



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

May 18, 2009

BY FACSIMILE

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007-1312

Re: *ACLU, et al., v. Department of Defense, et al.*, No. 04 Civ. 4151 (AKH)

Dear Judge Hellerstein:

For the reasons stated in the enclosed *ex parte* letter from John H. Durham provided for the Court's *in camera* review, we write to advise the Court that Mr. Durham withdraws his objection to paragraph 4 of the Court's April 20, 2009 Order. The enclosed letter is submitted *ex parte* because it contains details regarding the status of his investigation, which is still ongoing. We will work with Plaintiffs on a proposed schedule for the production of the information contemplated by paragraph 4 of the Order.

We also note for the Court that the Central Intelligence Agency has documents responsive to the subject matter identified in paragraph 4 of the Order that fall outside the date range provided in the Order; namely, April 1, 2002 through June 30, 2003. Mr. Durham may have objections to the production of documents created outside the date range specified in the Order. Mr. Durham is prepared to supplement the record as needed to the extent the Court amends the dates identified in paragraph 4 of the Order.

Respectfully submitted,

LEV L. DASSIN
Acting United States Attorney

By:

SEAN H. LANE
PETER M. SKINNER
HEATHER K. McSHAIN
Assistant United States Attorneys
Telephone: (212) 637-2601
Facsimile: (212) 637-2930

encl.

Hon. Alvin K. Hellerstein
May 18, 2009

cc: Amrit Singh, Esq. (by facsimile) (w/o encl.)
Jennifer B. Condon, Esq. (by facsimile) (w/o encl.)



FACSIMILE COVER SHEET

U.S. ATTORNEY'S OFFICE- SDNY
86 CHAMBERS STREET
NEW YORK, NY 10007

From: Heather K. McShain ?
Assistant United States Attorney

Office Phone No.: (212) 637-2696

Fax Number: (212) 637-2702

No. pages (including cover sheet): 3

Date sent: 5/18/2009

**"FOR OFFICIAL USE ONLY" U.S. ATTORNEY FACSIMILE
COMMUNICATION**

The information contained in this facsimile message, and any and all accompanying documents, constitute "FOR OFFICIAL USE ONLY" information. This information is the property of the U.S. Attorney's Office. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is strictly prohibited. If you received this information in error, please notify us immediately by telephone at the above number and destroy the information. (rev. 9/08)

To: (following distribution list)

<u>Name</u>	<u>Phone Number</u>	<u>Fax Number</u>
Amrit Singh, Esq.	(212) 549-2609	(212) 549-2654
Jennifer Brooke Condon, Esq.	(973) 596-4500	(973) 596-0545

Remarks: