials by September 30, 2016. *See* ECF No. 83. Pending that review, the Court held the parties' cross-motions in abeyance, and it directed the Clerk of Court to terminate the cross-motions. *Id.* On September 26, 2016, the State Department informed the Court that it had completed its supplemental review and found no new responsive documents. *See* ECF No. 86. Plaintiffs responded on September 29, 2016, requesting that the Court reinstate their cross-motion for partial summary judgment.² *See* ECF No. 87. The following day, Defendants likewise requested that their motion for partial summary judgment be reinstated. *See* ECF No. 88. Based on the public docket, it appears that the Court did not address the parties' letters before the case was reassigned.

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The parties therefore respectfully request that the Court reinstate their cross-motions for partial summary judgment. We thank the Court for its consideration.

SO ORDERED.

Dated: December 21, 2016
New York, New York


KIMBA M. WOOD
U.S.D.J.

Respectfully submitted,

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² In that letter, Plaintiffs stated that they were no longer seeking: (i) a series of deadlines for the State Department to review the material in the newly discovered boxes, and (ii) disclosure of the "Classified Annex to DoD Procedures Under EO 12333." *See* ECF No. 87.

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