

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

ABD AL-RAHIM HUSSAIN)	
MOHAMMED AL-NASHIRI,)	
)	
Petitioner,)	
)	
v.	)	Civil Action 08-cv-1207 (RCL)
)	
BARACK OBAMA, et al.,)	
)	
Respondents.)	

**RESPONDENTS’ MOTION FOR PARTIAL RECONSIDERATION
AND CLARIFICATION OR, IN THE ALTERNATIVE, FOR A STAY**

On December 28, 2016, the Court granted Petitioner’s Motion for a Preservation Order (see Notice of Mot. for Preservation Order (Nov. 22, 2016) (ECF No. 260). See Order (ECF No. 268) (“the Order”). In doing so, the Court adopted both Petitioner’s proposed order and, as the rationale for its Order, “the reasons stated in Petitioner’s reply [brief].” See Order at 1. The government respectfully seeks limited reconsideration of three aspects of the Order. As to the first two, the government asks the Court to reconsider the requirements (1) that the government preserve a copy of the Senate Select Committee on Intelligence’s “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program” (2014) (“the SSCI Report” or “the Report”), Order at 1, and (2) that the government deposit a copy of that report with the Court Information Security Officer (“CISO”) for storage, *id.* at 2. Reconsideration is appropriate primarily because intervening facts have rendered these provisions unnecessary. As explained below, a copy of the SSCI Report is already being preserved in the Executive Branch under the Presidential Records Act, 44 U.S.C. §§ 2201-2209, and documents underlying the Report have

been and continue to be preserved under a 2007 preservation directive issued by the Director of the CIA. Further, no copy of the SSCI Report held by the CIA has been destroyed, nor has any improper destruction of evidence by the CIA occurred since the issuance of the 2007 preservation directive. And importantly, the two challenged provisions of the Order also contravene policy concerns, implicating separation of powers, that were recently emphasized by the Court of Appeals in a decision concerning an effort to compel disclosure of the Report. See ACLU v. CIA, 823 F.3d, 655, 665-68 (D.C. Cir. 2016), petition for cert. filed, No. 16-629 (U.S. Nov. 9, 2016). In particular, provisions such as these threaten to disrupt the information flow between the political branches necessary for proper oversight of Executive Branch agencies by Congress.

In seeking reconsideration of these two aspects of the Order, the government emphasizes that the relief it seeks is limited to that concerning the Report itself. The government does not seek reconsideration of the Court's directives to preserve the CIA's response to the SSCI Report, see Order at 1, ¶ 2, or of the documents underlying that response or the Report, see id. at 1, ¶ 3, which are already subject to the CIA preservation directive.

Respondents, however, also seek clarification and, if necessary, reconsideration, as to the scope of another part of the Order. The Order requires the government to preserve evidence relating to any "detainees held in the custody of the Executive Branch since September 11, 2001." Order at 1. Interpreted literally, this mandate could include, among other things, evidence related to convicted criminals held by the Bureau of Prisons, criminal defendants detained pending federal trial, or even immigration-related detainees. The government respectfully requests that the Court reconsider this portion of the Order as unnecessary, or, at a minimum, clarify that the Order refers to only detainees held at Guantanamo Bay under the

authority of the Authorization for Use of Military Force, Pub. Law 107-40, 115 Stat.224 (2001) (“AUMF”).

In the alternative, should the Court decline to reconsider or to clarify the Order as requested, in whole or in part, the government respectfully seeks a stay to permit it to consider whether to seek appellate review of the Order, and if an appeal is authorized, a stay pending appellate review. Additionally, the government respectfully requests a stay of these provisions pending the decision of the Court on this Motion for Reconsideration.¹

ARGUMENT

I. Reconsideration of the SSCI Report Preservation Provisions Is Appropriate

Though disfavored, district courts may grant reconsideration “as justice requires.” Capitol Sprinkler Insp., Inc. v. Guest Servs., Inc., 630 F.3d 217, 227 (D.C. Cir. 2011) (internal quotation omitted). Reconsideration is appropriate, for example, if “the Court has ‘patently misunderstood a party, has made a decision outside the adversarial issues presented to the Court by the parties, has made an error not of reasoning but of apprehension, or where a controlling or significant change in the law or facts [has occurred] since the submission of the issue to the Court.” Singh v. George Washington Univ., 383 F. Supp.2d 99, 101 (D.D.C. 2005) (quoting Cobell v. Norton, 224 F.R.D. 266, 277 (D.D.C. 2004) (internal citation omitted) (alteration in original)).

Here, reconsideration is warranted. Two intervening facts and an apparent misapprehension of the relevance of the Report reflected in Petitioner’s Reply manifest the need to vacate the twin preservation mandates concerning the SSCI Report—(1) that the Executive

¹ Pursuant to Local Civil Rule 7(m), undersigned counsel consulted with counsel for Petitioner and was informed that Petitioner will oppose this motion.

Branch preserve a copy of the SSCI Report that were provided to it by the SSCI Chair and, more importantly, (2) that it tender a copy to the CISO. Reconsideration is even more appropriate in light of the serious policy concerns discussed in the ACLU v. CIA decision that highlight the undue burdens associated with the mandates contained in the Order.²

² The SSCI Report resulted from a comprehensive review of the CIA's former detention and interrogation program initiated by the SSCI in 2009 as part of its oversight of the intelligence community. ACLU v. CIA, 823 F.3d at 659. The CIA and the Senate Committee negotiated a special arrangement, memorialized in a June 2009 letter, in which Senate Committee members and staff would have access to relevant CIA documents in a secure electronic reading room at a CIA facility and would prepare and store their work product on a segregated network drive. Id. at 659.

The letter specified that the Senate Committee's work product stored on the network drive would remain "congressional records" whose disposition would be controlled exclusively by the Committee, not by the CIA. Specifically, the letter specified that documents generated by the Committee:

are the property of the Committee and will be kept at the Reading Room solely for secure safekeeping and ease of reference. These documents remain congressional records in their entirety and disposition and control over these records, even after the completion of the Committee's review, lies exclusively with the Committee. As such, these records are not CIA records under the Freedom of Information Act or any other law If the CIA receives any request or demand for access to these records from outside the CIA under the Freedom of Information Act or any other authority, the CIA will immediately notify the Committee and will respond to the request or demand based upon the understanding that these are congressional, not CIA, records.

823 F.3d at 659–60 (quoting Letter from Dianne Feinstein, Chairman, Senate Select Comm. on Intelligence, and Christopher S. Bond, Vice Chairman, Senate Select Comm. on Intelligence, to Leon Panetta, Director, CIA ¶ 6 (June 2, 2009)).

The Senate Committee completed its report in December 2014. The full report contains 6,963 classified pages. 823 F.3d at 661. The then-chair of the Senate Committee sent copies of the full report to the President, the CIA, and several other agencies. An accompanying letter indicated the oversight function of the report process, stating:

[T]he full report should be made available within the CIA and other components of the Executive Branch for use as broadly as appropriate to help make sure that this experience is never repeated. To help achieve that result, I hope you will encourage use of the full report in the future development of CIA training

The status of the SSCI Report was recently considered by the Court of Appeals in ACLU v. CIA, a case concerning a Freedom of Information Act request seeking disclosure of copies of the SSCI Report in the possession of the CIA and three other agencies. 823 F.3d at 659. The Court of Appeals held that it was clear from the memorialized understanding between the Committee and the CIA, supra n.2, that the Committee intended to retain control over dissemination of the full Report. Accordingly, the Court held that the Report was a Congressional document rather than an agency document subject to disclosure under FOIA. Id. at 664–68.

In so holding, the Court of Appeals expressly noted that important policy considerations strongly counsel respect for Congress’s clearly expressed intent to control documents that it shares with the Executive Branch, a respect rooted in the need to avoid inadvertently chilling the information exchange vital to Congress’s oversight functions with respect to Executive Branch agencies. See id. at 662-63 (“Congress exercises oversight authority over the various federal agencies, and thus, has an undoubted interest in exchanging documents with those agencies to facilitate their proper functioning in according with Congress’ originating intent.”).³

programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit.

Id. at 660–61 (quoting Letter from Dianne Feinstein, Chairman, Senate Select Comm. on Intelligence, to President Barack Obama (Dec. 10, 2014)).

In January 2015, however, Senator Richard Burr, the new chair of the Senate Committee, sent a letter to the President requesting that “all copies of the full and final report in the possession of the Executive Branch be returned immediately to the Committee.” Id. at 661 (quoting Letter from Richard Burr, Chairman, Senate Select Comm. on Intelligence, to President Barack Obama (Jan. 14, 2015)).

³ Previously, the Court of Appeals has similarly explained that these “special policy considerations” are rooted in “Congress’ long-recognized prerogative to maintain the confidentiality of its own records as well as its vital function as overseer of the Executive Branch.” Paisley v. CIA, 712 F.2d 686, 693 n.30 (D.C. Cir. 1983) (citing McGehee v. CIA, 697

Although in ACLU v. CIA the Court of Appeals explained these governing policy considerations in the context of a FOIA case, those same policy concerns should apply to the preservation relief that has been granted to Petitioner, which occasions similar kinds of harms that the Court of Appeals considered so important to avoid. Indeed, the Court should not require the government to retain a copy of the SSCI Report or deliver a copy to the Court. The Senate Committee still controls the SSCI Report and has requested that the Executive Branch return copies currently in its possession. An order requiring preservation of the SSCI Report or delivery of it to the Court would unduly interfere with the 2009 agreement negotiated between the Senate Committee and the CIA and with the larger oversight relationship between the Senate Committee and the CIA. Such potential interference and burdens make the preservation relief requested by Petitioner especially improper and unwarranted.⁴

F.2d 1095, 1107–08 (D.C. Cir. 1983) and Goland v. CIA, 607 F.2d 339, 348 n.48 (D.C. Cir. 1978)), vacated in part on other grounds, 724 F.2d 201 (D.C. Cir. 1984) (per curiam)). As further explained in McGehee:

Congress . . . should not be forced to abandon its long-acknowledged right to keep its records secret or its ability to oversee the activities of federal agencies (a supervisory authority it exercises in part through exchange of documents with those agencies to “facilitate their proper functioning in accordance with Congress’ originating intent.”)

697 F.2d at 1108 (quoting Goland, 607 F.2d at 346).

⁴ Even under the standard for preservation argued by Petitioner, see Mot. at 10, a preservation order must be both necessary and not unduly burdensome. See Pueblo of Laguna v. United States, 60 Fed. Cl. 133, 137–38 (Fed. Cl. 2004) (“[T]he Supreme Court has cautioned, ‘inherent powers must be exercised with restraint and discretion,’” such that a party seeking a preservation order must demonstrate that the preservation order is necessary and not unduly burdensome) (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)). As explained above, the Order unduly burdens the relationship between the political branches, and as explained below, the Order is unnecessary. To be clear, Respondents do not concede that Pueblo of Laguna supplies the appropriate legal standard for issuance of a preservation order in these circumstances, especially given that the Order requires not just preservation but enjoins the government to deliver a copy of the Report to the CISO. Cf. Madden v. Wyeth, No. 3-03-CV-0167-R, 2003 WL

In any event, based on intervening events and other factors, the Order is no longer necessary. Accordingly, the government respectfully requests that the Court reconsider and vacate those two portions of the Order.⁵

1. The first intervening fact alleviating any need for the Order is that a copy of the SSCI Report will remain in the possession of the Executive Branch, stored by the National Archives and Record Administration. On December 9, 2016, one day after Petitioner submitted his reply brief, the Counsel to the President informed the Chairman and Vice-Chairman of the SSCI that a copy of the Report will be preserved under the Presidential Records Act, 44 U.S.C. §§ 2201-2209 (requiring that the Archivist of the United States assume responsibility for preservation of “Presidential records,” defined generally by the statute as documentary materials “received by the President”). See Ex. 2, Letter from W. Neil Eggleston to the Honorable Richard Burr, Chairman, Senate Select Comm. on Intelligence (Dec. 9, 2016); see also Letter from W. Neil Eggleston to the Honorable Dianne Feinstein, Vice Chairman, Senate Select Comm. on Intelligence (Dec. 9, 2016) (available at <http://go.usa.gov/x86nB>). This action by the President means that the Report’s continued existence is no longer (if it ever was) “contingent on political vicissitudes.” See Reply Br. at 2-3. Even were the Executive to return its other copies to the

21443404, at *1 (N.D. Tex. Apr. 16, 2003) (motion to preserve evidence is injunctive remedy that should issue only upon an adequate showing that equitable relief is warranted).

⁵ In the military commission trial of the accused September 11th conspirators, the military judge recently ordered the Department of Defense to preserve a copy of the Report, relying on this Court’s Order as partial justification for his order. See Ex. 1, Order, United States v. Khalid Shaikh Mohammad (KSM II), AE 286T ¶¶ 5(d), 7 (Jan. 10, 2017). The military judge, though requested to do so, did not require the prosecution to lodge a copy of the Report with the commission. Id. ¶¶ 6, 7.

SSCI and then the SSCI were to destroy all copies (including, presumably, the original),⁶ a highly unlikely scenario, a copy of the SSCI Report would still be preserved in the National Archives pursuant to the Presidential Records Act.

2. A second intervening fact establishes that Petitioner unintentionally overstated the need for the Order in general, and for the two SSCI-Report-preservation provisions in particular. With respect to the SSCI Report, contrary to the press report that Petitioner invoked, the CIA's Office of Inspector General has not destroyed the copy of the Report that was sent to it. See Mot. at 6 (citing M. Isikoff, "Senate Report on CIA Torture is One Step Closer to Disappearing," Yahoo News, May 16, 2016). Rather, as the attached declaration from the Director of the CIA attests, both the CIA and the CIA's Office of Inspector General currently have in their possession a copy of the final version of the Report.⁷ Ex. 3, Decl. of John O. Brennan, Director Central Intelligence Agency at ¶ 11.⁸

Accordingly, Petitioner erred when he implied that the government had violated its representation in ACLU v. CIA that it would preserve the status quo with respect to the SSCI Report in its possession pending the final resolution of that case. See Reply Br. at 6.⁹ To the

⁶ Petitioner's requested relief makes sense only if Petitioner has assumed that the Committee intends to not only recall all copies of the Report, but to destroy them as well.

⁷ Although the initial media reports characterized the CIA IG's copy as having been lost or destroyed, the CIA understands that that copy was subsequently located.

⁸ The need to obtain this declaration so that this fact and certain others detailed therein could be brought to the Court's attention was a primary reason for the government's request for an extension of time to respond fully to Petitioner's motion. See Respts.' Interim Resp. to Petr.'s Mot. for a Preservation Order at 7 (Dec. 5, 2016) (ECF No. 262).

⁹ See also ACLU v. CIA, Civ. Action No. 13-1870 (JEB), Defs.' Resp. to Pls.' Emerg. Mot. for an Order Protecting this Court's Juris. at 1, 3-4, (D.D.C. Feb. 6, 2015) (ECF No. 42) (representing that government would "preserve the status quo regarding the Full Report absent either leave of court or resolution of this litigation in the government's favor.").

contrary, that representation was accurate when Petitioner filed his motion, and remains so to this day.¹⁰

Furthermore, with respect to the need for preservation relief more generally, Petitioner also failed to note that for over eight years, the CIA has had an internal directive barring it from destroying information relating to Guantánamo and CIA detainees. In 2007, after the CIA's well-publicized destruction of videotapes of some of its interrogations referenced in Petitioner's Motion, then-Director Michael Hayden ordered the agency to preserve all documents, information, and evidence relating to any detainee either held at Guantanamo Bay or held by the CIA. Brennan Decl., ¶ 6. That directive remains in full force today. *Id.*, ¶ 7. And since then-Director Hayden issued that order, there have been no substantiated reports of the improper destruction of any such material warranting a preservation order. Accordingly, Petitioner incorrectly justified the relief he requested by asserting that "[t]here is already a pattern of evidence destruction in this case." Mot. at 18. To the contrary, there was simply no need for the Court to order preservation relief in this matter. *See Pueblo of Laguna*, 60 Fed. Cl. at 138 (party seeking preservation order must show that "absent a court order, there is a significant risk that relevant evidence will be lost or destroyed.").

3. Lastly, the government respectfully suggests that the two SSCI-Report-preservation provisions appear to have been based on an apparent misapprehension of the relevance of the

¹⁰ The ACLU has petitioned the Supreme Court for certiorari. *See ACLU v. CIA*, No. 16-629, Pet. For Cert. (U.S. Nov. 9, 2016). As that case is still pending, the government's commitment to preserve the status quo remains in force. Moreover, Respondents will advise this Court and Petitioner's counsel in advance of any change in that status quo. But given the President's lodging of a copy of the SSCI Report in the National Archives, even were the Supreme Court to deny certiorari, or to grant it and then affirm, and even were the Executive then to return all other copies to the SSCI, one copy of the report would still remain within the Executive Branch.

Report reflected in Petitioner's Reply. As an initial matter, the government notes that the intelligence documents that were the source of the facts related the Report remain in the possession of the CIA. Moreover, the documents are being preserved pursuant to then-Director Hayden's preservation directive.¹¹ See Brennan Decl. ¶¶ 6-7. And these intelligence documents will continue to be protected under both that directive and under those portions of this Court's Order to which the government is not seeking reconsideration, see Order at 1 ¶ 3 (requiring, in part, the preservation of all documents referenced or relied on in the SSCI Report).

With respect to the relevance of the SSCI Report to this case more generally, this habeas action challenges the legality of Petitioner's continuing detention under the AUMF as informed by the laws of war. The government does not rely on any post-capture statements by Petitioner to justify his detention, nor does it intend to do so. Accordingly, even if, as Petitioner contends, see Reply Br. at 8, a portion of the Report documents his interrogations while in CIA custody, that portion is unlikely to show that he is improperly detained under the AUMF and, so, is likely not discoverable. See Case Mgmt. Order (Nov. 6, 2008) (ECF No. 53) ("Merits Judge may, for good cause, permit the petitioner to obtain limited discovery" if the discovery request is "likely to produce evidence that demonstrates that the petitioner's detention is unlawful").

¹¹ As explained in Director Brennan's declaration, the primary repository of information used by the Senate Committee in its study was an electronic database known as RDINet. Brennan Decl. ¶ 8. RDINet contains millions of highly classified documents, including emails, memoranda, and other sensitive records containing classified and compartmented information about intelligence sources and methods; pseudonyms and true names of CIA personnel, assets, and liaison officers, and details about liaison relationships. Id. Director Brennan has confirmed that the contents of RDINet are subject to former Director Hayden's preservation directive, id. ¶ 9, so there was no need for judicial relief to preserve the documents underlying the SSCI Report or those pertaining to Petitioner.

Similarly misplaced is his argument that he needs the Report to support a conditions-of-confinement claim. To be sure, pursuant to Aamer v. Obama, Petitioner is entitled in this action to challenge not only the legality of his continuing detention, but also the conditions of that detention. 742 F.3d 1023, 1038 (D.C. Cir. 2014). But Petitioner’s Reply, see Reply Br. at 7-8, misapprehends just what a proper condition-of-confinement claim is. Under Aamer, Petitioner is entitled to challenge only his current conditions of confinement. Aamer, 742 F.3d at 1035 (explaining that a conditions-of-confinement claim brought through habeas addresses whether “the conditions in which the petitioner is currently being held violate the law.”) (emphasis added). Petitioner has brought no such claim here. Rather, Petitioner merely addresses his alleged former conditions-of-confinement while held in CIA custody. Reply at 7-8, 10. Aamer provides no basis for such a claim. But to the extent that facts reflected in the Report nonetheless might be considered relevant here, the underlying intelligence documents, which were the source of the facts related in the Report, remain in the possession of the CIA and are being preserved, as explained above.

In summary, the bases reflected in Petitioner’s Reply for the two SSCI-Report-preservation provisions of the Order—that is, a purported pattern of destruction and a danger that the Report will cease to exist—are unfounded. In addition, Petitioner’s Reply does not make clear the appropriate relevance of the Report here, but whatever the case, it is clear that the underlying source documents supporting any relevant facts contained in the Report are being and will be preserved. The Court also should reconsider its Order based on the policy concerns noted by the Court of Appeals in ACLU v. CIA, including Congress’s express intent to control dissemination of the Report. The government respectfully requests that the Court vacate both the

direction to the government to preserve the SSCI Report currently in its possession and to lodge a copy of the Report with the CISO.

II. Respondents' Request that the Court Clarify the Scope of its Order

Respondents also respectfully request that the Court clarify the scope of a separate provision of the Order. The Order states that “Respondents shall preserve and maintain all evidence, documents and information, without limitation, now or ever in respondents’ possession, custody or control, relating to the torture, mistreatment, and/or abuse of detainees held in the custody of the Executive Branch since September 11, 2001.” Order at 1. The phrase “detainees held in the custody of the Executive Branch,” without qualification, suggests that the Order, literally interpreted, could apply with respect to all individuals detained by the government, for example, convicted criminals incarcerated in federal prisons, criminal defendants held under federal pretrial detention, and even immigration detainees.

Petitioner’s Reply, upon which the Court based its ruling, does not provide any guidance, argument, or rationale regarding this issue. Indeed, like Petitioner’s Motion itself, the Reply focuses primarily on the SSCI Report and does not address with any specificity Petitioner’s other preservation requests. Even under the Pueblo of Laguna standard, “the proponent [of a preservation order] must show that the particular steps to be adopted will be effective, but not overbroad[.]” 60 Fed. Cl. at 138. Neither in his Reply nor otherwise has Petitioner justified preservation relief as broad as reflected in a literal reading of the preservation order, including how such relief could be justified based on the specifics of his habeas case.

Accordingly, Respondents respectfully request that the Court, consistent with the scope of this habeas proceeding, reconsider this aspect of its Order and eliminate the preservation requirement as unnecessary for the reasons explained above. See supra at 9 (addressing CIA’s

long-standing preservation directive). Alternatively, at a minimum, the Court should clarify that its Order applies only with respect to individuals who have been detained at Guantánamo Bay pursuant to the AUMF (and does not include the SSCI Report itself, for the reasons set out above).¹² Such a clarification would render the Order consistent with the CIA's long-standing preservation directive. And such a clarification would also mirror preservation orders entered by other District Judges in these Guantanamo habeas cases. See, e.g., Anam v. Obama, No. 04-1194 (HHK) (D.D.C), Order (June 10, 2005) (ECF No. 124) (requiring preservation of “evidence and information regarding the torture, mistreatment, and abuse of detainees now at the United States Naval Base at Guantanamo Bay, Cuba”); Abdah v. Obama, 04-1254 (D.D.C.), Order (June 10, 2005) (ECF No. 155) (same). As explained above, Petitioner offers no serious basis, rationale, or explanation of need for any broader preservation order, or indeed, any order at all.

III. Respondents Request That The Court Stay Their Obligation Concerning Handling and Disposition of the SSCI Report Pending Possible Appellate Review

Should the Court decline to reconsider the portions of the Order directing Respondents to take action with respect to the copies of the SSCI Report in their possession, or decline to reconsider or clarify the Order's reference to “detainees held in the custody of the Executive Branch,” the government will consider whether to seek appellate review of the Order. Accordingly, as to any of these three provisions that it does not alter, Respondents respectfully request that the Court stay those provisions pending final resolution of any appellate review or

¹² To be clear, the government is not seeking reconsideration or clarification of the directive to preserve all evidence, documents, and information relating to Petitioner, see Order at 1, exclusive of the obligation to preserve a copy of the SSCI Report. Nevertheless, the government maintains that this aspect of the Order is also unnecessary in light of the CIA's internal preservation directive.

until Respondents decide not to seek such review.¹³ Additionally, Respondents respectfully request a stay of these three obligations pending the Court's decision on this motion for reconsideration.

A stay pending appellate review is appropriate where (1) the moving party has a substantial likelihood of success on the merits; (2) the moving party will suffer irreparable injury absent the stay; (3) the stay will not substantially injure the other parties interested in the proceedings; and (4) the public interest will be served by a stay. Nken v. Holder, 556 U.S. 418, 434 (2009); United States v. Philip Morris, Inc., 314 F.3d 612, 617 (D.C. Cir. 2003) (internal citation omitted).

Here, as explained above, the facts demonstrate that there is no significant risk that the SSCI Report will be destroyed or that information underlying the Report will be destroyed; indeed, the opposite is true. Respondents thus have a strong likelihood of success should they decide to seek appellate review. See Pueblo of Laguna, 60 Fed. Cl. at 138 (in the absence of a significant risk that the relevant evidence will be lost or destroyed, a preservation order is not necessary). Respondents recognize that should the Court decline to partially reconsider its Order, the Court will have disagreed with the government's position on the need and propriety of depositing a copy of the SSCI Report with the CISO. But even so, Respondents respectfully submit that the discussion above establishes that they "have made out a 'substantial case on the merits,'" a case sufficient to "weigh[] in favor of a stay." Ctr. for Int'l Envtl. Law v. Office of U.S. Trade Rep., 240 F. Supp. 2d 21, 22 (D.D.C. 2003) (quoting Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)).

¹³ Given the serious issues raised by the Order, Respondents will move expeditiously to seek a determination whether to seek appellate review.

As for the analysis of irreparable harm and the public interest, compliance with the Order's directive to deliver a copy of the SSCI Report to the CISO would immediately impose the very burdens that animated the Court of Appeals' decision in ACLU v. CIA. Specifically, further dissemination of the Report by the Executive, even under court order, would improperly burden the relations between the Executive and Legislative Branches. Forcing the Executive Branch to further disseminate the SSCI Report by lodging a copy with the CISO would be inconsistent with the express demand of the SSCI upon the Executive Branch for the return of the document and would impede Congress' oversight role and discourage the flow of information between the two coordinate branches of government. See supra at 5-6. Pending any necessary appellate review, the Court should stay its hand from imposing such burdens upon the relationship between the political branches and upon the public interest as reflected in the special policy considerations credited by the Court of Appeals in ACLU v. CIA.

Lastly, the stay would not substantially injure Petitioner because, as explained above, there simply is no risk that every copy of the SSCI Report in the possession of the Executive Branch will be destroyed and because information underlying the Report is subject to a long-standing preservation directive by the CIA.

For these reasons, should the Court deny Respondents' motion for partial reconsideration and clarification, in whole or in part, a stay pending resolution of this Motion and Respondents' determination whether to seek appellate review (and, should appellate review be sought, pending resolution of that proceeding) is warranted.

CONCLUSION

For the reasons stated above, the Court should reconsider those portions of the Order of December 28, 2016 that require the government to preserve copies of the SSCI Report in its

possession and to submit a copy to the CISO. Additionally, the government respectfully requests that the Court reconsider the more general mandate of the Order, or at least narrow the scope of that portion of the Order to refer solely to detainees held at Guantanamo Bay, pursuant to the AUMF. In the alternative, should the Court decline any of these requests, the government respectfully requests the Court stay enforcement of any of these three provisions that remain extant so that the government may determine whether to seek appellate review and seek such review if appropriate. The government also respectfully requests a stay of these three provisions during the pendency of this Motion for Reconsideration.

January 13, 2017

Respectfully submitted,

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EXHIBIT 1

UNCLASSIFIED//FOR PUBLIC RELEASE
MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI</p>	<p>AE 286T</p> <p>ORDER</p> <p>Emergency Defense Motion to Order the Government to Produce the Full, Unredacted Senate Report on the RDI Program, or, in the Alternative, to File the Report with the Commission to be Maintained <i>EX PARTE</i> and Under Seal Pending Further Rulings</p> <p>10 January 2017</p>
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1. On 2 April 2014, Counsel for Mr. Ali filed a motion¹ to compel discovery of the full, unredacted Senate Select Committee on Intelligence (SSCI) Study of the CIA Rendition, Detention, and Interrogation Program (SSCI Report) and related documents. The Government responded,² requesting the Commission defer ruling on AE 286J because the Government was seeking to obtain access to the full SSCI Report from both the legislative and the executive branches.³

Among the issues raised in AE 386 is whether the Commission has authority to compel discovery of a Congressional record.

2. On 30 January 2015, Counsel for the Accused filed a motion⁴ (AE 286J) requesting the Commission compel discovery of the SSCI Report to the Defense, or, in the alternative, order the Government to file the SSCI Report with the Commission *ex parte* and under seal so it can be made part of the appellate record and be produced at a later date.

¹ AE 286 (AAA), Defense Motion to Compel Discovery of Senate Select Committee on Intelligence Study of RDI Program and Related Documents, filed 2 April 2014.

² AE 286K (GOV), Government Response To Defense Supplement to AE 286, Motion To Compel Discovery of Senate Select Committee on Intelligence Study of RDI Program and Related Documents, filed 12 February 2015.

³ There were additional filings by the parties in the AE 286 series that are not germane to this Order.

⁴ AE 286J, Emergency Defense Motion to Order the Government to Produce the Full, Unredacted Senate Report on the RDI Program, or, in the Alternative, to File the Report with the Commission to be Maintained *EX PARTE* and Under Seal Pending Further Rulings, filed 30 January 2015.

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3. On 13 February 2015, the Government responded.⁵ Within the response, they asserted, “The United States Department of Defense . . . can assure the Commission that it will preserve the status quo regarding the full SSCI Report absent either leave of the Commission or resolution of this litigation in the Prosecution’s favor. The Commission thus need not compel the Prosecution to file the SSCI Report with the Commission.”⁶ On 24 February 2015, the Government notified⁷ the Commission that, as of 18 February 2015, the SSCI authorized them to review the full SSCI Report.

4. The Commission heard oral argument regarding AE 286J on 7 December 2016.⁸ The Government advised the Commission it was reviewing the full SSCI Report for discoverable information and was providing discoverable information to the Defense regarding the CIA Rendition, Detention, and Interrogation (RDI) Program via AE 308⁹ *et seq.*¹⁰ The Government was not prepared at that time to confirm whether the Department of Defense (DoD) currently had a copy of the SSCI Report.¹¹ Following oral argument, the Commission ordered the Government to notify the Commission whether the DoD currently possessed a copy of the SSCI Report.¹² On

⁵ AE 286L (GOV), Government Response to Emergency Defense Motion to Order the Government to Produce the Full, Unredacted Senate Report on the RDI Program, or, in the Alternative, to file the Report with The Commission to be Maintained *Ex Parte* and Under Seal Pending Further Rulings, filed 13 February 2015.

⁶ *Id.* at 6.

⁷ AE 286M (GOV), Government Sixth Notice To Defense Motion To Compel Discovery of Senate Select Committee on Intelligence Study of RDI Program and Related Documents, filed 24 February 2015.

⁸ Unofficial/Unauthenticated Transcript of the Khalid Shaikh Mohammad et al Motions Hearing Dated 7 December 2016 from 10:51 a.m. to 12:02 p.m. at pp. 14447-14475.

⁹ See AE 308 (AAA), Defense Motion to Compel Discovery Regarding CIA Rendition, Detention, and Interrogation Program, filed 30 June 2014, *et seq.* See also AE 397F, Trial Conduct Order, Government Proposed Consolidation of Motions to Compel Information Relating to the CIA’s Former Rendition, detention, and Interrogation Program, dated 5 April 2016.

¹⁰ Transcript at 14466.

¹¹ Transcript at 14469 and 14471.

¹² AE 286Q, Order: Emergency Defense Motion to Order the Government to Produce the Full, Unredacted Senate Report on the RDI Program, or, in the Alternative, to File the Report with the Commission to be Maintained *EX PARTE* and Under Seal Pending Further Rulings, dated 7 December 2016.

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15 December 2016,¹³ the Government advised the Commission that the DoD had two copies of the SSCI Report and the DoD treats the SSCI Report as a Congressional Record.

5. Findings.

a. The DoD maintains two copies of the full SSCI Report. The DoD treats its copies of the SSCI report as Congressional records.

b. The Government, via AE 308 *et seq* has established that information referenced in the SSCI Report is potentially discoverable.

c. The Government is currently in the process of providing RDI discovery in the AE 308 series. The Government has invoked Military Commission Rule of Evidence (M.C.R.E.) 505(f) to seek substitutions and other relief for providing classified information. The M.C.R.E. 505(f) process is ongoing and the Government has not completed provision of RDI discovery in the AE 308 series. Thus, the underlying motion by the Defense for the Commission to compel discovery of the full un-redacted SSCI report is not ripe.

d. The issues of the Commission's authority to compel discovery of Congressional records and whether Congressional records in the possession the DoD are "within the possession, custody, or control of the Government" under Rule for Military Commissions 701(c)(1)) are also not ripe for decision. The Commission notes an Article III Court within the D.C. Circuit has recently issued a preservation order for the Government to preserve the full SSCI Report in *habeas* litigation concerning a Guantanamo Bay detainee not party to this case.¹⁴

¹³ AE 286R (GOV), Government Notice Concerning Defense Motion to Compel Discovery Of Senate Select Committee on Intelligence Study of RDI Program, filed 15 December 2016.

¹⁴ See *Abd Al Rahim Hussein Al Nashiri v. Barack Obama, et al.*, No. 08-cv-1207 (RCL), Misc. No. 08-mc-442 (TFI-I), dated 28 December 2016.

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e. The Commission agrees with the Government's assertion in AE 286L that it is necessary to preserve the *status quo* regarding DoD possession of the SSCI report pending completion of RDI discovery and resolution of the issues raised in the AE 286 series.

6. Ruling.

a. The Commission motion to compel discovery of the SSCI Report is **DEFERRED**.

b. The Defense motion to order the Government to file the SSCI Report with the Commission *ex parte* and under seal so it can be made part of the appellate record and be produced at a later date is **GRANTED IN PART** as provided in paragraph 7 of this Order.

7. Order.

a. The Government shall ensure the DoD preserves a copy of the full SSCI Report pending completion of RDI discovery and litigation of issues raised in the 286 series.

b. This Preservation Order will remain in effect until otherwise ordered by this Commission or other Court of competent jurisdiction.

So **ORDERED** this 10th day of January, 2017.

//s//
JAMES L. POHL
COL, JA, USA
Military Judge

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EXHIBIT 2

THE WHITE HOUSE

WASHINGTON

December 9, 2016

The Honorable Richard Burr
United States Senate
Washington, DC 20510

Dear Chairman Burr:

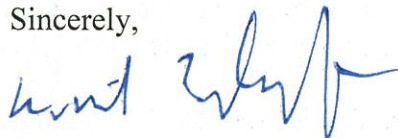
Thank you very much for your letter to the President dated December 2, 2016 regarding the Senate Select Committee on Intelligence's full Committee Study of the Central Intelligence Agency's Detention and Interrogation Program.

I write to notify you that the full Study will be preserved under the Presidential Records Act (PRA). The determination that the Study will be preserved under the PRA has no bearing on copies of the Study currently stored at various agencies.

Consistent with the authority afforded to him by the PRA, the President has informed the Archivist that access to classified material, among other categories of information, should be restricted for the full twelve years allowed under the Act. At this time, we are not pursuing declassification of the full Study.

Thank you very much for your letter on this important issue. I have sent a similar letter to Vice Chairman Feinstein.

Sincerely,



W. Neil Eggleston
Counsel to the President

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABD AL RAHIM HUSSEIN AL)	
NASHIRI,)	
)	
Petitioner,)	
	)	Civil Action No. 08-CV-1207 (RCL)
v.	)	Misc. No. 08-MC-442 (TFH)
)	
BARACK OBAMA, et al.,)	
)	
Respondents.)	

DECLARATION OF JOHN O. BRENNAN, DIRECTOR CENTRAL
INTELLIGENCE AGENCY

I, JOHN O. BRENNAN, hereby declare and state:

I. INTRODUCTION

1. I am the Director of the Central Intelligence Agency ("DCIA") and have served in this capacity since March 5, 2013. In my capacity as DCIA, I lead the CIA and manage the Intelligence Community's human intelligence and open source collection programs on behalf of the United States Government. Prior to serving as DCIA, I served as Assistant to the President for Homeland Security and Counterterrorism. My 25 years of earlier service with the CIA included work as a Near East and South Asia analyst; Station Chief in Saudi Arabia; and Director of the National Counterterrorism Center.

2. As Director of the CIA, I serve as the executive head of the CIA, pursuant to the National Security Act of 1947, as

amended, 50 U.S.C. § 3036. Pursuant to 50 U.S.C. § 3036(d), I am charged with (1) collecting intelligence through human sources and other appropriate means; (2) correlating and evaluating intelligence related to national security and providing appropriate dissemination of such intelligence; (3) providing overall direction for and coordination of the collection of national intelligence outside the United States through human sources and, in coordination with other elements of the U.S. Government, ensuring that the most effective use is made of authorized collection resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and (4) performing other functions and duties related to intelligence affecting national security as the President or Director of National Intelligence (DNI) may direct.

3. The purpose of this declaration is to describe an order to preserve detainee-related information issued by General Michael V. Hayden when he was Director of the CIA; to briefly describe certain records that are subject to that preservation order; and to describe the status of the copy in the possession of the CIA of the full 6,963-page report prepared by the Senate Select Committee on Intelligence ("SSCI") regarding the CIA's former detention and interrogation program (the "Full Report").

4. The statements in this declaration are based on my personal knowledge and information made available to me in my official capacity, including review of three declarations described further below and attached as exhibits to this declaration.

5. **Part I** of this declaration introduces the declaration, provides an overview of the declaration and describes its purpose. **Part II** describes General Hayden's preservation directive. **Part III** provides information related to a CIA database known as RDINet. **Part IV** provides information related to the document entitled "Comments on the Senate Select Committee on Intelligence's Study of the Central Intelligence Agency's Former Detention and Interrogation Program" that the CIA sent to the SSCI on June 27, 2013 (hereafter, the "June 2013 Response"). **Part V** provides information related to the Full Report.

II. GENERAL HAYDEN'S 2007 PRESERVATION DIRECTIVE

6. In light of events surrounding the destruction of recordings of the interrogations of certain detainees, then-Director of the Central Intelligence Agency Michael V. Hayden issued an order to CIA personnel in 2007 to preserve and maintain all documents, information, and evidence relating to

any detainee held at the United States Naval Station Guantanamo Bay, Cuba and any detainee held by the CIA.

7. General Hayden described that order in a declaration, signed on December 20, 2007. A true and correct copy of General Hayden's declaration is attached as Exhibit A. The preservation order issued by General Hayden remains in force.

III. THE RDINET DATABASE

8. From information and documents made available to me in my official capacity, including a September 16, 2016 declaration signed by Antoinette B. Shiner, Information Review Officer in the Litigation Information Review Office of the CIA, I understand that the CIA's principal and most complete repository of information related to the former detention and interrogation program is a stand-alone electronic computer database referred to as RDINet. RDINet was created in part to facilitate investigations into the former detention and interrogation program. It contains millions of highly classified documents, including emails, memoranda, and other sensitive records containing classified and compartmented information about intelligence sources and methods; pseudonyms and true names of Agency personnel, assets, and liaison officers; and details about liaison relationships. It was also the primary repository the SSCI used to conduct its study of the CIA's former detention

and interrogation program. A true and correct copy of Ms. Shiner's declaration is attached as Exhibit B.

9. RDINet contains documents, information and evidence relating to detainees held at the United States Naval Station Guantanamo Bay and detainees held by the CIA in its former detention and interrogation program. The materials in RDINet are covered by General Hayden's preservation directive, described above.

IV. THE CIA'S JUNE 2013 RESPONSE TO A DRAFT OF THE SSCI'S STUDY OF THE CIA'S FORMER DETENTION AND INTERROGATION PROGRAM

10. In its congressional oversight role, the SSCI advised the CIA in March 2009 that it planned to conduct a review of the CIA's former detention and interrogation program. A January 21, 2015 declaration signed by Neal Higgins, Director of the CIA's Office of Congressional Affairs, describes certain aspects of that review. A true and correct copy of Mr. Higgins' declaration (including exhibits attached thereto) is attached as Exhibit C.

11. The SSCI transmitted a draft of its study to the CIA in December 2012. On June 27, 2013, following a thorough review, the CIA sent the SSCI a response entitled "Comments on the Senate Select Committee on Intelligence's Study of the Central Intelligence Agency's Former Detention and Interrogation

Program." The CIA released a redacted version of that June 2013 Response on December 9, 2014 and is also in possession of a full, unredacted copy of the June 2013 Response. The unredacted copy of the June 2013 Response is covered by General Hayden's preservation directive, described above.

V. THE SSCI'S FULL REPORT ON THE CIA'S FORMER DETENTION AND INTERROGATION PROGRAM

12. The SSCI finalized its Full Report regarding the CIA's former detention and interrogation program in December 2014. Although the SSCI voted to send an Executive Summary and certain other documents to the President for declassification and public release, my understanding is that the SSCI did not approve declassification or release of the Full Report. The Full Report remains classified and discusses intelligence operations, foreign relations, and other sensitive matters at length and in great detail.

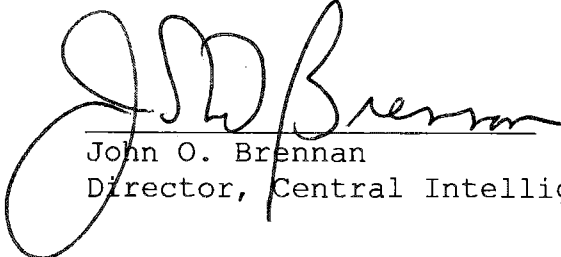
13. The CIA and other Executive Branch agencies received copies of the Full Report in December 2014. The disposition of those copies is subject to ongoing Freedom of Information Act litigation. See generally *ACLU v. CIA*, 823 F.3d 655 (D.C. Cir. 2016). Both the CIA and the CIA's Office of Inspector General currently have in their possession a copy of the final version of the Full Report.

14. I understand that the government represented to the district court in the Freedom of Information Act litigation that it would "preserve the status quo regarding the Full Report absent either leave of court or resolution of this litigation in the government's favor." *ACLU v. CIA*, No. 13-CV-1870 (D.D.C.) (Dkt. No. 42, filed Feb. 6, 2015). I further understand that a certiorari petition is pending before the Supreme Court in that litigation, and the earliest possible time the case could be resolved is March 2017, which is the earliest the Supreme Court could consider the petition. See *ACLU v. CIA*, No. 16-629 (S. Ct.) (petition filed Nov. 9, 2016; response due Feb. 13, 2017). The government has thus pledged to preserve the copy of the report in the CIA's possession absent either leave of the court with jurisdiction over the above-mentioned FOIA case or resolution of that case in the Government's favor.

* * * *

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th of January 2017.



John O. Brennan
Director, Central Intelligence Agency

Exhibit A

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MAJID KHAN and RUBIA KHAN,)	
as next friend,)	
)	
Petitioners,)	
)	
v.	)	No. 07-1324
)	
ROBERT M. GATES,)	
Secretary of Defense,)	
)	
Respondant.)	

**DECLARATION OF GENERAL MICHAEL V. HAYDEN, USAF,
DIRECTOR, CENTRAL INTELLIGENCE AGENCY**

I, MICHAEL V. HAYDEN, hereby declare and state:

- I am the Director of the Central Intelligence Agency (CIA) and have served in this capacity since 30 May 2006. In my capacity as Director, I lead the CIA and manage the Intelligence Community's human intelligence and open source collection programs on behalf of the Director of National Intelligence (DNI). I have held a number of positions in the Intelligence Community, including Principal Deputy Director of National Intelligence, from April 2005 to May 2006; Director, National Security Agency/Chief, Central Security Service (NSA/CSS), Fort George G. Meade, Maryland, from March 1999 to April 2005; Commander of the Air Intelligence Agency and Director of the Joint Command and Control Warfare Center, both headquartered at

Kelly Air Force Base, Texas, from January 1996 to September 1997; and Director, Intelligence Directorate, U.S. European Command, Stuttgart, Germany, from May 1993 to October 1995.

2. I am a four-star general in the United States Air Force and have held senior staff positions at the Pentagon, the National Security Council, and the U.S. Embassy in Sofia, Bulgaria, as well as serving as Deputy Chief of Staff for United Nations Command and U.S. Forces Korea. I entered active duty in 1969 as a distinguished graduate of the Reserve Officer Training Corps program.

3. I make the following statements based upon my personal knowledge and information provided to me in my official capacity.

4. In light of recent events surrounding the destruction of recordings of the interrogations of detainees formerly in the custody of the CIA, I have issued an order to all CIA personnel to preserve and maintain all documents, information, and evidence relating to:

A. any detainee held at the United States Naval Base Guantanamo Bay, Cuba; and

B. any detainee held by the CIA.

This order is a continuing obligation that applies to future as well as past and present detainees.

* * * *

Case 1:05-cv-00763-JDB Document 46 Filed 02/13/08 Page 19 of 28
DEC. 20. 2007 . 3:27PM NO. 2492 P. 4

I hereby declare under penalty of perjury that the
foregoing is true and correct.

Executed this 20th day of December, 2007.



General Michael V. Hayden, USAF
Director
Central Intelligence Agency

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

SULEIMAN ABDULLAH SALIM,)	
MOHAMED AHMED BEN SOUD,)	
OBAID ULLAH, (as personal)	
Representative of GUL RAHMAN),	)	Civil Action No.
	)	2:15-CV-286
Plaintiffs,)	
)	
v.)	
)	
JAMES ELMER MITCHELL and)	
JOHN "BRUCE" JESSEN,)	
)	
Defendants.)	

**DECLARATION OF ANTOINETTE B. SHINER
INFORMATION REVIEW OFFICER
LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY**

I. INTRODUCTION

I, ANTOINETTE B. SHINER, hereby declare and state:

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office at the Central Intelligence Agency ("CIA" or "Agency"). I assumed this position in January 2016.

2. Prior to becoming the IRO for the Litigation Information Review Office, I served as the IRO for the Directorate of Support for over sixteen months. In that capacity, I was responsible for making classification and release determinations for information originating within the

Directorate of Support. Prior to that, I was the Deputy IRO for the Director's Area of the CIA for over three years. In that role, I was responsible for making classification and release determinations for information originating within the Director's Area, which included, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of General Counsel. I have held other administrative and professional positions within the CIA since 1986, and have worked in the information review and release field since 2000.

3. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations. Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. As part of my official duties, it is my responsibility to ensure that any determinations as to the release or withholding of any such

documents or information are proper and do not jeopardize the national security.

4. Through the exercise of my official duties, I have become familiar with this case and Defendants James Elmer Mitchell and John "Bruce" Jessen's ("Defendants") Motion to Compel Pursuant to Federal Rule of Civil Procedure 45 (d)(2)(B)(i) ("Defendants' Motion to Compel"). The purpose of this Declaration is to address several issues relevant to the CIA's production of documents in response to Defendants' *Touhy* (*United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951)) request and non-party document subpoena, served on CIA through counsel on June 28, 2016, that were raised in Defendants' Motion to Compel. For the Court's convenience, I have divided the remainder of this declaration into two sections. Section II addresses the burdens the CIA must undertake to search for documents responsive to Defendants' *Touhy* request and subpoena for the production of documents. Section III explains the additional burdensome line-by-line classification review process that the CIA will need to conduct following the identification of responsive documents.

II. THE CIA'S SEARCH FOR RESPONSIVE RECORDS

5. On June 28, 2016, Defendants served upon the Department of Justice ("DOJ"), on behalf of the CIA, a *Touhy* request and subpoena for the production of documents, seeking,

inter alia, "all documents relating to" 29 broad categories of information, over a period of 15 years, in the possession of the CIA.

6. After analyzing the 29 individual requests in Defendants' Touhy request and subpoena, the CIA identified RDINet, its principal and most complete repository of information related to the former detention and interrogation program, as the Agency records system most likely to contain records potentially responsive to the document requests.

7. RDINet is a stand-alone electronic computer database created in part to facilitate investigations into the former detention and interrogation program. RDINet contains millions of highly classified documents, including emails, memoranda, and other sensitive records containing classified and compartmented information about intelligence sources and methods; pseudonyms and true names of Agency personnel, assets, and liaison officers; and details about liaison relationships. It was also the primary repository the Senate Select Committee on Intelligence utilized to conduct its multi-year detention and interrogation study.

8. Due to the highly classified and sensitive nature of the documents contained within RDINet, this records system has purposely been decentralized and compartmented to limit personnel access and to enhance its physical security. As a

result, fewer than ten CIA employees and/or contractors are currently assigned to search for documents contained within the system; however, this group is also responsible for other duties and numerous search activities. Thus, these requests are prioritized depending on the exigency or need for the information, such as ongoing or time sensitive intelligence matters. Every query of RDINet for records or information must go through this small cadre of experienced subject matter experts, who help determine the best search terms to use to locate the requested information. This small team must run every search of RDINet required by CIA and other government agencies, whether for litigation or other mission-related purposes.

9. The assigned RDINet subject matter experts conducted several searches designed to find documents responsive to Defendants' requests. Because of the breadth of Defendants' requests, the RDINet subject matter experts conducted searches for documents containing any references to Defendants or Plaintiffs. These searches utilized a variety of search terms, including both the Plaintiffs' and Defendants' names and identifiers, both individually and in combination. Those searches are continuing and more than 35,000 potentially responsive documents have been located.

10. With respect to any potentially responsive documents located within RDINet, a more time-consuming review process must then take place. Each document must be reviewed by the assigned RDINet subject matter expert to ensure that it is referencing the correct individual who was the target of the search. This process is to ensure that the document is potentially responsive and that only those persons with a "need to know" the information receive it and to prevent sensitive classified information about another person or intelligence matter from being inappropriately distributed. The process of reviewing documents to determine if they refer to the correct individual often requires careful and time-consuming review. For example, each Plaintiff in this case has several Arabic names and aliases, some of which are quite common (e.g., Salim Abdullah), thereby multiplying the number of documents that must be reviewed due to various spelling and transliterations of common Arabic names. Next, the documents must be reviewed to ensure that a potentially responsive document is not a duplicate of another document already identified earlier in the review. This first-line review is cumbersome and burdensome, as many of these documents are lengthy and there are many duplicate documents within RDINet, thus it is not uncommon for these reviews to take several days for even very limited search strings with limited results. By contrast, given the large volume of potentially

responsive documents at issue in this case, it was recently estimated that one dedicated RDINet subject matter expert can review no more than approximately 1,000 documents for responsiveness per week. At this rate, a review of the approximately 35,000 potentially responsive documents in this case would take approximately 35 man-weeks to complete. These burdens would be exponentially greater if, as I understand Defendants have requested, the CIA had to conduct searches for persons other than the Plaintiffs and Defendants, such as other detainees or CIA personnel who participated in the former detention and interrogation program.

11. Once this first-line review process is complete, the documents are set aside for review by Department of Justice attorneys to determine if the documents are responsive to the subpoena, thus beginning an additional layer of review. Due to the fact that RDINet contains many extremely sensitive documents, all of the potentially responsive documents are required to be initially treated with special storage and handling restrictions. This means, among other things, that the DOJ reviewers must acquire clearances appropriate to both enter the facility in which the documents are housed and to be permitted to use the stand-alone computer terminals within that facility to view the highly classified RDINet documents. This authorization process for DOJ's Andrew Warden alone, who already

had appropriate security clearances to access the facility, took over two weeks to complete.

III. THE CIA'S CLASSIFICATION REVIEW PROCESS

12. Once the DOJ reviewers determine which of the potentially responsive documents are responsive to the document requests, CIA officers then conduct a line-by-line classification review of each document, identifying whether any classified information can be declassified and released. In addition to the classification review, the CIA and DOJ also must conduct a privilege review to determine if the documents are protected (in whole or in part) by one or more of the following privileges and protections, in addition to the state secrets privilege: deliberative process privilege, attorney-client privilege, attorney work product doctrine, confidential informant privilege, or law enforcement privilege, among others.

13. This classification review is necessary because while over time, much information about the CIA's former detention and interrogation program has been officially declassified and publicly released, other information about the program remains highly classified. Determining whether certain information remains classified, and if so at what level of classification, can turn on subtle nuances, carefully parsed distinctions, and the context of given proposed disclosure.

14. The information about the program that remains classified can be divided into several categories. For example, information concerning the operation or location of any overseas detention facilities, including the name of any country in which the detention facility was located, remains highly classified. The same is true of information regarding any foreign liaison service's cooperation in administering or hosting any aspect of the program, from the capture and transfer of individuals, to foreign liaison participation in any debriefing or interrogation sessions. This category also includes any names or identifying information about any foreign liaison services.

15. The liaison agreements under which the CIA works with these foreign governments require that the CIA not expose the existence of the relationship or the intelligence or assistance that was provided as part of the former detention and interrogation program. Should the identities of these foreign intelligence services or the countries in which they are located become part of the public record, there is a high likelihood that certain liaison services will cease or restrict their current and future cooperation with the CIA. This in turn could cause irreparable damage to the CIA's ability to continue to collect valuable intelligence in those countries which might prove vital to our national security.

16. Also remaining highly classified is information regarding personnel or contractors involved in the former detention and interrogation program, including names, pseudonyms, physical descriptions, names of companies, or any other identifying information. This protection is due to grave concern for these individuals' physical safety and that of their families, should their names or identities become known to terrorist elements either in the United States or abroad, as well as the important national security interest in obtaining new personnel or contractors in the future.

17. The intelligence field is one in which disclosure of a discrete piece of information by itself may be innocuous, but its release in conjunction with other, seemingly harmless bits of information may result in the disclosure of sensitive information that could harm national security. Therefore, the classification review of documents must be thorough and exacting. In reviewing highly sensitive documents pertaining to the former detention and interrogation program, in which many prior releases of information have been made, it is often necessary to analyze considerable material beyond the particular documents responsive to the document request in order to ascertain whether a particular word, phrase, or sentence has been previously declassified or remains classified and/or privileged. The review of this additional material, which in

the case of the former detention and interrogation program is quite voluminous in nature, adds additional time, potentially several days, to each document review.

18. Responsive records retrieved from RDINet also often contain sensitive information from more than one CIA component. The originating component of each piece of information is uniquely knowledgeable about the kind of disclosures that could, for example, jeopardize specific intelligence sources or methods, and is therefore best qualified to determine what damage, if any, to the national security reasonably could be expected to result from an unauthorized release of the information. This review is critical because the significance of one item of information often depends upon the knowledge of other items of information, the value of which cannot be considered without expertise from subject-matter experts who have knowledge of the entire landscape. For that reason, responsive documents potentially need to be referred to multiple CIA components having equities in the documents, and potentially to other federal agencies that may have equities represented in the documents.

19. Upon referral, these entities must also conduct a line-by-line classification review to determine whether any information is properly exempted from disclosure. Many of the relevant CIA components' subject matter experts are also tasked

with mission-critical duties such as collecting, analyzing, and preparing intelligence for distribution to policymakers, and taking time away from those duties to conduct lengthy classification reviews pulls intelligence officers from the central focus of their mission for days or weeks at a time.

20. Once all reviews have been completed, individuals in my office must then incorporate all entities' recommended redactions as appropriate into one final copy of each document.

21. Once this final copy is prepared, a senior classification review takes place, with a subject matter expert IRO reviewing each document line-by-line once again to confirm that the proposed redactions are correct and that the information being released is both unclassified and not subject to any relevant privilege.

22. Additionally, the review of classified material related to such a highly sensitive topic may in some cases require coordination with senior CIA officials as to whether the release of the information at issue reasonably could be expected to cause identifiable damage to the national security. These judgments cannot be made solely by IROs; rather, they must be made by senior officials who are actively involved in the conduct and management of intelligence collection or analytical activities. Such officials are often called upon to respond quickly to international crises and pressures, and therefore

cannot, as a practical matter, instantly devote disproportionate time and effort to all civil litigations where the CIA is a non-party without consequent damage to intelligence activities, which are this Agency's primary responsibility.

23. The burdens of this review process are enormous. For example, the CIA released twelve documents responsive to Defendants' *Touhy* request on September 2, 2016. For this production alone, which did not even require the lengthy front line review process discussed above by the RDINet staff because the documents were appended to a CIA report released previously in response to a Freedom of Information Act request, the initial line-by-line classification review of the documents by my office took seven days, followed by the senior review conducted by the subject matter expert IRO, which took an additional seven days. Following that two week classification review process, review by OGC attorneys took an additional week. At that rate of review, and assuming that the IROs processing these documents do nothing else while this review is ongoing, the classification review and processing of even 1,000 documents would take approximately 250 weeks to complete. And this does not take into account the fact that my office performs a wide spectrum of work on other litigation matters with pending deadlines, or the significant responsibilities of the subject matter expert IRO and the other intelligence offices we must rely on to complete the work.

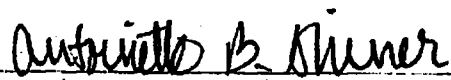
24. My office is not sufficiently staffed to devote personnel to work full-time solely on this litigation, in which CIA is not a party. Each officer in the Litigation Information Review Office maintains a full portfolio of other litigation matters with documents to review and court-ordered deadlines to meet, spanning a full range of criminal, civil and FOIA cases, including those in which the CIA is a named party. Similarly, the one subject matter expert IRO assigned to conduct senior reviews of documents related to the former detention and interrogation program is also assigned to a variety of additional detainee-related matters and cases that require extensive classification review, including several ongoing matters that require review of approximately 30,000 pages of documents at the same time.

25. For all of the foregoing reasons, searching for responsive documents and then conducting a line-by-line classification review of potentially thousands of pages of documents responsive to a broad array of document requests over a span of 15 years, for a civil case in which CIA is not even a party, is an incredibly burdensome undertaking for both this office and this Agency.

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of September 2016.



Antoinette B. Shiner,
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACLU and ACLU Foundation,)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 13-1870
	)	(JEB)
)	
CENTRAL INTELLIGENCE AGENCY,)	
et al.,)	
)	
Defendants.)	
_____)	

**DECLARATION OF NEAL HIGGINS
DIRECTOR, OFFICE OF CONGRESSIONAL AFFAIRS
CENTRAL INTELLIGENCE AGENCY**

I, NEAL HIGGINS, hereby declare and state:

1. I am the Director of the Office of Congressional Affairs at the Central Intelligence Agency ("CIA" or "Agency"). I joined the CIA in June 2013 after working for the Senate Select Committee on Intelligence ("SSCI" or "Committee"), where I served as a senior advisor to Senators Bill Nelson and Martin Heinrich, regional monitor for the Persian Gulf, and budget monitor for the Federal Bureau of Investigation. Prior to joining the SSCI staff, I served as Senator Nelson's legislative director. Earlier in my career I worked as a member of the trial team prosecuting Slobodan Milosevic and as an associate attorney at the law firm of Sullivan & Cromwell LLP.

2. As Director of the Office of Congressional Affairs, I am the principal advisor to the Director of the CIA on all matters concerning relations with the Congress. My responsibilities include ensuring that the Congress is kept fully and currently informed of the Agency's intelligence activities via timely briefings and notifications, responding in a timely and complete fashion to congressional taskings and inquiries, tracking and advising on legislation that could affect the Agency, and educating CIA personnel about their responsibility to keep the Congress fully and currently informed. One of the congressional oversight committees with which I regularly interact in this capacity is the SSCI, which authored the document described below.

3. Through the exercise of my official duties, I am familiar with this civil action and the underlying Freedom of Information Act ("FOIA") request. The purpose of this declaration is to explain my understanding of the creation and history of the document at issue in this litigation: the current version of the full 6,963-page report authored by the SSCI concerning the CIA's former detention and interrogation program (the "Full Report"). To provide context, this declaration also discusses the Executive Summary as well as the Findings and Conclusions of the SSCI's study (the "Executive Summary").

4. As I explain in more detail below, the SSCI "approved" drafts of the Executive Summary and Full Report (collectively, the "Study") in December 2012 and transmitted copies of both documents to the Executive Branch for comment. After the CIA submitted its comments, the SSCI made changes and decided in April 2014 to send an updated version of the Executive Summary -- but not the Full Report -- to the President for declassification. The SSCI made additional changes to the Executive Summary and Full Report during the declassification process and publicly released a redacted, declassified version of the Executive Summary in December 2014.

5. The statements in this declaration are based on my personal knowledge and information made available to me in my official capacity. Specifically, these assertions are drawn from my own interactions with the SSCI, consultations with other CIA officials, a review of the relevant documentary record, and other information made available to me in my official capacity.

I. Plaintiffs' FOIA Request

6. By letter dated February 13, 2013, plaintiffs requested "disclosure of the recently adopted report of the Senate Select Committee on Intelligence relating to the CIA's post-9/11 program of rendition, detention, and interrogation." A true and correct copy of this letter is attached hereto as Exhibit A.

7. The Agency responded by letter dated February 22, 2013, and advised plaintiffs that the requested report was a "Congressionally generated and controlled document that is not subject to the FOIA's access provisions" and, accordingly, the CIA informed plaintiffs that it could not accept the request. A true and correct copy of this letter is attached hereto as Exhibit B. This lawsuit followed.

8. The SSCI continued to make changes to the Full Report during the pendency of this lawsuit. The Agency now has at least three different versions of the Full Report in its possession: a December 2012 version, a Summer 2014 version, and the final December 2014 version.

9. Plaintiffs submitted a new FOIA request on May 6, 2014 seeking "the updated version of the Senate Select Committee on Intelligence's Report." A true and correct copy of this letter is attached hereto as Exhibit C. The Agency has not issued a substantive response to that request. The plaintiffs amended their complaint on June 5, 2014, to seek the release of the "Updated SSCI Report." The Agency has interpreted this to refer to the most current and final version of the Full Report -- the December 2014 version. I understand that the plaintiffs are no longer seeking the Executive Summary.

II. Initial Drafting of SSCI Work Product

10. In its congressional oversight role, the SSCI advised the CIA in March 2009 that it planned to conduct a review of the CIA's former detention and interrogation program. At the outset, the SSCI requested access to broad categories of CIA documents related to how the program was created, operated, and maintained, which would form the basis of SSCI's review. Due to the volume and the highly sensitive and compartmented nature of the classified information at issue, the CIA determined that in order to properly safeguard classified equities, the SSCI's review of Agency records would need to take place at CIA facilities.

11. Following discussions with the Committee, the CIA and SSCI reached an inter-branch accommodation that respected both the President's constitutional authorities over classified information and the Congress's constitutional authority to conduct oversight of the Executive Branch. Under this accommodation, the CIA established a secure electronic reading room at an Agency facility where designated SSCI personnel could review these highly classified materials. In addition, the CIA created a segregated network share drive at this facility that allowed members of the Committee and staffers to prepare and store their work product, including draft versions of the Full Report, in a secure environment.

12. One key principle necessary to this inter-branch accommodation, and a condition upon which SSCI insisted, was that the materials created by SSCI personnel on this segregated shared drive would not become "agency records" even if those documents were stored on a CIA computer system or at a CIA facility. Specifically, in a June 2, 2009, letter from the SSCI Chairman and Vice Chairman to the Director of the CIA, the Committee expressly stated that the SSCI's work product, including "draft and final recommendations, reports or other materials generated by Committee staff or Members," are "the property of the Committee" and "remain congressional records in their entirety." The SSCI further explained that the "disposition and control over these records, even after the completion of the Committee's review, lies exclusively with the Committee." As such, the Committee stated that "these records are not CIA records under the Freedom of Information Act or any other law" and that the CIA "may not integrate these records into its records filing systems, and may not disseminate or copy them, or use them for any purpose without prior written authorization from the Committee." Finally, the SSCI requested that in response to a FOIA request seeking these records, the CIA should "respond to the request or demand based upon the understanding that these are congressional, not CIA, records." The full passage reads as follows:

Any documents generated on the [segregated shared drive], as well as any other notes, documents, draft and final recommendations, reports or other materials generated by Committee staff or Members, are the property of the Committee and will be kept at the Reading Room [at an Agency facility] solely for secure safekeeping and ease of reference. These documents remain congressional records in their entirety and disposition and control over these records, even after the Committee's review, lies exclusively with the Committee. As such, these records are not CIA records under the Freedom of Information Act or any other law. The CIA may not integrate these records into its records filing systems, and may not disseminate or copy them, or use them for any purpose without authorization of the Committee. The CIA will return the records to the Committee immediately upon request in a manner consistent with [security procedures outlined elsewhere]. If the CIA receives any request or demand for access to these records from outside the CIA under the Freedom of Information Act or any other authority, the CIA will immediately notify the Committee and will respond to the request or demand based upon the understanding that these are congressional, not CIA, records.

A true and correct copy of this letter is attached hereto as Exhibit D.

13. Based on this inter-branch accommodation, SSCI personnel used the segregated shared drive to draft the document that is the subject of this litigation. As sections of their work product reached a certain stage, the SSCI worked with the CIA information technology and security personnel to transfer these drafts from the segregated shared drive to the SSCI's secure facilities at the U.S. Capitol complex so that the SSCI could complete the drafting process in its own workspace.

14. CIA understands that the SSCI made changes to its work product following the transfers. Thus, it is the Agency's understanding that the draft versions of the Full Report and Executive Summary that SSCI approved in December 2012 do not reside in the CIA facility described in the preceding paragraph. Nonetheless, the restrictions governing the SSCI's initial work product have informed how the CIA has treated versions of the SSCI's work product in the Agency's possession.

III. SSCI's Treatment of the Full Report

A. December 2012: Approval and Transmission of the Initial Draft

15. On December 13, 2012, the SSCI decided in closed session to "approve" a draft of the Study -- both the Executive Summary and the Full Report -- and transmit it to the Executive Branch for review. The SSCI Staff Director notified the CIA and other federal agencies of the decision by e-mail that evening. He indicated that his staff would transmit a "limited number of hard copies" of the Study to the White House, the Office of the Director of National Intelligence, the CIA, and the Department of Justice for review. He also noted that his staff would provide copies of the Study only to specific individuals identified in advance to the Chairman. The Staff Director's e-mail indicates that these limitations on dissemination and access were imposed pursuant to "the motion adopted by the

Committee." A true and correct copy of this e-mail (with appropriate redactions) is attached hereto as Exhibit E.

16. Soon thereafter, the CIA provided the Committee with a list of Agency officers who would review the Executive Summary and Full Report on behalf of the CIA. The Committee approved access for these individuals for the limited purpose of providing comments in response to the Study. The CIA subsequently conducted a thorough review of the Study and drafted a lengthy response, a process that necessitated increasing the number of officers who had access to the Full Report or portions of the Full Report. However, access to that version of the document remained confined to authorized CIA personnel with the requisite security clearances and a need-to-know, and for the limited purpose of assisting the Agency in its interactions with the SSCI with respect to the Study and the Agency's response.¹

B. April 2014: SSCI's Decision to Send the Executive Summary to the President for Declassification

17. The SSCI revised the Executive Summary and Full Report after considering the CIA's comments. The SSCI then met in closed session on April 3, 2014, to determine the proper disposition of those documents. The Committee ultimately

¹ In addition, a small number of Agency personnel have reviewed portions of the Full Report for the limited purpose of assessing the proper classification of its contents or responding to FOIA requests.

decided to approve the updated versions and to send the Executive Summary to the President for declassification and eventual public release. My understanding is that the Committee did not approve declassification or release of the Full Report.

18. Because the April 3, 2014, decision was made in closed session, the exact text of the motion approved by the Committee is not publicly available. But it is clear from the public statements of SSCI members that the Committee did not decide to declassify or release the Full Report. For example, the SSCI Chairman noted in a press release announcing the April 3 decision that the Full Report would be "held for declassification at a later time." A true and correct copy of the press release is attached hereto as Exhibit F. The Chairman later explained in her foreword to the Executive Summary that she "chose not to seek declassification of the full Committee Study at this time" because "declassification of the more than six thousand page report would have significantly delayed the release of the Executive Summary."²

C. December 2014: SSCI's Release of the Executive Summary

19. The SSCI and the Executive Branch had many discussions after April 2014 regarding the Executive Summary, and the SSCI continued to edit the document in light of those discussions.

² A copy of the Chairman's foreword is available on the SSCI website: www.intelligence.senate.gov/study2014.html.

It is my understanding that the SSCI also made conforming changes to the Full Report as it updated the Executive Summary.

20. When the SSCI and the Executive Branch concluded their discussions, the Director of National Intelligence declassified a partially redacted version of the Executive Summary. The SSCI then publicly released the Executive Summary, along with minority views and the additional views of various Committee members, on December 9, 2014. To the best of my knowledge, that was the last official action of the full Committee in connection with its study of the CIA's detention and interrogation program.

IV. The CIA's Treatment of the Full Report

21. In addition to the December 2012 draft, the SSCI Chairman transmitted at least two updated versions of the Full Report to the President and other agencies. The CIA received an updated version in the summer of 2014 and another updated version in December 2014. The December 2014 version is considered the final version of the Full Report.

22. All three versions of the Full Report are marked TOP SECRET, with additional access restrictions noted based on the sensitive compartmented information contained in them. The Full Report discusses intelligence operations, foreign relations, and other classified matters at length and in great detail.

23. The Agency has used the Full Report only for limited reference purposes. When the SSCI provided the CIA with a copy

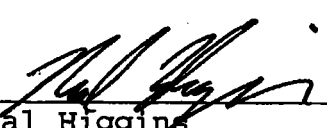
of the Full Report in December 2012, it did so for the sole purpose of allowing the Agency to review the document and provide comments. Indeed, the Committee placed express restrictions on dissemination of the Full Report. The CIA accordingly gave only a limited number of officers access to the December 2012 version of the Full Report for the limited purpose permitted by the SSCI: as a reference used when preparing the CIA's response.

24. Access to the subsequent versions transmitted in the summer of 2014 and December 2014 has been even more tightly controlled by CIA, and their use by CIA has been limited to reference purposes.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of January 2015.



Neal Higgins
Director, Office of Congressional
Affairs
Central Intelligence Agency

Exhibit A

NATIONAL SECURITY PROJECT



F-2013-00829

February 14, 2013

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505
Fax: 703.613.3007

To the Information and Privacy Coordinator:

The accompanying FOIA Request was submitted in hard-copy format as an overnight parcel via USPS on February 13, 2013. At 11:07 this morning, I received an electronic notice from the USPS that a delivery had been attempted but failed at the above mailing address. A representative at the CIA's FOIA hotline informed me that a member of your team will soon pick up the parcel from the post office holding it. In the meantime, please accept this Fax version of the Request as a substitute, and begin processing immediately.

Zachary E. Levine
Zachary Evan Levine
American Civil Liberties Union
Foundation
125 Broad Street
18th Floor
New York, NY 10004
Tel: 212.284.7322
Fax: 212.549.2654
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FEB 14 2013

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
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OFFICERS AND DIRECTORS
SUSAN M. NEWMAN
PRESIDENT
ANTHONY D. TOMPRIO
EXECUTIVE DIRECTOR

NATIONAL SECURITY PROJECT



February 13, 2013

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Office of Information Programs and Services, A/GIS/IPS/RL
U.S. Department of State
Washington, D.C. 20522-8100

Cannen L. Mallon, Chief of Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, N.W., Suite 11050
Washington, D.C. 20530-0001

Re: Request Under Freedom of Information Act / Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and various relevant implementing regulations, *see* 32 C.F.R. § 1900 (Central Intelligence Agency); 28 C.F.R. § 16.1 (Department of Justice); 32 C.F.R. § 286 (Department of Defense); and 22 C.F.R. § 171.10 *et seq.* (Department of State). The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU" or the "Requesters").¹

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
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1199 BROADWAY
NEW YORK NY 10004

Requesters seek the disclosure of the recently adopted report of the Senate Select Committee on Intelligence relating to the CIA's post-9/11 program of rendition, detention, and interrogation (the "Report").

* * *

The Senate Select Committee on Intelligence ("SSCI") voted on Thursday, December 13, 2012, to approve a report detailing the findings of its three-year investigation of the CIA's rendition, detention, and interrogation program in the years after 9/11. According to the SSCI chairperson, the Report—which totals nearly 6,000 pages—is "the most definitive review" to be conducted of the CIA's program, including the Agency's use of so-called "enhanced interrogation techniques." See, e.g., Benjamin Wittes, *Senate Intelligence Committee Interrogation Report Approved—But Not Released*, Lawfare, Dec. 14, 2012, <http://bit.ly/Vw1twf>; Natasha Lennard, *Senate-Approved CIA Torture Report Kept Under Wraps*, Salon, Dec. 14, 2012, <http://bit.ly/SWHghg>; Scott Shane, *Senate Panel Approves Findings Critical of Detainee Interrogations*, N.Y. Times, Dec. 13, 2012, <http://nyti.ms/VwdORk>; Carrie Johnson, *Report On CIA Interrogation Tactics Revives Torture Debate*, NPR, Dec. 13, 2012, <http://n.pr/VDKWm0>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>.

In the course of its investigation, which began in 2009, the SSCI reviewed millions of pages of records documenting the day-to-day operations of the CIA's interrogation program. The Commission's intent was to produce "a detailed, factual description of how interrogation techniques were used, the conditions under which detainees were held, and the intelligence that was—or wasn't—gained from the program." Joint Statement from Senator Dianne Feinstein, Chairman, Senate Intelligence Committee, and Senator Carl Levin, Chairman, Senate Armed Services Committee, Apr. 27, 2012, <http://1.usa.gov/IKjkq0>.

The Report is of clear and enormous public importance. The American public has a right to know the full truth, based on a comprehensive government investigation, about the torture and other abusive treatment of detainees authorized by officials at the highest levels of our government.

§ 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby their legislators.

According to SSCI members, the Report puts to rest claims that the use of torture led to the capture of Osama bin Laden, a topic that continues to generate public debate. The Committee chairperson, Senator Feinstein, has said—based on her familiarity with the Committee’s investigation—that “none of [the evidence that led to bin Laden] came as a result of harsh interrogation practices.” Scott Shane and Charlie Savage, *Bin Laden Raid Revives Debate on Value of Torture*, N.Y. Times, May 3, 2011, <http://nyti.ms/jDg9Ob>; Mark Hosenball, *Exclusive: Senate Probe Finds Little Evidence of Effective “Torture,”* Reuters, Apr. 7, 2012, <http://reut.rs/ItLmpH>.

Release of the Report is therefore critical to ensure timely public access to a congressional investigative report of historic significance. Other official investigative reports have been made available to the public: for example, the Senate Armed Services Committee Report, which concerned the Department of Defense’s involvement in detainee abuses, was released in full in April 2009. The SSCI’s Report likewise ought to be released.

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I. Record Requested

Requesters seek disclosure of the SSCI’s recently adopted report on the CIA’s rendition, detention, and interrogation program in the years following 9/11.

With respect to the form of production, see 5 U.S.C. § 552(a)(3)(B), we request that the Report be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession.

II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); and 22 C.F.R. § 171.12(b). There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); see also 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). In addition, the records sought relate to a “breaking news story of general public interest.” 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when “the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity”); see also 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2)(i).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(ID); 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). See *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" (internal citation omitted)); see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is "to serve as the site of record for relevant and up-to-the-minute civil rights news and information" and to "disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws"—to be "primarily engaged in the dissemination of information").

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Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU's regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.² ACLU attorneys are interviewed frequently for news stories about

² See, e.g., Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using "Mosque Outreach" for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of "Community Outreach"*, Dec. 1, 2011, <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American Civil Liberties Union, *FOIA Documents from FBI Show Unconstitutional Racial Profiling*, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem*, Oct. 19,

documents released through ACLU FOIA requests.³

The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.⁴ For example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.⁵ The ACLU also maintains a "Torture FOIA" webpage containing commentary about the ACLU's FOIA request, press releases, and analysis of the FOIA documents.⁶ (That webpage also notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA. See Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007)). Similarly, the ACLU's webpage about the Office of Legal Counsel ("OLC") torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU's information gathering, research, and analysis; and ACLU videos about the memos.⁷ In

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2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison*, Says ACLU, June 24, 2009, <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

³ See, e.g., Carric Johnson, *Delay in Releasing CIA Report Is Sought; Justice Dep't Wants More Time to Review IG's Findings on Detainee Treatment*, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on 'High-Value' Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warrick, *Like FBI, CIA Has Used Secret 'Letters.'* Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

⁴ See, e.g., <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/torturefoia>; <http://www.aclu.org/olcmemos>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/natsec/foia/search.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; and <http://www.aclu.org/exclusion>.

⁵ <http://www.torturedatabase.org>.

⁶ <http://www.aclu.org/torturefoia>.

⁷ http://www.aclu.org/safefree/genral/olc_memos.html.

addition to websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.⁸

B. *The record sought is urgently needed to inform the public about actual or alleged government activity.*

The SSCI Report is urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest, specifically, the CIA's rendition, detention and interrogation program and its authorization of abusive techniques between 2002 and 2009. See 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2).

We make this Request to further the public's understanding of the CIA's program and the role of senior officials in conceiving of and authorizing the use of abusive interrogation techniques in the wake of September 11, 2001. The public has and continues to manifest an abiding interest in the conduct of the CIA and other executive agencies with respect to individuals seized, detained, and interrogated for counterterrorism purposes. While U.S. intelligence officials have acknowledged that the CIA used harsh and coercive interrogation techniques, Congress's investigation sets forth the most comprehensive account to date of what happened and why, and it is imperative that its findings be made public.

Over the past year, national news stories have highlighted the significance of the SSCI investigation for the public record. In the run-up to the committee vote last December, a host of articles and editorials were published emphasizing how important it is for the Report to be made public. See, e.g., Ed Pilkington, *Senate Under Pressure to Release Mammoth Report on CIA Interrogation*, The Guardian (U.K.), Dec. 13, 2012, <http://bit.ly/VECh2I>; *US Senate Panel to Vote on CIA Interrogations Report*, AFP, Dec. 11, 2012, <http://bit.ly/Z0ah1A>; Carolyn

⁸ In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.

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Lochhead, *Dianne Feinstein Torture Report May Conflict with Bin Laden Movie*, SFGate Blog, Dec. 11, 2012, <http://bit.ly/USwxpi>; Matt Bewig, *Senate Report on CIA Torture Techniques May Remain Secret*, AllGov, Dec. 10, 2012, <http://bit.ly/VLaXWE>; Jim Kouri, *Senate Democrats Urge Probe of CIA Interrogations During Bush Years*, Examiner, Dec. 7, 2012, <http://exm.nr/TZTQuk>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>; Editorial, *Our View: Snowe, Committee Should Release Torture Report*, Portland Press Herald, Nov. 23, 2012, <http://bit.ly/RYPVnf>. For the past several weeks, nationwide media outlets have continued to call for the Report's public release, emphasizing its critical importance. See, e.g., Mark Hosenball, *CIA Nominee Had Detailed Knowledge of "Enhanced Interrogation Techniques"*, Reuters, Jan. 30, 2013, <http://reut.rs/XgF44v>; Matt Sledge, *John Brennan Nomination Seen As Opening to Push for CIA Torture Report Release*, Huffington Post, Jan. 8, 2013, <http://huff.to/VD00SR>; Conor Friedersdorf, *Does it Matter if John Brennan was Complicit in Illegal Torture?*, The Atlantic, Jan. 8, 2013, <http://bit.ly/Wqxu5u>; Adam Serwer, *Obama's CIA Pick to Face Questions on Torture*, Mother Jones, Jan. 8, 2013, <http://bit.ly/VNAfiw>.

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The contents of the Report will inform urgent and ongoing debate about the CIA interrogation program. The SSCI Report provides "the public with a comprehensive narrative of how torture insinuated itself into U.S. policy," a narrative that "is of more than historical interest" as the nation's lawmakers move forward. Editorial, *Free the Torture Report*, L.A. Times, Apr. 27, 2012, <http://lat.ms/lmBMZ9>. See also Scott Shane, *No Charges Filed on Harsh Tactics Used by the C.I.A.*, N.Y. Times, Aug. 30, 2012, <http://nyti.ms/RuZNRX>; Mark Hosenball, *Exclusive: Senate Probe Finds Little Evidence of Effective "Torture"*, Reuters, Apr. 27, 2012, <http://reut.rs/ItLmpH>; Marcy Wheeler, *Right on Cue, the Counter-Argument to the Torture Apology Comes Out*, Empty Wheel, Apr. 27, 2012, <http://bit.ly/Ihha6s>.

Expedited processing should be granted.

III. Application for Waiver or Limitation of Fees

A. Release of the record is in the public interest.

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested record is in the public interest because it is likely to contribute significantly to the public understanding of the United States government's operations or activities and is not primarily in the commercial interest of the requestor. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); and 22 C.F.R. § 171.17.

The SSCI Report will significantly contribute to public understanding of the government's operations or activities. Moreover, disclosure is not in the ACLU's commercial interest. Any information obtained by the ACLU as a result of this FOIA request will be available to the public at no cost. See 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17.

Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

B. The ACLU qualifies as a representative of the news media.

A waiver of search and review fees is warranted because the ACLU qualifies as a "representative of the news media" and the SSCI Report is not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); see also 32 C.F.R. § 1900.02(h)(3); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17. Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication."

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information." See *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes).⁹ Indeed, the ACLU recently was held

⁹ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT

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to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012). See also *Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

* * *

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 28 C.F.R. § 16.5(d)(4); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

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If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish the applicable records to:

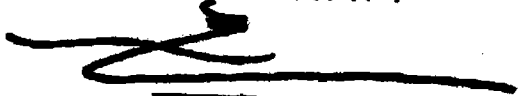
Mitra Ebadolahi
American Civil Liberties Union
125 Broad Street

Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

18th Floor
New York, NY 10004

Thank you for your prompt attention to this matter.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).



Mitra Ebadolahi
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Exhibit B

Central Intelligence Agency



Washington, D.C. 20505

22 February 2013

Ms. Mitra Ebadolahi
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Reference: F-2013-00829

Dear Ms. Ebadolahi:

This is a final response to your 13 February 2013 Freedom of Information Act (FOIA) request, submitted on behalf of the American Civil Liberties Union Foundation. Your request was received in the office of the Information and Privacy Coordinator on 14 February 2013, and sought "the disclosure of the recently adopted report of the Senate Select Committee on Intelligence relating to the CIA's post-9/11 program of rendition, detention, and interrogation (the 'Report')."

You have requested a Congressionally generated and controlled document that is not subject to the FOIA's access provisions. Therefore, the Agency cannot accept your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator

Exhibit C

LEGAL DEPARTMENT



F-2014-01530

May 6, 2014

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Office of Information Programs and Services, A/GIS/TPS/RL
U.S. Department of State
Washington, D.C. 20522-8100

Carmen L. Mallon, Chief of Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, N.W., Suite 11050
Washington, D.C. 20530-0001

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OFFICERS AND DIRECTORS
SUSAN N. BERMAN
PRESIDENT

ANTHONY J. ROMERO
EXECUTIVE DIRECTOR

BETHANN ZACKS
TREASURER

Re: Request Under Freedom of Information Act /
Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and various relevant implementing regulations, *see* 32 C.F.R. § 1900 (Central Intelligence Agency); 28 C.F.R. § 16.1 (Department of Justice); 32 C.F.R. § 286 (Department of Defense); and 22 C.F.R. § 171.10 *et seq.* (Department of State). The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU" or the "Requesters").¹

¹ The American Civil Liberties Union is a non-profit membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(4)

MAY - 7 2014

Requesters seek the disclosure of the updated version of the Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program* (the "Revised Report"). See Letter from Sen. Dianne Feinstein to President Barack Obama (Apr. 7, 2014), <http://bit.ly/OKXyvw> (describing the Revised Report).

* * *

In March 2009, the Senate Select Committee on Intelligence ("SSCI" or "Committee") began an investigation into the CIA's post-9/11 program of rendition, secret detention, torture, and other cruel, inhuman, and degrading treatment of detainees. In the course of its investigation, the SSCI reviewed six million pages of government records documenting the treatment of detainees in CIA custody. The SSCI's intent was to produce "a detailed, factual description of how interrogation techniques were used, the conditions under which detainees were held, and the intelligence that was—or wasn't—gained from the program." Joint Statement from Senator Dianne Feinstein, Chairman, Senate Intelligence Committee, and Senator Carl Levin, Chairman, Senate Armed Services Committee (Apr. 27, 2012), <http://1.usa.gov/IKjkq0>.

At the end of 2012, the SSCI completed its *Study of the CIA's Detention and Interrogation Program*, which spans more than 6,000 pages, includes 35,000 footnotes, and cost \$40 million to produce (the "Initial Report"). On December 13, 2012, the SSCI formally adopted the Initial Report. See S. Rep. No. 113-7, at 13 (Mar. 22, 2013). The SSCI subsequently disseminated the Initial Report to Executive Branch agencies. After reviewing comments by the CIA and minority views of Committee Republicans, the SSCI made changes to the Initial Report, which led to the SSCI's adoption of the Revised Report.

On April 3, 2014, the SSCI voted to send the "Findings and Conclusions" and "Executive Summary" of the Revised Report to the Executive Branch for declassification review. See Press Release, Sen. Feinstein, Intelligence Committee Votes to Declassify Portions of CIA Study (Apr. 3, 2014), <http://1.usa.gov/1h1YOk>. In her transmittal letter to President Obama, SSCI Chairman Senator Feinstein stated that the Revised Report should be viewed as "the authoritative report on the CIA's actions," and that she would be transmitting the Revised Report to appropriate Executive Branch agencies. See Letter from Sen. Feinstein to President Obama, <http://bit.ly/OKXyvw>.

§ 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, and provides analyses of pending and proposed legislation.

The Revised Report is of clear and enormous public importance. The American public has a right to know the full truth, based on a comprehensive government investigation, about the torture and other abusive treatment of detainees authorized by officials at the highest levels of our government. The Revised Report is a crucial part of the historical record on the United States' abusive interrogation practices, as well as current and future public discussion about the CIA's treatment of detainees during the administration of President George W. Bush. Indeed, President Obama urged the Committee to complete the Revised Report and send it to the Executive Branch for declassification, "so that the American people can understand what happened in the past, and that can help guide us as we move forward." Jennifer Epstein, *Barack Obama Weighs in on Senate-CIA Flap*, Politico, Mar. 12, 2014, <http://politi.co/1eproSL>.

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According to Senator Feinstein, the Revised Report "exposes brutality that stands in stark contrast to our values as a nation. It chronicles a stain on our history that must never again be allowed to happen." Press Release, Sen. Feinstein, Intelligence Committee Votes to Declassify Portions of CIA Study, <http://1.usa.gov/1hY0kt>. In addition to chronicling the CIA's detention and torture of detainees, the Revised Report "raises serious concerns about the CIA's management" of its detention and torture program. Press Release, Sens. Susan Collins and Angus King, Collins, King Announce Support for Declassification of Intelligence Committee Report on CIA Detention & Interrogation Program (Apr. 2, 2014), <http://1.usa.gov/1kws9vl>. Specifically, the Revised Report "concludes that the spy agency repeatedly misled Congress, the White House, and the public about the benefits" of the CIA's torture program. David S. Jouchim, *Senate Panel Votes to Reveal Report on C.I.A. Interrogations*, N.Y. Times, Apr. 3, 2014, <http://nyti.ms/1eejlaR>; see also Letter from Sen. Mark Udall to President Barack Obama, Mar. 4, 2014, <http://bit.ly/1hwpU9p> (noting that "much of what has been declassified and released about the operation, management and effectiveness of the CIA's Detention and Interrogation Program is simply wrong. These inaccuracies are detailed in the 6,300 page Committee Study[.]").

Release of the Revised Report is therefore critical to ensure timely public access to a congressional investigative report of historic significance. For much of the last decade, the legality and wisdom of the CIA's practices, as well as the resulting harm to individuals' human rights, our nation's values, and our national security, have been matters of intense and ongoing public debate. A fair public debate of these issues must be informed by the Revised Report. Other official investigative reports have been made available to the public: for example, the Senate Armed Services Committee Report, which concerned the Department of

Defense's involvement in detainee abuses, was released in full in April 2009. The SSCI's Revised Report likewise ought to be released.

I. Record Requested

Requesters seek disclosure of the SSCI's recently revised report on the CIA's rendition, detention, and interrogation program in the years following 9/11.

With respect to the form of production, see 5 U.S.C. § 552(a)(3)(B), we request that the Revised Report be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession.

II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); and 22 C.F.R. § 171.12(b). There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); see also 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). In addition, the records sought relate to a "breaking news story of general public interest." 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when "the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity"); see also 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2)(i); 28 C.F.R. § 16.5(d)(1)(iv).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). See *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" (internal citation omitted)); see also *Leadership Conference on Civil Rights v. Gonzalez*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership

Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.² ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.³

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² See, e.g., Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach,”* Dec. 1, 2011, <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American Civil Liberties Union, *FOIA Documents from FBI Show Unconstitutional Racial Profiling*, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem*, Oct. 19, 2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU*, June 24, 2009, <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

³ See, e.g., Carrie Johnson, *Delay in Releasing CIA Report Is Sought; Justice Dep’t Wants More Time to Review IG’s Findings on Detainee Treatment*, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on ‘High-Value’ Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosure by C.I.A., N.Y. Times*, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warrick, *Like FBI, CIA Has Used Secret ‘Letters.’* Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

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The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.⁴ For example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.⁵ Another example is the ACLU's "Mapping the FBI" portal, which analyzes, compiles, and makes available to the public records obtained through the ACLU's FOIA requests for information about the FBI's racial and ethnic "mapping" of American communities. From the Mapping the FBI portal, users can search the FOIA documents by state and subject matter in addition to accessing detailed commentary and analysis about the records and government activities. Beyond websites, the ACLU has produced an in-depth television series on civil liberties, which has included analyses and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.⁶

B. The record sought is urgently needed to inform the public about actual or alleged government activity.

The Revised Report is urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest, specifically, the CIA's rendition, detention and interrogation program and its authorization of abusive techniques after September 11, 2001. See 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2).

⁴ See, e.g., <http://www.aclu.org/national-security/preator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>; and <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>.

⁵ <http://www.torturedatabase.org>.

⁶ In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.

We make this Request to further the public's understanding of the CIA's program and the role of senior officials in conceiving of and authorizing the use of abusive interrogation techniques in the wake of September 11, 2001. The public has and continues to manifest an abiding interest in the conduct of the CIA and other executive agencies with respect to individuals seized, detained, and interrogated for counterterrorism purposes. While U.S. intelligence officials have acknowledged that the CIA used harsh and coercive interrogation techniques, Congress's investigation sets forth the most comprehensive account to date of what happened and why, and it is imperative that its findings be made public.

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Over the past eighteen months, national news stories have highlighted the significance of the SSCI investigation for the public record. In the run-up to the Committee vote on the Initial Report in December 2012, a host of articles and editorials were published emphasizing how important it is for the results of the SSCI's investigation to be made public. See, e.g., Ed Pilkington, *Senate Under Pressure to Release Mammoth Report on CIA Interrogation*, The Guardian (U.K.), Dec. 13, 2012, <http://bit.ly/VECh2J>; Carolyn Lochhead, *Dianne Feinstein Torture Report May Conflict with Bin Laden Movie*, SFGate Blog, Dec. 11, 2012, <http://bit.ly/USwxpi>; Matt Bewig, *Senate Report on CIA Torture Techniques May Remain Secret*, AllGov, Dec. 10, 2012, <http://bit.ly/VLaXWE>; Jim Kouss, *Senate Democrats Urge Probe of CIA Interrogations During Bush Years*, Examiner, Dec. 7, 2012, <http://exm.nr/TZTQuk>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>; Editorial, *Our View: Snowe, Committee Should Release Torture Report*, Portland Press Herald, Nov. 23, 2012, <http://bit.ly/RYPvnf>.

Similarly, during the weeks leading up to and following the Committee's declassification vote, nationwide media outlets have continued to emphasize the critical importance of the Revised Report. See, e.g., Bradley Klapper, *Feinstein Asks White House to Edit Torture Report*, Associated Press, Apr. 8, 2014, <http://bit.ly/1kwLrB1>; David S. Joachim, *Senate Panel Votes to Reveal Report on C.I.A. Interrogations*, N.Y. Times, Apr. 3, 2014, <http://nyti.ms/1ccjlaR>; Ali Watkins, Marisa Taylor, & David Lightman, *Senate Panel Finds CIA Illegally Interrogated Terror Suspects After 9-11*, McClatchy, Apr. 3, 2014, <http://bit.ly/1qzYEXj>; David Ignatius, *A Tortured Debate Between Congress and the CIA*, Wash. Post, Apr. 1, 2014, <http://wapo.st/1hEjfeG>; Marisa Taylor & David Lightman, *CIA's Harsh Interrogation Tactics More Widespread Than Thought, Senate Investigators Found*, McClatchy, Apr. 1, 2014, <http://bit.ly/1hrnoXPY>; Greg Miller, Adam Goldman, & Ellen Nakashima, *CIA Misled on Interrogation Program, Senate Report*

Says, Wash. Post, Mar. 31, 2014, <http://wapo.st/1ecuJNM>; Bradley Klapper, *Senate Report: Torture Didn't Lead to Bin Laden*, Associated Press, Mar. 31, 2014, <http://bit.ly/1i5ZD0t>; Mark Mazzetti, *Senate Asks C.I.A. to Share Its Report on Interrogations*, N.Y. Times, Dec. 17, 2013, <http://nyti.ms/1cotXqk>.

The contents of the Revised Report will inform urgent and ongoing debate about the CIA interrogation program. The Revised Report provides "the public with a comprehensive narrative of how torture insinuated itself into U.S. policy," a narrative that "is of more than historical interest" as the nation's lawmakers move forward. Editorial, *Free the Torture Report*, L.A. Times, Apr. 27, 2012, <http://lat.ms/1mlBMZ9>.

Expedited processing should be granted.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

III. Application for Waiver or Limitation of Fees

A. Release of the record is in the public interest.

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested record is in the public interest because it is likely to contribute significantly to the public understanding of the United States government's operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); and 22 C.F.R. § 171.17.

The Revised Report will significantly contribute to public understanding of the government's operations or activities. Moreover, disclosure is not in the ACLU's commercial interest. Any information obtained by the ACLU as a result of this FOIA request will be available to the public at no cost. See 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17.

Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

B. The ACLU qualifies as a representative of the news media.

A waiver of search and review fees is warranted because the ACLU qualifies as a "representative of the news media" and the Revised Report is not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); see also 32 C.F.R. § 1900.02(h)(3); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17. Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication."

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information." See *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes).⁷ Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012); see also *Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

* * *

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 28

⁷ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in October 2013, the State Department granted a fee waiver to the ACLU with respect to a request for documents concerning the United States' targeting killing program. In June 2013, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to standards governing intelligence collection and the Division's interpretation of an executive order. Since at least 2002, government agencies ranging from the Department of the Navy to the Department of Commerce have granted the ACLU fee waivers in connection with its FOIA requests.

C.F.R. § 16.5(d)(4); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

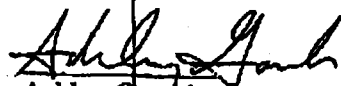
Please furnish the applicable records to:

Ashley Gorski
American Civil Liberties Union
125 Broad Street
18th Floor
New York, NY 10004

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Thank you for your prompt attention to this matter.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).



Ashley Gorski
American Civil Liberties Union
Foundation
125 Broad Street
18th Floor
New York, NY 10004
Tel: 212.284.7305
Fax: 212.549.2654
Email: agorski@aclu.org

Exhibit D

APPROVED FOR
RELEASE DATE
14-Jan-2015

[REDACTED]

~~SECRET~~
United States Senate
SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20540

June 2, 2009

The Honorable Leon Panetta
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Director Panetta:

In a letter dated March 26, 2009, the Senate Select Committee on Intelligence (the Committee) informed the Central Intelligence Agency (CIA) of its intention to conduct a thorough review of the CIA's detention and interrogation program. The letter included terms of reference approved by the Committee, as well as a document request.

To conduct our work in a comprehensive and timely manner, the Committee requires access to unredacted materials that will include the names of non-supervisory CIA officers, liaison partners, black-site locations, or contain cryptonyms or pseudonyms. We appreciate the CIA's concern over the sensitivity of this information. Our staff has had numerous discussions with Agency officials to identify appropriate procedures by which we can obtain the information needed for the study in a way that meets your security requirements. We agree that the Committee, including its staff, will conduct the study of CIA's detention and interrogation program under the following procedures and understandings:

1. Pursuant to discussions between the Committee and CIA about anticipated staffing requirements, the CIA will provide all Members of the Committee and up to 15 Committee staff (in addition to our staff directors, deputy staff directors, and counsel) with access to unredacted responsive information. In addition, additional cleared staff may be given access to small portions of the unredacted information for the purpose of reviewing specific documents or conducting reviews of individual detainees. These Committee staff have or will have signed standard Sensitive Compartmented Information non-disclosure agreements for classified information in the [REDACTED] compartment.

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The Honorable Leon Panetta

June 2, 2009

Page Two

2. CIA will make unredacted responsive operational files, as that term is defined in Section 701(b) of the National Security Act of 1947 (50 USC 431(b)), available at a secure Agency electronic Reading Room facility (Reading Room) which will permit Committee staff electronic search, sort, filing, and print capability.
3. If responsive documents other than those contained in operational files identify the names of non-supervisory CIA officers, liaison partners, or black-site locations, or contain cryptonyms or pseudonyms, CIA will provide unredacted copies of those documents at the Reading Room.
4. Responsive documents other than those contained in operational files that do not identify the names of non-supervisory CIA officers, liaison partners, or black-site locations, or contain cryptonyms or pseudonyms will be made available to the Committee in the Committee's Sensitive Compartmented Information Facility (SCIF), unless other arrangements are made.
5. CIA will provide a stand-alone computer system in the Reading Room with a network drive for Committee staff and Members. This network drive will be segregated from CIA networks to allow access only to Committee staff and Members. The only CIA employees or contractors with access to this computer system will be CIA information technology personnel who will not be permitted to copy or otherwise share information from the system with other personnel, except as otherwise authorized by the Committee.
6. Any documents generated on the network drive referenced in paragraph 5, as well as any other notes, documents, draft and final recommendations, reports or other materials generated by Committee staff or Members, are the property of the Committee and will be kept at the Reading Room solely for secure safekeeping and ease of reference. These documents remain congressional records in their entirety and disposition and control over these records, even after the completion of the Committee's review, lies exclusively with the Committee. As such, these records are not CIA records under the Freedom of Information Act or any other law. The CIA may not

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APPROVED FOR
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The Honorable Leon Panetta
June 2, 2009
Page Three

integrate these records into its records filing system, and may not disseminate or copy them, or use them for any purpose without the prior written authorization of the Committee. The CIA will return the records to the Committee immediately upon request in a manner consistent with paragraph 9. If the CIA receives any request or demand for access to these records from outside the CIA under the Freedom of Information Act or any other authority, the CIA will immediately notify the Committee and will respond to the request or demand based upon the understanding that these are congressional, not CIA, records.

- 7. CIA will provide the Committee with lockable cabinets and safes, as required, in the Reading Room.
- 8. If Committee staff identifies CIA-generated documents or materials made available in the Reading Room that staff would like to have available in the Committee SCIF, the Committee will request redacted versions of those documents or materials in writing. Committee staff will not remove such CIA-generated documents or materials from the electronic Reading Room facility without the agreement of CIA.
- 9. To the extent Committee staff seeks to remove from the Reading Room any notes, documents, draft and final recommendations, reports or other materials generated by Committee Members or staff, Committee staff will ensure that those notes, documents, draft and final recommendations, reports or other materials do not identify the names of non-supervisory CIA officers, liaison partners, or black-site locations, or contain cryptonyms or pseudonyms. If those documents contain such information, Committee staff will request that CIA conduct a classification review to redact the above-referenced categories of information from the materials or replace such information with alternative code names as determined jointly by the Committee and the CIA.

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The Honorable Leon Panetta
June 2, 2009
Page Four

Any document or other material removed from the reading room pursuant to paragraphs 8, 9, or 10 will be stored in the Committee SCIF or transferred and stored on Committee TS//SCI systems, under Committee security procedures.

- 10. Any notes, documents, draft and final recommendations, reports or other materials prepared by Committee Members or Staff based on information accessed in the Reading Room will be prepared and stored on TS//SCI systems. Such materials will carry the highest classification of any of the underlying source materials. If the Committee seeks to produce a document that carries a different classification than the underlying source materials, the Committee will submit that document to CIA, or if appropriate to the DNI, for classification review and, if necessary, redaction.
- 11. The Reading Room will be available from 0700 to 1900 hours, official government business days, Monday through Friday. If Committee staff requires additional time or weekend work is required, Committee staff will make arrangements with CIA personnel with as much advance notice as possible.
- 12. The Committee will memorialize any requests for documents or information in writing and CIA will respond to those requests in writing.
- 13. All Committee staff granted access to the Reading Room shall receive and acknowledge receipt of a CIA security briefing prior to reviewing CIA documents at the Reading Room.

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APPROVED FOR
RELEASE DATE:
14-Jan-2015

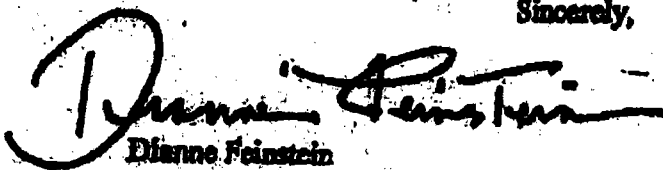
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The Honorable Leon Panetta
June 2, 2009
Page Five

We anticipate that agreement to these conditions will address your concerns about Committee access to unredacted materials responsive to the Committee's document request. We look forward to immediate staff access to those materials.

In addition, we expect that the discussions and agreements over access to the study information are a matter restricted to the Congress and the Executive branch. As such, neither this letter nor derivative documents may be provided or presented to CIA's liaison partners.

Sincerely,


Dianne Feinstein
Chairman


Christopher S. Bond
Vice Chairman

~~SECRET~~

Exhibit E

UNCLASSIFIED

Director of Office of
Congressional Affairs



From: Grannis, D (Intelligence) Subject: [redacted] SSCI report, reading

Date: 12/13/2012 05:18 PM

To:

Mark David Agrast

Cc:

Please respond to "Grannis, D
(Intelligence)"

[**** Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. ****]

CLASSIFICATION: UNCLASSIFIED

The SSCI approved today its report on CIA Detention and Interrogation. Per the motion adopted by the Committee, we will be transmitting to the White House, the ODNI, the CIA, and the Department of Justice a limited number of hard copies of the report for review. We will send an official transmittal letter tomorrow. However, by explicit instruction of the Chairman, and as specified in the motion, we will only provide copies of the report to specific individuals who are identified in advance to the Chairman (through me).

Regards,

David

David Grannis

Staff Director

Senate Select Committee on Intelligence

UNCLASSIFIED

Exhibit F

United States Senator Dianne Feinstein

Apr 03 2014

Intelligence Committee Votes to Declassify Portions of CIA Study

Washington—Senate Intelligence Committee Chairman Dianne Feinstein (D-Calif.) released the following statement after the committee voted to declassify the executive summary and conclusions of its landmark report on the CIA's Detention and Interrogation Program:

“The Senate Intelligence Committee this afternoon voted to declassify the 480-page executive summary as well as 20 findings and conclusions of the majority’s five-year study of the CIA Detention and Interrogation Program, which involved more than 100 detainees.

“The purpose of this review was to uncover the facts behind this secret program, and the results were shocking. The report exposes brutality that stands in stark contrast to our values as a nation. It chronicles a stain on our history that must never again be allowed to happen.

“This is not what Americans do.

“The report also points to major problems with CIA’s management of this program and its interactions with the White House, other parts of the executive branch and Congress. This is also deeply troubling and shows why oversight of intelligence agencies in a democratic nation is so important.

“The release of this summary and conclusions in the near future shows that this nation admits its errors, as painful as they may be, and seeks to learn from them. It is now abundantly clear that, in an effort to prevent further terrorist attacks after 9/11 and bring those responsible to justice, the CIA made serious mistakes that haunt us to this day. We are acknowledging those mistakes, and we have a continuing responsibility to make sure nothing like this ever occurs again.

“The full 6,200-page full report has been updated and will be held for declassification at a later time.

“I want to recognize the tireless and dedicated work of the staff who produced this report over the past five years, under trying circumstances. They have made an enormous contribution. I also thank

the senators who have supported this review from its beginning and have ensured that we reached this point.”

Background

The report describes the CIA’s Detention and Interrogation Program between September 2001 and January 2009. It reviewed operations at overseas CIA clandestine detention facilities, the use of CIA’s so-called “enhanced interrogation techniques” and the conditions of the more than 100 individuals detained by CIA during that period.

The executive summary, findings, and conclusions—which total more than 500 pages—will be sent to the president for declassification review and subsequent public release. President Obama has indicated his support of declassification of these parts of the report and CIA Director Brennan has said this will happen expeditiously. Until the declassification process is complete and that portion of the report is released, it will remain classified.

The Senate Intelligence Committee initiated the study of CIA’s Detention and Interrogation Program in March 2009. Committee staff received more than 6 million pages of materials, the overwhelming majority of which came from the CIA, but also included documents from the Departments of State, Justice and Defense. Committee staff reviewed CIA operational cables, memoranda, internal communications, photographs, financial documents, intelligence analysis, transcripts and summaries of interviews conducted by the CIA inspector general while the program was ongoing and other records for the study.

In December 2012, the committee approved the report with a bipartisan vote of 9-6 and sent it to the executive branch for comment. For the past several months, the committee staff has reviewed all comments by the CIA as well as minority views by committee Republicans and made changes to the report as necessary to ensure factual accuracy and clarity.

###

Permalink: <http://www.feinstein.senate.gov/public/index.cfm/2014/4/senate-intelligence-committee-votes-to-declassify-portions-of-cia-detention-interrogation-study>

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
ABD AL-RAHIM HASSAIN)	
MOHAMMED AL-NASHIRI,)	
)	
Petitioner,)	
)	
v.	)	Civil Action No. 08-cv-1207 (RCL)
)	
BARACK H. OBAMA, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

[PROPOSED] ORDER

Upon consideration of Respondents’ Motion for Partial Reconsideration and Clarification, Respondents’ motion is hereby GRANTED and the Order dated December 28, 2016, is VACATED. It is further ORDERED that Respondents shall preserve all evidence, documents and information, now or ever in Respondents’ possession, custody, or control, relating to the Petitioner in this case. This includes, but is not limited to:

1. Central Intelligence Agency (“CIA”) Report prepared between 2012 and 2014 in response to the Senate Select Committee on Intelligence’s “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program” (2014), and
2. All documents referenced or otherwise relied upon in the two above mentioned reports.

IT IS SO ORDERED.

Date:

ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ABD AL-RAHIM HASSAIN)	
MOHAMMED AL-NASHIRI,)	
)	
Petitioner,)	
)	
v.	)	Civil Action No. 08-cv-1207 (RCL)
)	
BARACK H. OBAMA, <i>et al.</i> ,)	
)	
Respondents.)	

[PROPOSED] ORDER

Upon consideration of Respondents’ Motion for Partial Reconsideration and Clarification, Respondents’ motion is hereby GRANTED and the Order dated December 28, 2016, is VACATED. It is further ORDERED that Respondents shall preserve and maintain all evidence, documents, and information, now or ever in Respondents’ possession, custody, or control, relating to the torture, mistreatment, and/or abuse of individuals who have been detained at Guantanamo Bay, as well as all evidence, documents and information, now or ever in Respondents’ possession, custody or control, relating to the Petitioner in this case. This includes, but is not limited to:

1. Central Intelligence Agency Report prepared between 2012 and 2014 in response to the Senate Select Committee on Intelligence, “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program” (2014) (hereinafter “SSCI Report”); and
2. All documents referenced or otherwise relied upon in the two above mentioned reports.

IT IS SO ORDERED.

Date:

ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE