

U.S. Department of Justice

United States Attorney
Southern District of New York



MEMO ENDORSED

86 Chambers Street
New York, New York 10007

April 9, 2012

APR 9 2012
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF
NEW YORK
COLLEEN MCMAHON

BY FACSIMILE

Hon. Colleen McMahon
United States District Judge
United States Courthouse
500 Pearl Street, Room 1350
New York, New York 10007

Re: New York Times v. Department of Justice
11 Civ. 9336 (CM)

ACLU v. Department of Justice
12 Civ. 794 (CM)

*4/9/12
OK, but don't ask
many more times
If government official
can give speeches about
this matter without creating
security problems, as
in other agencies
can*

Colleen McMahon

Dear Judge McMahon:

We write respectfully on behalf of defendants the Department of Justice and its component, the Office of Legal Counsel; the Department of Defense and its component, the United States Special Operations Command; and the Central Intelligence Agency (collectively, the "Government") in the above-named related cases brought pursuant to the Freedom of Information Act ("FOIA") to request a ten-day extension of the Government's deadline to file a motion for summary judgment in these cases, and to seek leave to file a consolidated brief of up to forty pages in both cases in support of the Government's motion for summary judgment.

Pursuant to the schedule ordered by the Court at the conference in this matter on February 24, 2012, the Government's motion is presently due on April 13, 2012. The agencies have been working diligently to meet this deadline and have made significant progress. Nevertheless, in the unique circumstances presented by these cases, we are constrained to ask the Court for an additional ten days in which to complete processing of the FOIA requests and prepare and finalize the Government's motion papers.

As the Court is aware, these case involve FOIA requests for legal analysis and other records pertaining to the alleged use of targeted lethal force against U.S. citizens associated with al Qaeda and other terrorist groups. The agencies and their relevant components are reviewing and processing documents responsive to the requests for legal analysis, and in some cases are conducting additional searches. Many of the responsive documents are highly classified, and access to them is restricted to a relatively small number of personnel who possess the necessary clearances, who may review the documents only in appropriate secure facilities. Further, because

of the nature of the documents at issue, many of which involve inter-agency deliberations, the processing of documents and preparation of declarations to support the agencies' withholdings require substantial coordination between and among the relevant agencies and components. We anticipate that the Government's motion will be supported by multiple agency declarations, including *ex parte* classified declarations to the extent the Government's justifications are themselves classified. However, although the agencies are preparing these declarations, they cannot be finalized and approved (and the Government's brief in turn finalized and reviewed) until the processing of documents has been completed. The Government's efforts to meet the April 13 deadline have also been hampered by the fact that many agency personnel either have been or will be out of the office in connection with the Easter and Passover holidays.

We recognize and appreciate the Court's desire to resolve this case expeditiously, and we have been working closely with the agencies to meet the schedule set by the Court. However, in light of the additional complications and difficulties presented by the documents in this case, and the important national security interests at stake, we respectfully request an additional ten days to complete the work that needs to be done to fully and appropriately present the Government's position to the Court. Counsel for plaintiffs in both cases do not consent to a ten day extension, but take no position on a seven day extension. While we appreciate counsel's neutrality with respect to a shorter amount of time, we ask the Court's indulgence for a full ten days in order to accommodate the very difficult logistical issues inherent in a highly classified and complex filing.

The Government also requests leave to submit a consolidated brief of up to forty pages in support of its motion for summary judgment in both cases. A consolidated brief would avoid duplication, as the Court requested at the initial conference in this matter, and allow the Government to efficiently address issues that overlap between the cases. The Court recently granted the ACLU leave to submit a forty-page brief in opposition to the Government's motion and in support of its cross-motion. We anticipate that the Government's consolidated opening brief similarly can be limited to forty pages.

We thank the Court for its consideration of this request.

Respectfully,

STUART DELERY
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