

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION.)	
AMERICAN CIVIL LIBERTIES UNION)	
FOUNDATION)	
)	
Plaintiffs,)	
)	No. 09 Civ. 8071 (BSJ)(FM)
v.)	
)	DECLARATION OF
DEPARTMENT OF DEFENSE; CENTRAL)	MAJOR GENERAL MICHAEL T.
INTELLIGENCE AGENCY; DEPARTMENT)	FLYNN
OF STATE; DEPARTMENT OF JUSTICE,)	
)	
Defendants,)	
)	

Pursuant to 28 U.S.C. §1746, I, Major General Michael T. Flynn, U.S. Army declare as follows:

1. I am the Director of Intelligence for the International Security Assistance Force (ISAF) and the United States Army Forces—Afghanistan (USFOR-A), and have held this position since 15 June 2009. In this capacity, I am responsible for the management of the Combined Intelligence Operations section at ISAF and USFOR-A which provides intelligence services and oversight for all US military and ISAF personnel in Afghanistan. Immediately prior to assuming my current duties at ISAF/USFOR-A, I was Director of Intelligence, Joint Staff from July 2008 to June 2009. I also served as the Director of Intelligence, US Central Command (CENTCOM) from June 2007 and as the Director of Intelligence for Joint Special Operations

Command from July 2004 to June 2007, as well as several other command and leadership positions in the U.S. Army.

2. As the ISAF/USFOR-A Director of Intelligence, I am responsible for the review of ISAF/USFOR-A information for classification purposes as authorized by Executive Order (E.O.) 12958, as amended by E.O. 13292, and declarations in support of classifications leading to withholdings under Exemption 1 of the FOIA. As the ISAF/USFOR-A Director of Intelligence, I am also responsible for the collection of intelligence in support of ISAF/USFOR-A operations including the collection of intelligence from detainee operations. In my capacity as ISAF/USFOR-A Director of Intelligence, I make this detailed declaration to explain the basis for withholding information from a particular record responsive to plaintiff's FOIA request pursuant to FOIA exemptions 1 and 2, 5 U.S.C. §552(b)(1) and (2).

3. In my capacity as ISAF/USFOR-A Director of Intelligence, I am the principal advisor on classification issues to the Commander of USFOR-A who has been designated as an Original Classification Authority (OCA) pursuant to E.O. 12958, as amended by E.O. 13292. I am also familiar with relevant security classification determinations made by relevant OCAs with respect to detainee operations.

4. On 23 April 2009, the American Civil Liberties Union Foundation (ACLU Foundation) sent a FOIA request to several U.S. government agencies, including the Department of Defense (DoD) Office of Freedom of Information and Security Review, seeking "records pertaining to the detention and treatment of prisoners held at the Bagram Theater Internment Facility at Bagram Airfield in Afghanistan, including records concerning the process afforded these prisoners to challenge their detention and designation as enemy combatants." On 22 September 2009, plaintiffs ACLU and the ACLU Foundation filed suit to compel the DoD to

“disclose a document that lists each Bagram detainee’s name, citizenship, length of detention, and place of capture.” The responsive document at issue at this time is a spreadsheet list prepared by the DoD’s National Detainee Reporting Center that contains information about the Bagram detainees, in the following 12 enumerated fields: detainee’s full registration number (commonly known as the Internee Serial Number or “full ISN”); an abbreviated sequence number (commonly known as the “six digit ISN” that abbreviates the six digits that appear within the full ISN); detainee’s last name, first name, second name, third name; detainee’s citizenship; detainee’s capture date, the date of the report, days detained, detainee’s capture location, and circumstances of the detainee’s capture. On March 10, 2010, the plaintiffs filed a Motion for Summary Judgment along with a Memorandum in Support of this motion challenging DoD’s withholding of the full ISN, detainee citizenship, capture date, capture location, circumstances of capture, and the total number of days retained.

5. The detainee’s citizenship, when connected to the detainee’s description and positive identification, could hinder future intelligence collection efforts by revealing sources, methodology, and ultimately levels of cooperation/opposition. Revealing the citizenship of these individuals already identified by name could put them in greater jeopardy for retaliation when repatriated. The release of a detainee’s citizenship could cause damage to future military plans, operations, and detainee operations by influencing various segments of the population. For example, if the citizenship information revealed that a large number of detainees were from a particular country or countries, this information, when combined with the other information, could assist the enemy in predicting the direction of our future military operations which may target areas heavy with this citizenship demographic and meeting other criteria. Also, detainee movement operations could be impacted as these detainees are released to their country or

countries of citizenship. Further, the strategic implications of the citizenship of detainees could negatively influence diplomatic relations with other countries, in particular, the country or countries of which such detainees are citizens. Specifically, intelligence methods and planning is directly impacted as the citizenship of the detainee, when analyzed along with other information disclosed, places intelligence in the proper context for the opposition which impacts intelligence analysis, fusion, and reporting. Section 1.4(a) and (c) of E.O. 13292.

6. Release of detainees' capture dates could assist persons hostile to the United States in establishing a chronological pattern or identifying operational strategies which could be used to assist them in hiding or evading future intelligence gathering efforts, and anticipating counterterrorism or counterinsurgency efforts. With resources currently available on the internet and in the community, the capture dates could provide enemies of the United States with critical intelligence in relation to the time our forces or coalition forces captured the individual detainee which, coupled with the place and the circumstances of those captures, could reveal too much concerning military standard operating procedures (SOPs) and our secret rules of engagement. The release of the detainees' capture dates could damage future military plans, intelligence activities, intelligence sources, and intelligence methods. The capture dates, in conjunction with other information addressed below, could provide organizations with insights into past and current strategies and tactics in military operations that lead to capture of the enemy. Further, the public release of this combined information could provide material assistance to those who wish to penetrate, detect, prevent, avoid or otherwise damage the intelligence and detainee operations of the United States and might allow individuals of intelligence interest to anticipate and immunize themselves from such procedures. Section 1.4(a) and (c) of E.O. 13292.

7. The capture locations of the detainees could be critical information, showing the presence of United States or other coalition forces in a particular geographic location, and when all the capture locations are released simultaneously, this valuable intelligence could allow the enemy to map the historical movement of US forces, making us predictable and vulnerable to unanticipated surprise reprisals. The release of the detainees' capture locations could cause damage to military plans, intelligence activities, intelligence sources, and intelligence methods and could create a life and physical safety risk for any US personnel still at these locations. If these detainees were captured after actual combat with US forces, then the capture locations could assist the enemy in locating actual battle sites. Also, too much information about the date, time, location, and circumstances of detention could allow the enemy to detect some of the United States' sources of intelligence that led to the capture of enemy combatants. This cumulative revelation would significantly disrupt the United States' efforts in Afghanistan by revealing information about US objectives, raid locations, base camp locations, cordon and search locations, traffic control points, and border crossing points. If the location could further be linked to the time of detention, the enemy might be able to use all of this information to paint a common operating picture and allow them to predict and exploit detainee movement operation procedures which could place military operations at risk. Section 1.4(a), (c), (g) of E.O. 13292.

8. The circumstances of the detainees' capture is perhaps the most sensitive category being discussed. While the level of detail disclosed in this category on the spreadsheet are limited, when combined across the range of all the detainees and compared over time, the release of the circumstances of the detainees' captures could cause damage to military plans, intelligence activities, intelligence sources, and intelligence methods. For example, cumulatively, knowledge of these circumstances could allow the opposition to intuit military SOP, the sources of

intelligence, or other critical operational factors. The places of capture, when combined with the times of capture and details of the circumstances surrounding the detainees' capture, could reveal critical tactical information about detainee collection points, detainee holding areas, evacuation procedures, and the handling process that could place intelligence operations and detainee operations at jeopardy. In particular, the point-of-capture units' security in future operations, the safety of US resources, the protection of the detainees, planning, and SOP could be impacted if the circumstances of the detainees' captures were revealed. The cumulative information related to capture place, time, and the circumstances of capture disclosed over a period of time for large numbers of detainees could assist the enemy in predicting our movement, plans, and procedures and could place our national security at risk. Section 1.4(a), (c), and (g) of E.O. 13292.

9. Release of the number of days the detainees have been detained, when considered with all the other information in question, could reveal too much about how the United States operates in intelligence and detention operations. Accordingly, the enemy may attempt to use this information to develop patterns of detention periods and correlate this data with the SOPs surrounding intelligence and detention operation. The release of the total number of days detained could damage our future military plans, intelligence activities, intelligence sources, and intelligence methods. The length of days detained, when combined with the other information on the chart, could assist the enemy in understanding our evidence gathering and prosecution strategy which could be used to predict and exploit detention procedures. For example, detainees captured in a certain location under certain circumstances that are released within a short time frame might cause the enemy to infer that, if captured, being silent could lead to a more rapid release, which could lead to a chilling effect in intelligence gathered from these detainees. Conversely, holding a detainee for a longer period of time may lead some to think he cooperated

with the United States and place his life in danger upon release. This cumulative information analyzed over time with regard to a diverse prisoner population could also assist organizations to circumvent military regulations and SOPs which could, in turn, lead to less quality intelligence gathered by the US and coalition forces and more robust estimative intelligence by the enemy. Section 1.4(a), (c), and (g) of E.O. 13292.

10. In addition to the classified nature of the spreadsheet items individually, the, detainee citizenship, capture date, capture location, circumstances of capture, and the total number of days retained, when woven together, create a mosaic of information that reveals an additional association or relationship meeting the standards for this classification. While the names and date of the report have been disclosed, in this instance, the United States has legitimate concerns that further disclosure of this additional information would impair national security because specifics pertaining to US operational activities at the time of the capture could damage US operational planning and intelligence activities by revealing patterns, capabilities, and strategies of the US military. For example, the dates, places, citizenships, and circumstances of capture could, when considered together, reveal significant details of classified missions that, in turn, could place future mission operations in jeopardy. Most likely the enemy already knows the names of their comrades which combined with the date of the report, by themselves, do not provide enough background or statistics for the enemy to formulate patterns or develop theories about these detainees. However, when the rest of the information on the spreadsheet is disclosed and added to the detainees' names and the report date, the enemy is provided too much information about our operations, detainee process, and intelligence gathering process. Disclosing all of these facts concerning a wide range of detainees, taken together over a period of time, would reveal too much about historical military operations and assist the enemy in

predicting future military operational tactics, plans, and movements. Section 1.4(a) and (c) of E.O. 13292.

11. Despite past piecemeal releases of this type of information, releasing all of this information now, in the aggregate, would greatly affect national security by giving the enemy a complete picture of our military operations. We control the piecemeal releases under current classification guidelines; an aggregate release would create a mosaic of information that would assist our enemies and endanger Soldiers' lives. The names of the detainees and the date of the report have been released with the reasoning that this limited disclosure, most likely already known by terrorist and insurgent groups about their own members, would not reveal too much about military operations and detainee operations in isolation. In contrast, on April 20, 2006 and on subsequent dates, DoD, pursuant to court order, released the names, nationalities, ID numbers, dates of birth, and places of birth of all the captives held in military custody in Guantanamo. These individuals had been detained from January 2002 onwards. The limited information released on the Guantanamo detainees did not contain the detailed scope of the larger data set in question here and thus provided limited connectivity and contextuality with which terrorist and insurgent groups could map the operational plans, strategies, or tactics utilized to discover, capture, and detain these individuals. However, in the present case, the disclosure of the names and the date of the report combined with the place, time, and circumstances of capture, the date (if any) of their release, and the length of detention reveal too much about specific geographical and chronological operational centers of gravity in an actual theater of war and how the DoD's operations shifted and progressed over a period of time. Section 1.4(a) and (c) of E.O. 13292.


12. The FOIA request at issue pertains to information related to detainees that was classified up to and at the SECRET level. I have determined it remains properly classified, and that, other than the SEQ number, name, and date of the report, the cumulative effects of its release could reasonably be expected to impede intelligence operations and cause serious damage to the national security due to current operations in the area. Specifically, future military plans and operations as well as intelligence activities, sources, and methods may be negatively impacted by disclosing the details of our detention and intelligence operation. Much of this information, if viewed together, would create a mosaic of our operation, procedures, and intelligence gathering methods which could make many of our systems and plans vulnerable to attack by establishing, among other things, a pattern of predictability. Section 1.4(a), (c), and (g) of E.O. 13292.

13. Additionally, the full ISN relates solely to the internal practices of ISAF/USFOR-A detention operations and its release risks allowing terrorists and insurgents to circumvent intelligence collection efforts and thus the material is exempt from disclosure under FOIA exemption b(2). The full ISN contains information related to the capturing power (i.e., the country or entity that captured the detainee), the command/theater involved (i.e., the relevant military or other unit), the detainee's nationality/power served, sequencing patterns (a unique tracking/sequence number assigned exclusively to an individual detainee based on when detained), and the United States' detainee classification process. Further, disclosing the detainee classification system contained within the ISN would show whether a particular individual is classified as an enemy prisoner of war, a civilian internee, retained personnel, an enemy combatant, or in the catch-all "other detainee" category. Identifying this classification would assist the enemy in understanding the level of US intelligence about detainees and the

information used to classify detainees, such that if we characterized a detainee as "retained personnel" who was really an "enemy combatant," this intelligence would assist future detainees avoid being labeled as enemy combatants. In order to promote fair and equal treatment, much of our detainee operations have become standardized, which makes this process more susceptible to prediction and more vulnerable as a result. Release of the full ISN for all the detainees collectively could reveal too much about our overall intelligence scope and methodology and about the detainee identification process, which could jeopardize on-going and future intelligence and detainee operations. This number directly correlates to the capture, detention, and detainee operations, which if isolated, predicted, and utilized could negatively impact the mission. Much of the intelligence value for the United States as well as the enemy is in analyzing statistical data like nationality, what theater of war is involved, what force captured this individual, and how the United States characterizes this individual, which could reveal US coalition and enemy strengths, weaknesses, inclinations, and preferences. The release of the full ISN could thus allow the enemy knowledge of the internal workings of ISAF/USFOR-A detention operations and assist future detainees circumvent intelligence collection efforts. The information is thus being withheld under what is commonly referred to as FOIA exemption (b)(2) "high." 5 U.S.C. 552(b)(2).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 5TH day of April 2010, at Headquarters ISAF/USFOR-A, Kabul, Afghanistan.


MICHAEL T. FLYNN
Major General, USA
Director of Intelligence
ISAF/USFOR-A