

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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JOHN DOE,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 1:17-cv-2069 (TSC)
	)	
GEN. JAMES N. MATTIS,	)	██████████
in his official capacity as SECRETARY	)	
OF DEFENSE,	)	
	)	
Respondent.	)	

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**NOTICE**

Respondent respectfully submits this Notice in order to apprise the Court of an inadvertent breach on the part of the Department of Defense (“DoD”) of attorney-client communications between Petitioner and his American Civil Liberties Union Foundation (“ACLUF”) attorneys. DoD deeply regrets this incident, and counsel for Respondent have conferred with Petitioner’s counsel regarding appropriate remedial steps, to which Petitioner’s counsel has agreed, as set forth below.

As described in the attached declarations, on April 23, 2018, a DoD employee became aware that telephone calls between Petitioner, from his location within a DoD facility in Iraq, and his attorneys, who were using a conference room within the United States Attorney’s Office of the Southern District of New York (“SDNY”), had been recorded as part of routine DoD security monitoring of DoD telecommunications systems. Although Petitioner had originally communicated with ACLUF attorneys via systems that were not screened or recorded and that involved Petitioner’s ACLUF attorneys having to travel to the Washington, D.C., area, DoD had arranged for telephone calls to SDNY, beginning on ██████████ 2018, in order to facilitate

communications between Petitioner and his attorneys, based in New York City, in a fashion more convenient for Petitioner's counsel and not requiring counsel's travel to the Washington, D.C., area. Unfortunately, however, the DoD personnel who arranged for those calls were not aware the telephone lines used for the calls would be monitored.

As explained in the attached declarations, security monitoring operations unrelated to this litigation are conducted to ensure the security of DoD telecommunications systems. Part of those operations involved the recording of telephone calls from DoD telephones and placement of the recordings in a database. An analyst who had no involvement either with Petitioner or with this habeas proceeding, and who was screening recorded calls as part of the security monitoring program, ascertained that a number of calls between Petitioner, at the facility where he is held, and his attorneys, while at SDNY, had been recorded.

Upon realizing that the communications between Petitioner and his attorneys had been recorded, DoD took immediate steps to isolate those recordings, removing them from the database of recorded calls, placing them on a CD, and securing the CD in a safe. Only one DoD employee, the analyst referenced above, has listened to any portion of these calls. As explained, that employee has no involvement either with Petitioner, with detention operations, or with this habeas proceeding. The employee has been instructed not to reveal the content of what he heard, and he attests in a declaration attached hereto that he has not revealed the content of the calls and will not reveal their content in the future.

The Department of Justice ("DOJ") attorneys representing DoD in this action notified Petitioner's counsel about what had happened in person on April 27, 2018. Since that time, DoD, through its DOJ counsel, and Petitioner's counsel have communicated regarding how to proceed.

DoD provided Petitioner's counsel with drafts of the attached declarations in an effort to ensure that the declarations described what had occurred in sufficient detail and addressed any questions that Petitioner's counsel had. DoD also proposed that it would destroy the CD containing the sole remaining copies of the recordings. ACLUF has agreed to DoD's proposed remedial steps, and in response to ACLUF's request, DoD will create a copy of the CD (omitting metadata that cannot be shared with ACLUF) and provide it to ACLUF. DoD will then destroy the original CD. And with respect to the attached declarations, Respondent is redacting information from the filed public versions at the request of ACLUF.<sup>1</sup>

Again, Respondent regrets this incident. Since the time that this incident was discovered, DoD has been able to provide Petitioner and his counsel with access to unmonitored forms of communication at locations in the New York City area, and anticipates that it will continue to be able to provide such access going forward, as needed.

June 1, 2018

Respectfully submitted,

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Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer  
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Senior Counsel  
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Senior Trial Counsel, Federal Programs

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<sup>1</sup> All information redacted from the filed public versions has been redacted at the request of ACLUF, with the exception of the declarants' names, which Respondent has redacted for the reasons stated in footnote 1 of the first attached declaration.

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