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Brett D. Freedman General Counsel Senate Select Committee on Intelligence

Dear Mr. Freedman:

This is a request to the Senate Select Committee on Intelligence on behalf of my client Shawn Musgrave for a copy of the full SSCI Torture Report. Mr. Musgrave is a member of the news media as a freelance reporter whose work has been featured in *Politico*, the *Boston Globe*, *The Verge*, *VICE*, *Motherboard*, *Reason*, the *Intercept*, and elsewhere.

As Judge Karen LeCraft Henderson noted in her concurrence today in *Judicial Watch, Inc. v. Schiff,* No. 20-5270, at *8 (D.C. Cir. June 4, 2021), there is a common law right of access to public records which is not wholly precluded by the Speech or Debate Clause of the Constitution and "require[s] careful balancing." All three branches of the government are subject to this federal common law right of access, she explained, citing "unequivocal" Supreme Court precedent in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978) and further D.C. Circuit discussion of *Nixon* in *Washington Legal Foundation v. U.S. Sentencing Commission* (*WLF-II*), 89 F.3d 897, 902 (D.C. Cir. 1996).

Judge Henderson explained that if a sought document is a "public record," the government's interest in keeping the document secret should be balanced against the public's interest in disclosure. *Judicial Watch* at *11. A "public record," she notes, is "a government document created and kept for the purpose of memorializing or recording an official action, decision, statement, or other matter of legal significance, broadly conceived." *Id.*, quoting *WLF-II*, 89 F.3d at 905.

The Torture Report is a public record under this longstanding framework and today's decision in *Judicial Watch* does not counsel otherwise. Moreover, the public interest in disclosure is especially high for this report. Thus, we request that you provide the full report to us under the common law right of access to it.

Sincerely,

Kel McClanahan
Executive Director