

[ORAL ARGUMENT NOT YET SCHEDULED]

No. 15-5183

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

AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION FOUNDATION,

Appellants,

v.

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

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November 16, 2015

ACLU v. CIA, No. 15-5183 (D.C. Cir.)**JOINT APPENDIX
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**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-cv-01870-JEB**

AMERICAN CIVIL LIBERTIES UNION et al v. CENTRAL
INTELLIGENCE AGENCY
Assigned to: Judge James E. Boasberg
Case: 1:13-cv-01324-JEB
Cause: 05:552 Freedom of Information Act

Date Filed: 11/26/2013
Date Terminated: 05/21/2015
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

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Date Filed	#	Page	Docket Text
11/26/2013	<u>1</u>		COMPLAINT against CENTRAL INTELLIGENCE AGENCY (Filing fee \$ 400 receipt number 0090-3547825) filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons CIA Summons, # <u>3</u> Summons AG Summons, # <u>4</u> Summons US Atty Summons, # <u>5</u> Supplement Rule 7.1 Statement)(Shamsi, Hina) (Entered: 11/26/2013)
11/26/2013	<u>2</u>		NOTICE OF RELATED CASE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. Case related to Case No. 13-cv-1324(JEB). (Shamsi, Hina) (Entered: 11/26/2013)
11/26/2013			Case Assigned to Judge James E. Boasberg. (md,) (Entered: 11/26/2013)
11/26/2013	<u>3</u>		ELECTRONIC SUMMONS (3) ISSUED as to CENTRAL INTELLIGENCE AGENCY, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Summons 2nd, # <u>2</u> Summons 3rd, # <u>3</u> Notice of Consent, # <u>4</u> Consent Form)(md,) (Entered: 11/26/2013)
11/26/2013	<u>4</u>		NOTICE of Appearance by Arthur B. Spitzer on behalf of AMERICAN CIVIL

		LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Spitzer, Arthur) (Entered: 11/26/2013)
11/27/2013	<u>5</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Alex Abdo, :Firm– American Civil Liberties Union Foundation, :Address– 125 Broad Street, 18th Floor. Phone No. – 212–549–2517. Fax No. – 212–549–2654 by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 11/27/2013)
11/27/2013	<u>6</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Ashley Gorski, :Firm– American Civil Liberties Union Foundation, :Address– 125 Broad Street, 18th Floor. Phone No. – 212–284–7305. Fax No. – 212–549–2654 by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 11/27/2013)
11/27/2013		MINUTE ORDER granting <u>5</u> Motion for Leave to Appear Pro Hac Vice of Alex Abdo. Signed by Judge James E. Boasberg on 11/27/13. (lcjeb1) (Entered: 11/27/2013)
11/27/2013		MINUTE ORDER granting <u>6</u> Motion for Leave to Appear Pro Hac Vice of Ashley Gorski. Signed by Judge James E. Boasberg on 11/27/13. (lcjeb1) (Entered: 11/27/2013)
01/08/2014	<u>7</u>	ANSWER to Complaint by CENTRAL INTELLIGENCE AGENCY.(Mei, Vesper) (Entered: 01/08/2014)
01/08/2014	<u>8</u>	SCHEDULING ORDER: Pursuant to the attached Order, the parties shall consult and file a joint proposed briefing schedule on or before January 22, 2014. Signed by Judge James E. Boasberg on 1/8/14. (lcjeb1) (Entered: 01/08/2014)
01/08/2014		Set/Reset Deadline: The parties shall consult and file a joint proposed briefing schedule on or before 1/22/2014. (ad) (Entered: 01/08/2014)
01/08/2014	<u>9</u>	ENTERED IN ERROR.....CERTIFICATE OF SERVICE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (for the U.S. Attorney General). (Abdo, Alexander) Modified on 1/9/2014 (rdj). (Entered: 01/08/2014)
01/08/2014	<u>10</u>	ENTERED IN ERROR.....CERTIFICATE OF SERVICE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (for the Central Intelligence Agency). (Abdo, Alexander) Modified on 1/9/2014 (rdj). (Entered: 01/08/2014)
01/08/2014	<u>11</u>	ENTERED IN ERROR.....CERTIFICATE OF SERVICE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (for the U.S. Attorney for the District of Columbia). (Abdo, Alexander) Modified on 1/9/2014 (rdj). (Entered: 01/08/2014)
01/14/2014	<u>12</u>	MOTION for Scheduling Order by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # <u>1</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 01/14/2014)
01/15/2014	<u>13</u>	

		RESPONSE re <u>12</u> MOTION for Scheduling Order filed by CENTRAL INTELLIGENCE AGENCY. (Attachments: # <u>1</u> Text of Proposed Order)(Mei, Vesper) (Entered: 01/15/2014)
01/22/2014	<u>14</u>	STATUS REPORT <i>re Joint Proposed Briefing Schedule</i> by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Shamsi, Hina) (Entered: 01/22/2014)
01/22/2014		MINUTE ORDER: The Court hereby DENIES <u>12</u> Motion for Scheduling Order. Instead, the Court ORDERS that the following schedule, outlined in the parties' <u>14</u> Joint Status Report, shall govern further proceedings: (1) Plaintiffs shall amend their Complaint on or before January 27, 2014; (2) Defendant shall submit its opening brief on the issue of whether the SSCI Report is an agency record on or before February 28, 2014; (3) Plaintiffs shall file their opposition on or before March 14, 2014; (4) Defendant shall file its reply on or before March 28, 2014; (5) If appropriate, Defendant shall process the CIA Response and Panetta Report for release on or before May 22, 2014; and (6) The parties shall file a joint proposed schedule addressing briefing on any remaining issues on or before June 5, 2014. Signed by Judge James E. Boasberg on 1/22/14. (lcjeb1) (Entered: 01/22/2014)
01/23/2014		Set/Reset Deadlines: Plaintiffs shall amend their Complaint on or before 1/27/2014; Defendant shall submit its opening brief on the issue of whether the SSCI Report is an agency record on or before 2/28/2014; Plaintiffs shall file their opposition on or before 3/14/2014; Defendant shall file its reply on or before 3/28/2014; If appropriate, Defendant shall process the CIA Response and Panetta Report for release on or before 5/22/2014; and The parties shall file a joint proposed schedule addressing briefing on any remaining issues on or before 6/05/ 2014. (ad) (Entered: 01/23/2014)
01/27/2014	<u>15</u>	AMENDED COMPLAINT against CENTRAL INTELLIGENCE AGENCY filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION.(Shamsi, Hina) (Entered: 01/27/2014)
02/10/2014	<u>16</u>	ANSWER to <u>15</u> Amended Complaint by CENTRAL INTELLIGENCE AGENCY. Related document: <u>15</u> Amended Complaint filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AMERICAN CIVIL LIBERTIES UNION.(Mei, Vesper) (Entered: 02/10/2014)
02/28/2014	<u>17</u>	MOTION to Dismiss for Lack of Jurisdiction by CENTRAL INTELLIGENCE AGENCY (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Affidavit of Neal Higgins, # <u>3</u> Text of Proposed Order)(Mei, Vesper) (Entered: 02/28/2014)
03/14/2014	<u>18</u>	Memorandum in opposition to re <u>17</u> MOTION to Dismiss for Lack of Jurisdiction filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # <u>1</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 03/14/2014)
03/28/2014	<u>19</u>	REPLY to opposition to motion re <u>17</u> MOTION to Dismiss for Lack of Jurisdiction filed by CENTRAL INTELLIGENCE AGENCY. (Mei, Vesper) (Entered: 03/28/2014)
04/09/2014		MINUTE ORDER: In light of the SSCI's decision to submit the Report's executive summary, findings, and conclusions to the White House for declassification review, the Court ORDERS that a conference call is set for

		Friday, April 11, 2014, at 11:30 a.m. The parties in this and the companion case, No. 13-cv-1324, shall jointly call Chambers at (202) 354-3300 at the appointed time and should be prepared to discuss whether the Court should proceed to consider the pending motions at this time or wait until the declassification process concludes. Signed by Judge James E. Boasberg on 4/9/14. (lcjeb1) (Entered: 04/09/2014)
04/10/2014		MINUTE ORDER rescheduling conference call. It is hereby ORDERED that the conference call previously scheduled for Friday, April 11, 2014, at 11:30 a.m. will now be held on Monday, April 14, 2014, at 10:30 a.m. The Court ORDERS that the parties shall jointly call Chambers at (202) 354-3300 at that time. Signed by Judge James E. Boasberg on 4/10/2014. (lcjeb4) (Entered: 04/10/2014)
04/14/2014		Minute Entry for proceedings held before Judge James E. Boasberg: Telephone Conference held on 4/14/2014. (ad) (Entered: 04/14/2014)
04/14/2014		MINUTE ORDER: As agreed upon in today's conference call among the parties in case nos. 13-1324 and 13-1870, the Court ORDERS that: 1) As a result of pending declassification decisions, the motions to dismiss concerning whether the subject documents are "agency records" shall be held in abeyance until a further status conference among the parties; and 2) All parties shall appear for such status conference on May 29, 2014, at 9:30 a.m. in Courtroom 19. Signed by Judge James E. Boasberg on 4/14/14. (lcjeb1) (Entered: 04/14/2014)
04/14/2014		Set/Reset Hearing: A Status Conference is set for 5/29/2014 at 9:30 AM in Courtroom 19 before Judge James E. Boasberg. (ad) (Entered: 04/14/2014)
05/15/2014	<u>20</u>	MOTION for Extension of Time to <i>process documents</i> by CENTRAL INTELLIGENCE AGENCY (Attachments: # <u>1</u> Exhibit A – Letter from Kathryn H. Ruemmler to Sen. Dianne Feinstein, # <u>2</u> Text of Proposed Order)(Mei, Vesper) (Entered: 05/15/2014)
05/27/2014	<u>21</u>	STATUS REPORT <i>in advance of May 29, 2014 conference</i> by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Shamsi, Hina) (Entered: 05/27/2014)
05/28/2014		MINUTE ORDER: Having reviewed the parties' <u>21</u> Joint Status Report, the Court believes that a status conference remains worthwhile and thus ORDERS that the May 29, 2014, conference shall proceed as scheduled. Signed by Judge James E. Boasberg on 5/28/14. (lcjeb1) (Entered: 05/28/2014)
05/29/2014		MINUTE ORDER: As discussed at today's status hearing, the Court ORDERS that: 1) Defendant's Motion for Extension of Time (ECF No. <u>20</u>) is GRANTED; and 2) Defendant shall file a status report by June 20, 2014, providing a date for the completion of the processing of the Panetta Review and CIA Response. Signed by Judge James E. Boasberg on 5/29/14. (lcjeb1) (Entered: 05/29/2014)
05/29/2014		Minute Entry for proceedings held before Judge James E. Boasberg: Status Conference held on 5/29/2014. (Defendant shall file a status report by 6/20/2014, providing a date for the completion of the processing of the Panetta Review and CIA Response). (Court Reporter Patricia Kaneshiro-Miller) (ad) (Entered: 05/29/2014)
06/05/2014	<u>22</u>	

		Consent MOTION to Amend/Correct <u>15</u> Amended Complaint by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # <u>1</u> Proposed Second Amended Complaint, # <u>2</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 06/05/2014)
06/06/2014		MINUTE ORDER: The Court ORDERS that: 1) Plaintiff's <u>22</u> Motion for Leave to File Second Amended Complaint is GRANTED; 2) The Proposed Second Amended Complaint is deemed FILED; and 3) Defendants shall have until July 7, 2014, to respond. Signed by Judge James E. Boasberg on 6/6/14. (lcjeb1) (Entered: 06/06/2014)
06/06/2014		Set/Reset Deadline: Defendants shall have until 7/07/2014, to respond to Plaintiff's Second Amended Complaint. (ad) (Entered: 06/06/2014)
06/06/2014	<u>23</u>	REQUEST FOR SUMMONS TO ISSUE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION re Order on Motion to Amend/Correct, filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. Related document: Order on Motion to Amend/Correct.,(Shamsi, Hina) (Entered: 06/06/2014)
06/06/2014	<u>24</u>	REQUEST FOR SUMMONS TO ISSUE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION re Order on Motion to Amend/Correct, filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. Related document: Order on Motion to Amend/Correct.,(Shamsi, Hina) (Entered: 06/06/2014)
06/06/2014	<u>25</u>	REQUEST FOR SUMMONS TO ISSUE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION re Order on Motion to Amend/Correct, filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. Related document: Order on Motion to Amend/Correct.,(Shamsi, Hina) (Entered: 06/06/2014)
06/06/2014	<u>26</u>	REQUEST FOR SUMMONS TO ISSUE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION re Order on Motion to Amend/Correct, filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. Related document: Order on Motion to Amend/Correct.,(Shamsi, Hina) (Entered: 06/06/2014)
06/06/2014	<u>27</u>	REQUEST FOR SUMMONS TO ISSUE by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION re Order on Motion to Amend/Correct, filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. Related document: Order on Motion to Amend/Correct.,(Shamsi, Hina) (Entered: 06/06/2014)
06/06/2014	<u>28</u>	Second AMENDED COMPLAINT against All Defendants filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION.(td,) (Entered: 06/06/2014)
06/06/2014	<u>29</u>	SUMMONS (5) Issued Electronically as to DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons)(td,) (Entered: 06/06/2014)
06/20/2014	<u>30</u>	STATUS REPORT by CENTRAL INTELLIGENCE AGENCY. (Mei, Vesper) (Entered: 06/20/2014)

07/07/2014	<u>31</u>	ANSWER to <u>28</u> Amended Complaint by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. Related document: <u>28</u> Amended Complaint filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AMERICAN CIVIL LIBERTIES UNION.(Mei, Vesper) (Entered: 07/07/2014)
08/14/2014		MINUTE ORDER: The Court ORDERS that the parties shall appear for a status conference in Case Nos. 13-1324, 13-1870, and 14-48 on September 4, 2014, at 10:30 a.m. Signed by Judge James E. Boasberg on 8/14/2014. (lcjeb1) (Entered: 08/14/2014)
08/14/2014		Set/Reset Hearing: A Status Conference is set for 9/04/2014 at 10:30 AM in Courtroom 19 before Judge James E. Boasberg in case nos. 13cv1324, 13cv1870, and 14cv048. (ad) (Entered: 08/14/2014)
08/27/2014	<u>32</u>	MOTION for Extension of Time to <i>process documents</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Text of Proposed Order)(Mei, Vesper) (Entered: 08/27/2014)
08/28/2014		MINUTE ORDER: The Court ORDERS that Plaintiffs shall, by August 29, 2014, either inform the Court that they do not oppose Defendants' <u>32</u> Motion for Extension or file an Opposition. Signed by Judge James E. Boasberg on 08/28/14. (lcjeb1) (Entered: 08/28/2014)
08/28/2014		Set/Reset Deadline: Plaintiffs shall, by 8/29/2014, either inform the Court that they do not oppose Defendants' <u>32</u> Motion for Extension or file an Opposition. (ad) (Entered: 08/28/2014)
08/29/2014		MINUTE ORDER granting Defendants' <u>32</u> Motion for Extension of Time to Process Documents. The Court ORDERS that Defendants shall complete processing on or before September 29, 2014. Signed by Judge James E. Boasberg on 8/29/14. (lcjeb1) (Entered: 08/29/2014)
08/29/2014		Set/Reset Deadline: Defendants shall complete processing on or before 9/29/2014. (ad) (Entered: 08/29/2014)
09/04/2014		MINUTE ORDER: As discussed at today's status hearing in case nos. 13-1324, 13-1870, and 14-48, the Court ORDERS that: 1) The request in 13-1324 is confined to the Executive Summary of the SSCI Report; 2) In 13-1324, Defendant's <u>17</u> Motion to Dismiss is DENIED as moot with consent; 3) In 13-1870, Defendant's <u>17</u> Motion to Dismiss is DENIED as moot with consent; and 4) A further status hearing in all three cases shall take place on October 7, 2014, at 9:30 a.m. Signed by Judge James E. Boasberg on 9/4/14. (lcjeb1) (Entered: 09/04/2014)
09/04/2014		Minute Entry for proceedings held before Judge James E. Boasberg: Status Conference held on 9/4/2014. A combined Status Conference for case numbers 13-cv-1870, 13-cv-1324, and 14-cv-0048 is scheduled for 10/7/2014 at 9:30 AM in Courtroom 19 before Judge James E. Boasberg. (Court Reporter Lisa Griffith) (jth) (Entered: 09/04/2014)
09/25/2014	<u>33</u>	MOTION for Extension of Time to <i>Process Documents</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed

		Order)(Mei, Vesper) (Entered: 09/25/2014)
10/07/2014		MINUTE ORDER: As discussed in today's status conference in Nos. 13–1324, 13–1870, and 14–48, the Court ORDERS that: 1) The Government's Motions for Extension are GRANTED; 2) The ACLU need not file an additional amended complaint or additional FOIA request in 13–1870; and 3) Summary judgment briefing in all cases will comply with the following schedule: Government's Motion due December 5, 2014, Plaintiffs' Opposition and Cross–Motion due January 9, 2015; Government's Opposition and Reply due January 30, 2015, and Plaintiffs' Reply due February 13, 2015. Signed by Judge James E. Boasberg on 10/7/14. (lcjeb2) (Entered: 10/07/2014)
10/07/2014		Minute Entry for proceedings held before Judge James E. Boasberg: Status Conference held on 10/7/2014. (Government's Motion due 12/05/2014, Plaintiffs' Opposition and Cross–Motion due 1/09/2015; Government's Opposition and Reply due 1/30/2015, and Plaintiffs' Reply due 2/13/2015. (Court Reporter Lisa Griffith) (ad) (Entered: 10/07/2014)
10/28/2014	<u>34</u>	MOTION for Extension of Time to <i>Process Documents</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Mei, Vesper) (Entered: 10/28/2014)
10/29/2014	<u>35</u>	Memorandum in opposition to re <u>34</u> MOTION for Extension of Time to <i>Process Documents</i> filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # <u>1</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 10/29/2014)
10/30/2014	<u>36</u>	REPLY to opposition to motion re <u>34</u> MOTION for Extension of Time to <i>Process Documents</i> filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Mei, Vesper) (Entered: 10/30/2014)
10/31/2014		MINUTE ORDER: The Court ORDERS that Defendants' Motion for Extension is GRANTED, but that Plaintiffs' proposed briefing schedule shall govern. As a result, the Court ORDERS that Defendants' motion for summary judgment shall be due four weeks following the public release of the SSCI Report Summary and the CIA Report; Plaintiffs' opposition and cross–motion shall be due three weeks thereafter; Defendants' opposition and reply shall be due three weeks thereafter; and Plaintiffs' reply shall be due two weeks thereafter. Signed by Judge James E. Boasberg on 10/31/14. (lcjeb1) (Entered: 10/31/2014)
12/18/2014	<u>37</u>	Unopposed MOTION for Extension of Time to <i>file summary judgment motion</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Mei, Vesper) (Entered: 12/18/2014)
12/19/2014		MINUTE ORDER granting the Government's Unopposed <u>37</u> Motion for Extension of Time. The Court ORDERS that the Government shall file its Motion for Summary Judgment on or before January 21, 2015. Signed by Judge James E. Boasberg on 12/19/14. (lcjeb1) (Entered: 12/19/2014)
12/19/2014		Set/Reset Deadline: The Government shall file its Motion for Summary Judgment on or before 1/21/2015. (ad) (Entered: 12/19/2014)

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01/21/2015	<u>38</u>		MOTION for Summary Judgment by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE (Attachments: # <u>1</u> Declaration of Martha Lutz, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order)(Mei, Vesper) (Entered: 01/21/2015)	
01/21/2015	<u>39</u>		MOTION to Dismiss for Lack of Jurisdiction by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE (Attachments: # <u>1</u> Declaration of Neal Higgins, # <u>2</u> Declaration of Julia Frifield, # <u>3</u> Declaration of Mark Herrington, # <u>4</u> Declaration of Peter Kadzik, # <u>5</u> Exhibit 1, # <u>6</u> Exhibit 2, # <u>7</u> Exhibit 3, # <u>8</u> Exhibit 4, # <u>9</u> Exhibit 5, # <u>10</u> Text of Proposed Order)(Mei, Vesper) (Entered: 01/21/2015)	
01/26/2015	<u>40</u>		MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Dror Ladin, :Firm– American Civil Liberties Union, :Address– 125 Broad Street, New York, New York 10004. Phone No. – (212) 284–7303. Fax No. – (212) 549–2654 Filing fee \$ 100, receipt number 0090–3974038. Fee Status: Fee Paid. by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 01/26/2015)	
01/27/2015			MINUTE ORDER granting <u>40</u> Motion for Admission <i>Pro Hac Vice</i> of DROR LADIN. Signed by Judge James E. Boasberg on 1/27/15. (lcjeb1) (Entered: 01/27/2015)	
01/27/2015	<u>41</u>		WITHDRAWN PURSUANT TO <u>43</u> Emergency MOTION for Order <i>Protecting This Court's Jurisdiction</i> by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Text of Proposed Order)(Shamsi, Hina) Modified on 2/10/2015 (jf,). (Entered: 01/27/2015)	
02/06/2015	<u>42</u>		RESPONSE re <u>41</u> Emergency MOTION for Order <i>Protecting This Court's Jurisdiction</i> filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Text of Proposed Order)(Mei, Vesper) (Entered: 02/06/2015)	
02/09/2015	<u>43</u>		NOTICE OF WITHDRAWAL OF MOTION by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Shamsi, Hina) (Entered: 02/09/2015)	
02/11/2015	<u>44</u>		Memorandum in opposition to re <u>39</u> MOTION to Dismiss for Lack of Jurisdiction filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # <u>1</u> Declaration of Ashley Gorski, # <u>2</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 02/11/2015)	
02/11/2015	<u>45</u>		Cross MOTION for Partial Summary Judgment <i>and Opposition to Defendant CIA's Motion for Summary Judgment</i> by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # <u>1</u> Declaration of Ashley Gorski, # <u>2</u> Statement of Facts (Undisputed), # <u>3</u> Statement of Facts (Disputed), # <u>4</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 02/11/2015)	

02/12/2015			NOTICE OF ERROR re <u>45</u> Motion for Partial Summary Judgment; emailed to hshamsi@aclu.org, cc'd 13 associated attorneys — The PDF file you docketed contained errors: 1. Counsel has been instructed to file the second part of this document, Opposition. (td,) (Entered: 02/12/2015)
02/12/2015	<u>46</u>		Memorandum in opposition to re <u>38</u> MOTION for Summary Judgment [<i>CORRECTED</i>] filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # <u>1</u> Statement of Facts As To Which There Is Genuine Issue, # <u>2</u> Declaration of Ashley Gorski, # <u>3</u> Text of Proposed Order)(Shamsi, Hina) (Entered: 02/12/2015)
03/04/2015	<u>47</u>		Memorandum in opposition to re <u>45</u> Cross MOTION for Partial Summary Judgment <i>and Opposition to Defendant CIA's Motion for Summary Judgment</i> filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Text of Proposed Order)(Mei, Vesper) (Entered: 03/04/2015)
03/04/2015	<u>48</u>		REPLY to opposition to motion re <u>38</u> MOTION for Summary Judgment filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Mei, Vesper) (Entered: 03/04/2015)
03/04/2015	<u>49</u>		REPLY to opposition to motion re <u>39</u> MOTION to Dismiss for Lack of Jurisdiction filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Mei, Vesper) (Entered: 03/04/2015)
03/18/2015	<u>50</u>		REPLY to opposition to motion re <u>45</u> Cross MOTION for Partial Summary Judgment <i>and Opposition to Defendant CIA's Motion for Summary Judgment</i> filed by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Shamsi, Hina) (Entered: 03/18/2015)
05/20/2015	<u>51</u>	40	ORDER: For the reasons set forth in the accompanying Memorandum Opinion, the Court ORDERS that: 1) Defendants' Motion to Dismiss is GRANTED; 2) The CIA's Motion for Summary Judgment is GRANTED; 3) Plaintiffs' Cross-Motion for Summary Judgment is DENIED; and 4) Judgment is ENTERED in favor of Defendants. Signed by Judge James E. Boasberg on 5/20/15. (lcjeb1) (Entered: 05/20/2015)
05/20/2015	<u>52</u>	14	MEMORANDUM OPINION re <u>51</u> Order. Signed by Judge James E. Boasberg on 5/20/15. (lcjeb1) (Entered: 05/20/2015)
06/26/2015	<u>53</u>	12	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>51</u> Order on Motion for Summary Judgment, by AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. Filing fee \$ 505, receipt number 0090-4152487. Fee Status: Fee Paid. Parties have been notified. (Shamsi, Hina) (Entered: 06/26/2015)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES)
UNION and AMERICAN CIVIL)
LIBERTIES UNION FOUNDATION)
)
Plaintiffs,)
)
v.) Civil Action No. 13-01870
) (JEB)
)
CENTRAL INTELLIGENCE AGENCY,)
)
Defendant.)

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 ("OCA") at the Central Intelligence Agency ("CIA or "Agency"). I joined the CIA in June 2013 from the Senate Select Committee on Intelligence ("SSCI or "Committee"), where I served as a senior advisor to Senators Bill Nelson and Martin Heinrich, as regional monitor for the Persian Gulf, and as 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 at the law firm of Sullivan & Cromwell LLP.

2. As Director of OCA, I am the principal advisor to the CIA Director 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 Senate Select Committee on Intelligence, 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") requests. The purpose of this declaration is to explain the basis of the Agency's determination that one of the documents at issue in this litigation, the version of a report¹ authored by the SSCI concerning the CIA's former detention and interrogation program ("SSCI Report" or "Report") that the Committee has shared with CIA, is a congressional record that is not subject to the FOIA.

¹ Although the SSCI "adopted" a version of the Report and shared it with CIA, the Agency's understanding is that the SSCI may make additional edits to the document; thus the version shared with CIA may not represent the final text of the Report if and when it is officially released by the Committee.

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 with respect to the disposition of the Report, consultations with other CIA officials who were responsible for working with the SSCI as it drafted and disseminated the Report, a review of the relevant documentary record, and other information made available to me in my official capacity.

I. Plaintiffs' FOIA Request

4. By letter dated 14 February 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.

5. The Agency responded by letter dated 22 February 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.²

² Plaintiffs have submitted two other FOIA requests seeking additional documents related to the subject matter of the instant request. The CIA's responses to these FOIA requests will be briefed separately.

II. Creation of the SSCI Report

6. From the beginning of its interactions with the CIA with respect to the Report, the SSCI demonstrated that it intended for the Report to remain a congressional record that would not be subject to the provisions of the FOIA. 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 Committee requested access to broad categories of CIA documents related to how the program was created, operated, and maintained, which would form the basis of its review. Due to the volume and the highly sensitive and compartmented nature of the 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.

7. 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. 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 SSCI Report, in a secure environment.

8. 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 though this work product was being created and stored on a CIA computer system. Specifically, in a 2 June 2009 letter from the SSCI Chairman and Vice Chairman to the CIA Director, 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."³ The SSCI further provided 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 "[t]he CIA may not integrate these records into its records filing

³ The other portions of this letter reflect confidential negotiations between the SSCI and CIA over other, unrelated conditions pertaining to the SSCI's review, and therefore this confidential correspondence, which is itself a congressional record, is not attached to this declaration. The quoted provisions in this paragraph are true and accurate quotations from the letter, and are being included in this declaration after consultation with the SSCI staff.

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."

9. 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 the report 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 Committee could complete the drafting process in its workspaces. Presumably, the SSCI made additional changes to these draft sections following the transfers. Thus, it is the Agency's understanding that the adopted version of the Report that SSCI subsequently provided to the Agency does not reside on the segregated shared drive described in the preceding paragraph. Nonetheless, the restrictions governing the information on that shared drive have informed how the CIA has treated all versions of the SSCI's work product in the Agency's possession, including the version of the Report adopted by the SSCI and shared with

the CIA, and the SSCI has provided no indication that the Agency should treat the Report in a different manner.

III. Transmission of the SSCI Report to the CIA

10. On 14 December 2012, the SSCI Chairman informed the President, Acting CIA Director, and other senior Executive Branch officials that the Committee had completed its review of the CIA program and stated that the Committee planned to provide a copy of the approved Report for their review. A true and correct copy of this letter is attached hereto as Exhibit C. Additionally, the SSCI Chairman stated that she planned to send copies of the report to appropriate Executive Branch agencies for their review and response. After considering any "suggested edits or comments" from these agencies, the SSCI Chairman advised that she "intend[ed] to present the report with any accepted changes again to the Committee to consider how to handle any public release of the report, in full or otherwise."

11. After receiving this letter, the CIA's Office of Congressional Affairs reached out to Committee staff in order to secure the approvals necessary for Agency personnel to gain access to the SSCI Report. By email dated 13 December 2012, the SSCI Staff Director advised the then-Director of OCA and personnel from other federal agencies involved in the review that, upon the explicit instruction of the SSCI Chairman, the Committee would only provide the copies of the Report to

specific individuals identified in advance to the Chairman by the agencies. A true and correct copy of this email (with appropriate redactions) is attached hereto as Exhibit D. Soon thereafter, the CIA provided the Committee with a list of Agency officers who would review the SSCI Report on behalf of the CIA. The Committee approved access for these individuals for the limited purpose of providing edits and comments in response to the Report.

12. The Report that the Agency received is marked TOP SECRET, with additional access restrictions noted based on the sensitive compartmented information contained therein. The CIA subsequently conducted a thorough review of the Report and drafted a lengthy response, a process that necessitated increasing the number of officers who had access to the Report or portions of the Report. However, access to the document has 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 Committee with respect to the Report and the Agency's response.⁴ Additionally, the CIA has not integrated the SSCI Report into the CIA files or records systems and has consistently treated it as a congressional document rather than an agency record.

⁴ In addition, a small number of Agency personnel have reviewed portions of the Report for limited purpose of assessing the proper classification of its contents or responding to the present FOIA request.

IV. The CIA's Determination that the SSCI Report Is a Congressional Record

13. As the foregoing demonstrates, the CIA understood from the beginning, and the Committee has consistently made clear, that the SSCI retained control over the Report. From the outset, the SSCI indicated that the records it created on the segregated shared drive during the course of its review, including any reports resulting from its inquiry, were to be considered congressional records that are not subject to the dictates of the FOIA. This understanding was an important element of the inter-branch accommodation that was reached.

14. When the SSCI later provided the CIA with the copy of the adopted Report, it did so for the sole purpose of allowing the Agency to provide "suggested edits or comments," and the Committee continued to exhibit its intent to control the document. Before providing the Report to the CIA for purposes of CIA's review and comment, the Committee required that the Agency provide a list of personnel who would access the Report for that limited purpose. Further, following its transmittal, the CIA has not integrated the SSCI Report into the Agency's file systems, and it has relied upon it for the limited purpose permitted by the SSCI.⁵ As such, the Committee's intent to control the Report has been demonstrated throughout the

⁵ As noted above, a small number of CIA personnel have also reviewed portions of the Report for limited purpose of assessing the proper classification of its contents or responding to the present FOIA request.

document's existence, from its creation through its transfer to the CIA. In addition, the CIA understands that the SSCI may revise the Report based on the comments it has received and other factors, and therefore the version at issue in this litigation may not be the Committee's final product. Based on all of these circumstances, the Agency does not believe that it has any authority to publicly release this non-final version of the Report without the express approval of the SSCI, further demonstrating that it is not an agency record for the purposes of FOIA.


15. Finally, it should be noted that although the Report is a congressional record that is under the control of the SSCI, it contains information that was originated and classified by the Executive Branch. As such, the Executive Branch does not consider SSCI's control over the document to extend to control over the classification of the information therein. Rather, the SSCI would be required to submit its Report for a declassification review before it could publicly release the Report. Once that declassification review was completed, the SSCI would retain the sole authority to publicly release that declassified version of the Report with the necessary redactions. In contrast, even after redacting classified information from the Report, the CIA would not be free to disseminate or otherwise dispose of it without approval of the

SSCI. Thus, notwithstanding the requirement for the Agency to conduct a declassification review, the Report remains a congressional record that is ultimately under the control of the SSCI.

* * *

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

Executed this 28th day of February 2014.



Neal Higgins
Director, Office of Congressional
Affairs
Central Intelligence Agency

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

AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505,

DEPARTMENT OF DEFENSE
1000 Defense Pentagon,
Washington, D.C. 20301,

DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue NW,
Washington, D.C. 20530,

DEPARTMENT OF STATE
2201 C Street NW,
Washington, D.C. 20520,

Defendants.

No. 1:13-cv-01870 (JEB)

SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

1. This is a Freedom of Information Act lawsuit seeking the release from the Central Intelligence Agency (“CIA”), the Department of Defense (“DOD”), the Department of Justice (“DOJ”), and the Department of State (“DOS”) of a Senate Select Committee on Intelligence (“SSCI”) investigative report detailing the CIA’s now-discontinued program of rendition, detention, torture, and other abuse of detainees. Plaintiffs also seek from the CIA two additional

reports: (i) the CIA's report in response to the SSCI, in which the agency defends its unlawful practices; and (ii) a report commissioned by former CIA Director Leon Panetta, which is reportedly consistent with the SSCI investigative report findings, but contradicts the CIA's response to the SSCI.

2. In the years after September 11, 2001, under a program developed and authorized by officials at the highest levels of government, the CIA systematically captured, detained, and tortured suspected terrorists, including in a network of secret overseas prisons known as "black sites." That program was halted by President George W. Bush in 2008, and in 2009, President Barack Obama ordered the black sites closed.

3. Because of the continuing and extraordinary public interest in and controversy surrounding the CIA's rendition, torture, and secret detention program, the SSCI conducted a comprehensive review of the CIA's post-9/11 conduct—examining millions of pages of government documents in the process. At the end of 2012, the SSCI completed a 6,000-page investigative report, *Study of the CIA's Detention and Interrogation Program* ("SSCI Report"), documenting its findings and conclusions. The Chairman of the SSCI, Senator Dianne Feinstein, said upon the Committee's adoption of the report, "I am confident the CIA will emerge a better and more able organization as a result of the committee's work. I also believe this report will settle the debate once and for all over whether our nation should ever employ coercive interrogation techniques such as those detailed in this report."

4. The SSCI sent a copy of the SSCI Report to Executive Branch agencies, including the CIA, and the CIA eventually issued its own report in response ("CIA Report"). The CIA's response is reportedly a detailed defense of its detention, torture, and abuse of detainees.

5. During a SSCI hearing on December 17, 2013, Senator Mark Udall disclosed the existence of a separate CIA report, commissioned by former CIA Director Panetta, concerning the CIA's detention and torture program ("Panetta Report"). According to Senator Udall, the findings of this report appear to be inconsistent with the CIA Report to the SSCI.

6. Upon information and belief, in 2014, after the SSCI reviewed the comments by Executive Branch agencies concerning the SSCI Report, the SSCI made changes to it and adopted an updated version of the *Study of the CIA's Detention and Interrogation Program* ("Updated SSCI Report"). The SSCI subsequently transferred portions of the Updated SSCI Report to Executive Branch agencies, including Defendants. According to the Chairman of the SSCI, the SSCI planned to disseminate the entire Updated SSCI Report to Executive Branch agencies, including Defendants, and it asked that the Executive Branch declassify portions of the report.

7. On May 7, 2014, Plaintiffs submitted a FOIA request to the CIA, DOD, DOJ, and DOS, seeking the Updated SSCI Report. None of the agencies have released the report in response.

8. On June 28, 2013 and December 19, 2013, Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (together, "ACLU") submitted two separate Freedom of Information Act ("FOIA") requests to the CIA seeking, respectively, the CIA Report and the Panetta Report. The CIA has not released either of these reports in response.

9. Plaintiffs now file suit under FOIA, 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the immediate processing and release of the Updated SSCI Report, the CIA Report, and the Panetta Report.

10. There is immense public interest in the disclosure of these three reports. 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 and our nation's values and national security, have been matters of intense and ongoing debate. A fair public debate of these issues must be informed by the Updated SSCI Report, the CIA's defense of its program, and the Panetta Report.

Jurisdiction and Venue

11. This Court has both subject matter jurisdiction over the FOIA claims and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and (a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–706. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

12. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan 26 U.S.C. § 501(c)(4) organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the American government complies with the Constitution and laws, including its international legal obligations, in matters that affect civil liberties and human rights. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights.

13. Plaintiff American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

14. Defendant CIA is a department of the Executive Branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

15. Defendant DOD is a department of the Executive Branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

16. Defendant DOJ is a department of the Executive Branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

17. Defendant DOS is a department of the Executive Branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Factual Background

18. In 2009, the SSCI initiated a comprehensive review of the CIA's post-9/11 regime of rendition, secret detention, torture, and other cruel, inhuman, and degrading treatment of detainees.

19. On December 13, 2012, the SSCI approved the SSCI Report, which details the findings of the Committee's multi-year investigation, and which cost \$40 million to produce. Spanning more than 6,000 pages with 35,000 footnotes, the SSCI Report resulted from the Committee's review of millions of pages of government records documenting the CIA's treatment of detainees.

20. On June 26, 2013, news media revealed that the CIA had completed a report challenging the SSCI Report's investigative methods and findings. The CIA Report has been described as the most detailed defense that the CIA has assembled of its rendition, torture, and secret detention program to date. *See, e.g.,* Greg Miller & Julie Tate, *CIA Report Refutes Senate Panel's Criticism of Agency's Harsh Interrogation Methods*, Wash. Post., June 26, 2013, <http://wapo.st/17Dtquw>.

21. On December 17, 2013, during a confirmation hearing for CIA General Counsel nominee Caroline Diane Krass, Senator Udall revealed the existence of a separate report by the CIA, commissioned by former CIA Director Panetta, that concerns the agency's detention and torture program. According to Senator Udall, the Panetta Report "is consistent with the Intelligence committee's report, but amazingly it conflicts with the official CIA response" to the SSCI Report. Press Release, Sen. Udall, Udall Presses CIA Nominee on Brutal Detention, Interrogation Program, Alleged Discrepancies Between Official, Internal Agency Accounts (Dec. 17, 2013), <http://1.usa.gov/1kWoamC>; *see also* Letter from Sen. Udall to President Obama (Mar. 4, 2014), <http://bit.ly/1jSzY8h> (describing discrepancies between the CIA Report and Panetta Report).

22. After the SSCI reviewed comments by Executive Branch agencies and minority views of Committee Republicans, the SSCI adopted the Updated SSCI Report. Senator Feinstein stated that the Updated SSCI 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." *See* Press Release, Sen. Feinstein, Intelligence Committee Votes to Declassify Portions of CIA Study (Apr. 3, 2014), <http://1.usa.gov/1hlYOkt>.

23. In addition to chronicling the CIA's detention and torture of detainees, the Updated SSCI 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 and Interrogation Program (Apr. 2, 2014), <http://1.usa.gov/1kws9vI>. Specifically, the Updated SSCI 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. Joachim, *Senate Panel Votes to Reveal Report on C.I.A. Interrogations*, N.Y. Times, Apr. 3, 2014, <http://nyti.ms/1eejlaR>.

24. On April 3, 2014, the SSCI voted to send the “Findings and Conclusions” and “Executive Summary” of the Updated SSCI Report to the Executive Branch for declassification review. In her transmittal letter to President Obama, Senator Feinstein also stated: “I encourage and approve the dissemination of the updated report to all relevant Executive Branch agencies, especially those who were provided with access to the previous version. This is the most comprehensive accounting of the CIA’s Detention and Interrogation Program, and I believe it should be viewed within the U.S. Government as the authoritative report on the CIA’s actions.” *See* Letter from Sen. Feinstein to President Obama (Apr. 3, 2014), <http://bit.ly/OKXyvw>.

25. Disclosure of the Updated SSCI Report, the CIA Report, and the Panetta Report is critical to a full and fair public debate about the CIA’s torture program. These reports are 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.

Plaintiffs’ FOIA Request for the CIA Report

26. On June 28, 2013, the ACLU submitted a FOIA request (“Request I”) seeking disclosure of the CIA Report, which was produced in response to the SSCI Report.

27. Plaintiffs sought expedited processing of Request I on the grounds that there is a “compelling need” for the CIA Report 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 federal government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 32 C.F.R. § 1900.34(c)(2).

28. Plaintiffs sought a waiver of search, review, and reproduction fees on the grounds that disclosure of the CIA Report is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and disclosure is “not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 32 C.F.R. § 1900.13(b)(2).

29. Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the CIA Report is not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 32 C.F.R. § 1900.13(i)(2).

30. By letter dated July 11, 2013, the CIA acknowledged receipt of and denied Request I, erroneously mistaking Request I (for the CIA Report) as identical to a prior request for the SSCI Report:

A search of our database indicates that your organization had previously requested information on the same subject on 13 February 2013, which we assigned the reference number F-2013-00829. Our records further show that we responded to this request on 22 February 2013. A copy of our response is enclosed.

31. On September 6, 2013, an ACLU attorney spoke with a representative from the CIA who confirmed that the CIA’s response of July 11 did not address Request I for the CIA Report. The representative stated that the CIA would re-open Request I and respond as appropriate.

32. In a letter to the CIA dated September 9, 2013, the ACLU memorialized that telephone discussion, further clarifying Request I.

33. By letter dated September 25, 2013, CIA Information and Privacy Coordinator Meeks informed the ACLU that Request I was “initially interpreted as seeking a copy of the

SSCI report.” The CIA assigned a reference number to Request I and stated that its officers would review the request.

34. By letter dated October 31, 2013, the CIA informed the ACLU that “[t]o the extent your request seeks information that is subject to the FOIA, we accept your request, and we will process it in accordance with the FOIA We will search for records up to and including the date the Agency starts its search.” The CIA also agreed to waive the fees for Request I.

35. The CIA has neither released the CIA Report nor explained its failure to do so.

36. The twenty-day statutory period for the CIA to make a determination with respect to Request I has elapsed with no determination. *See* 5 U.S.C. § 552(a)(6).

Plaintiffs’ FOIA Request for the Panetta Report

37. On December 19, 2013, the ACLU submitted a FOIA request (“Request II”) to the CIA seeking disclosure of the Panetta Report.

38. Plaintiffs sought expedited processing of Request II on the grounds that there is a “compelling need” for the Panetta Report 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 federal government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 32 C.F.R. § 1900.34(c)(2).

39. Plaintiffs sought a waiver of search, review, and reproduction fees on the grounds that disclosure of the Panetta Report is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and disclosure is “not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 32 C.F.R. § 1900.13(b)(2).

40. Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the Panetta Report is not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 32 C.F.R. § 1900.13(i)(2).

41. By letter dated December 24, 2013, the CIA informed the ACLU that “[t]o the extent your request seeks information that is subject to the FOIA, we accept your request, and we will process it in accordance with the FOIA We will search for records up to and including the date the Agency starts its search.” The CIA also assigned a reference number to Request II, denied the ACLU’s request for expedited processing, and agreed to waive the fees for the request.

42. The CIA has neither released the Panetta Report nor explained its failure to do so.

43. The twenty-day statutory period for the CIA to make a determination with respect to Request II has elapsed with no determination. *See* 5 U.S.C. § 552(a)(6).

Plaintiffs’ FOIA Requests for the Updated SSCI Report

44. On May 7, 2014, Plaintiffs submitted identical FOIA requests (“Request III”) (collectively, with Requests I and II, “the Requests”) to the CIA, DOD, DOJ, and DOS, seeking disclosure of the Updated SSCI Report.

45. Plaintiffs sought expedited processing of Request III on the grounds that there is a “compelling need” for the Updated SSCI Report 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 federal government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II) and Defendants’ corresponding regulations.

46. Plaintiffs sought a waiver of search, review, and reproduction fees on the grounds that disclosure of the Updated SSCI Report is “in the public interest because it is likely to

contribute significantly to public understanding of the operations or activities of the government,” and disclosure is “not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii) and Defendants’ corresponding regulations.

47. Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the Updated SSCI Report is not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii) and Defendants’ corresponding regulations.

48. By letter dated May 9, 2014, the CIA acknowledged receipt of Request III. The CIA also denied the ACLU’s request for expedited processing.

49. By letter dated May 16, 2014, the DOD informed the ACLU that it would be unable to respond to Request III within twenty days. The DOD also denied the ACLU’s requests for expedited processing and a fee waiver. In a second letter, dated May 28, 2014, the DOD stated that “the Central Intelligence Agency (CIA) is the agency best suited to respond to your request. . . . That agency will respond to you directly if it has not done so already.”

50. By e-mail dated May 22, 2014, the DOJ informed the ACLU that it had “determined that the Central Intelligence Agency (CIA) is the agency best suited to respond to your request. . . . That agency will respond to you directly if it has not done so already.”

51. The DOS has not responded to Request III.

52. The twenty-day statutory period for Defendants to make a determination with respect to Request III has elapsed.

Causes of Action

53. Defendants’ failure to make a reasonable effort to search for the records sought by the Requests violates FOIA, 5 U.S.C. § 552(a)(3), and Defendants’ corresponding regulations.

54. Defendants' failure to promptly make available the records sought by the Requests violates FOIA, 5 U.S.C. § 552(a)(6)(A), and Defendants' corresponding regulations.

55. Defendants' failure to (i) grant Plaintiffs' request for expedited processing as to the Requests; and (ii) process the Requests, violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

56. The failure of Defendants CIA, DOJ, and DOS to grant Plaintiffs' request for a waiver of search, review, and duplication fees as to Request III violates FOIA, 5 U.S.C. § 552(a)(4), and Defendants' corresponding regulations.

57. The failure of Defendants CIA, DOJ, and DOS to grant Plaintiffs' request for a limitation of fees as to Request III violates FOIA, 5 U.S.C. § 552(a)(4), and Defendants' corresponding regulations.

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants to immediately process and release all records responsive to the Requests;
- B. Enjoin the CIA, DOJ, and DOS from charging Plaintiffs search, review, or duplication fees for the processing of Request III;
- C. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Hina Shamsi

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Counsel for Plaintiffs

Dated: June 5, 2014

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

JASON LEOPOLD

Plaintiff

Civil Action Nos.:
13-1324 and 14-048

v.

CENTRAL INTELLIGENCE AGENCY,
DEPT. OF JUSTICE, et al.,

Defendants

-----X

AMERICAN CIVIL LIBERTIES UNION, et al.,

Plaintiffs,

v.

Civil Action No. 13-1870

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants

-----X

Washington, D.C.

Tuesday, October 7, 2014
9:35 A.M.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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2

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16 Court Reporter: Lisa Walker Griffith, RPR
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P R O C E E D I N G S

1
2 THE DEPUTY CLERK: Your Honor, calling Civil Action
3 Number 13-1324, Jason Leopold versus the Department of
4 Justice, et al.; Case Number 13-1870, the American Civil
5 Liberties Union, et al., v. The Central Intelligence Agency,
6 et al.; Case Number 14-48, Jason Leopold versus the Central
7 Intelligence Agency; and 14-1056, Jason Leopold, et al. v.
8 the Central Intelligence Agency.

9 Counsel, will you please approach the podium and
10 identify yourselves for the record.

11 MR. LIGHT: Good morning, Your Honor, Jeffrey Light
12 on behalf of the plaintiff, Jason Leopold.

13 THE COURT: Good morning.

14 MS. SHAMSI: Good morning, Your Honor. Hina Shamsi
15 and Arthur Spitzer on behalf of the American Civil Liberties
16 Union.

17 THE COURT: Okay. Good morning to you folks.

18 MS. MEI: Good morning, Your Honor. Vesper Mei and
19 Elizabeth Shapiro from the Department of Justice on behalf of
20 all of the defendants.

21 THE COURT: Okay. Good morning to you ladies.

22 All right. So, I know there's been a motion to
23 extend the time. And, Ms. Mei, why don't you elaborate on
24 that.

25 MS. MEI: Your Honor, as you are aware, we

1 originally requested a one month extension until September
2 29th, which we did move for. The committee then requested an
3 additional extension and didn't provide a date by which we
4 should move until. So, therefore, we did move until October
5 29th to give ourselves an extra month.

6 We can't predict exactly when the discussions of
7 declassification will be completed. Obviously, that's not
8 completely in our control, but we have learned, and we don't
9 anticipate further extensions beyond October 29th. So we are
10 actually at this time prepared to set a briefing schedule,
11 assuming that everything will be released by the 29th.

12 THE COURT: Okay.

13 Ms. Shamsi, your position on that?

14 MS. SHAMSI: Your Honor, we had agreed to a one week
15 extension, and I felt we couldn't agree to more without
16 additional information about the status of negotiations, when
17 processing would be completed, and we weren't able to get
18 that information.

19 We also have a concern, as I had expressed to you
20 during the last status conference, Your Honor, about whether
21 or not the agencies did, in fact, possess the full updated
22 SSCI report which is the subject of one of our FOIA requests
23 and the second amended complaint. And we had asked the
24 Department of Justice to let us know whether, in fact,
25 agencies did possess those reports. We asked in June of this

1 summer and were told that, although it wasn't definitive, it
2 wasn't definitive whether, in fact, the agencies possessed
3 any updated version.

4 We asked again in July, August and then in
5 September. And in July, August and September, were told
6 that, in fact, no agencies possessed a full report and that
7 was based on agency's representations to the Department of
8 Justice. That representation was in addition, Your Honor,
9 made to you on September 4th.

10 We, as I had mentioned to you when we last met, Your
11 Honor, I just didn't think that that was plausible given
12 Senator Feinstein's letter to the executive branch in April,
13 intending the executive branch to -- intending for the
14 dissemination of the full report and for lessons to be
15 learned from that report.

16 We also didn't think it was plausible because the
17 full report is 6,000 pages long, and as a matter of common
18 sense, Your Honor, it just seems that CIA and other agencies
19 who are weighing in on the redaction of the summary would
20 want to have the full report.

21 And we then also came to learn through our
22 Washington legislative office that subsequent to the
23 September 4th hearing before this Court, and the
24 representations that were made, Senate staff directly urged
25 DOJ to, in fact, research two things: Whether the agencies

1 did have the full updated report; and two, what remaining
2 time was needed to complete the negotiations and release the
3 executive summary.

4 Just this morning, Your Honor, I understand from the
5 Department of Justice that the Central Intelligence Agency
6 does have the full report. I'll obviously let them speak for
7 themselves, but there's no explanation about when it received
8 the full report and why over the course of the summer we, and
9 then you, were told that it didn't have it.

10 We think this is fairly serious, Your Honor, because
11 in order for FOIA to function, the litigants and the courts
12 have to have faith that everyone is acting in good faith.

13 So therefore, Your Honor, I would ask for a couple
14 of things. One, renew my request for a declaration from the
15 agencies, including the CIA, about when they received the
16 full updated report. And when representations were made to
17 the Department of Justice to us and to the Court about
18 agencies not having it and why those representations were
19 made.

20 We think that's important because, Your Honor,
21 depending on the timing, obviously there's an issue of the
22 representations that were made, but also we could have been
23 moving forward in this case. A matter that is of tremendous
24 public significance about a Congressional investigation of
25 historic importance.

1 And then, Your Honor, at a minimum, we would ask you
2 to exercise your discretion and ensure that regardless of
3 when the agency received the full report, we are not required
4 to file an additional FOIA request, an additional amended
5 complaint so that we can proceed expeditiously on the actual
6 substantive issues that should be before the Court.

7 THE COURT: Okay. Thank you.

8 Ms. Mei, do you want to respond?

9 MS. MEI: Your Honor, I just want to correct one
10 thing, which is that none of the other defendant agencies
11 have yet received the full updated report. The CIA has. And
12 after the last status conference, we asked that CIA check for
13 the full report again, and they discovered that they did have
14 it. And there was a miscommunication apparently within the
15 agency as to what they were looking for. In fact, we have
16 learned that the report was conveyed on disk, which may
17 explain some of how 6,000 pages may have -- they didn't
18 realize that they had it.

19 With respect to the declaration from the agencies,
20 we don't think it's necessary. There was a miscommunication,
21 and for the merits of the case and for the agency record
22 issue, it doesn't matter when the report was found.

23 THE COURT: All right. And how about the second
24 issue about filing an additional amended complaint or an
25 additional FOIA request?

1 MS. MEI: I think we're prepared to move forward on
2 a briefing schedule and on the agency record issue without
3 requiring them to file a new FOIA request.

4 THE COURT: Okay. All right. So, what do you --
5 all right. So, Mr. Light, do you want to be heard on any of
6 these issues?

7 MR. LIGHT: Yes, Your Honor. I would echo the
8 ACLU's request as far as asking for a status update as to
9 where the negotiations are. And the most recent request for
10 extension of time, unlike the previous one, the Government
11 did not attach the letter from Senator Feinstein, which may
12 perhaps shed a little bit more detail on where we are.

13 FOIA doesn't include a provision that the Court
14 needs to wait on Senator Feinstein in order to be ready for
15 us to proceed forward. So we'd ask for a briefing schedule
16 to be set right away. And that any further request for
17 extension of time be looked upon with disfavor.

18 THE COURT: Okay. Well, what I'm going to do, I'm
19 not going to require a declaration. I think that, Ms.
20 Shamsi, that the representations you've now heard on the
21 record as opposed to just in private conversations with you
22 are sufficient to give the Government's account. And given
23 that I will also hold them to their agreement that you do not
24 need to file an additional amended complaint or an additional
25 FOIA request.

1 So let's set -- let's set briefing schedules then
2 based off of the October 29th date. So, Ms. Mei, do you have
3 a proposed schedule?

4 MS. MEI: We do, Your Honor. We could file a
5 motion -- or opening briefs on summary judgment by December
6 12th.

7 THE COURT: Okay. And -- all right. Then
8 Ms. Shamsi? I'm sorry, one second. So are you anticipating
9 filing separate ones in the three cases or one brief in the
10 consolidated? And again, they're different, somewhat
11 different requests.

12 MS. MEI: I think we will file separate briefs in
13 the three cases.

14 THE COURT: Okay. All right.

15 So, Ms. Shamsi.

16 MS. SHAMSI: Your Honor, if I may, just on the
17 question about the declaration if you -- just a couple of
18 points very briefly, which is that, DOJ was providing
19 representations from the agency. We don't know whether
20 those -- whether that was a miscommunication or a
21 misrepresentation. And, Your Honor, I don't think you have,
22 frankly, the record from the agency. And I'm not saying
23 anything with respect to DOJ. I am expressing concerns about
24 representations made to us and to the Court by the agencies
25 through the DOJ and whether there was a miscommunication or

1 not. And that is solely the issue when we're talking about a
2 6,000 page report, whether on CD or not, that has gripped the
3 nation's newspapers and public debate. I do think it is very
4 serious, Your Honor, and I would very much ask you to
5 reconsider your decision not to require a declaration, so
6 that the record is clear so that we know whether it was a
7 miscommunication or something else so that we may respond to
8 that, and you may decide whether any further action needs to
9 be taken, Your Honor.

10 THE COURT: But how would that affect the merits of
11 the case, since -- well, we've been holding it pending
12 declassification. So, if they had had it or not, if they'd
13 seen it or not seen it, how would that affect the merits?

14 MS. SHAMSI: Well, it would affect the posture and
15 the stance of the case, Your Honor, in this way, which is
16 that we've been seeking these reports since last year, since
17 2013. We've sought to move forward and to obtain
18 representations about the possession of the full report since
19 June of this year. And there is a fundamental importance in
20 FOIA that the public needs to have faith in the agencies
21 fulfilling their statutory obligations and doing so in good
22 faith themselves.

23 It would be important for us and the Court to know
24 whether or not each of the representations made on a monthly
25 basis over the course of the summer, that the full report was

1 not in the possession of the agencies, that meant that we did
2 not move forward on briefing expeditiously the matter of
3 whether this is an agency record or not. And, therefore, the
4 public release of that record, that is significant. It was
5 not just a day, it was multiple months over --

6 THE COURT: Well, but isn't that all -- and I
7 understand your point, but isn't it all mooted by the
8 declassification review?

9 MS. SHAMSI: No, Your Honor. Declassification
10 review are two separate things because under FOIA, there is
11 an independent obligation that this Court has to adjudicate
12 the merits of any basis for withholding, whether that's
13 agency record or exemptions themselves. The fact that we
14 have not been able to brief to you that you have not been
15 able to exercise your independent judgment, which is separate
16 from the declassification issue with respect to the executive
17 summary is, I think, significant.

18 THE COURT: Okay.

19 Ms. Mei, do you want to respond to that?

20 MS. MEI: Your Honor, I would just point out that
21 there is no pending FOIA request for the full updated SSCI
22 report at this time. We filed an answer saying that none of
23 the agencies had received the full updated version, and
24 there was an agreement by counsel that we would do our best
25 to check and see when the agencies received that full report.

1 So, we were doing this not because of some legal
2 obligation. We were doing this because we had agreed
3 informally with counsel to do this. And the agreement was
4 that, you know, I would -- we would check with the agency
5 contacts and they would see what they had. And obviously
6 there was a miscommunication. But again, that doesn't affect
7 the merits of the case.

8 THE COURT: Okay.

9 Ms. Shamsi, do you want to respond?

10 MS. SHAMSI: One final word, Your Honor. And that's
11 exactly the issue here, which is that we had asked for
12 certainty about whether or not that report had been provided
13 to the executive branch. We were told on a monthly basis
14 that it had not been received. And again, this is a case
15 that should not come as any surprise to any of the agencies
16 that we were seeking the full report.

17 We've been seeking the full report since last year.
18 If it turned out that the CIA had that report in July or
19 August or September when representations were made that the
20 CIA didn't have the report, then we do think that that is a
21 significant issue because it relates to the good faith of the
22 agency in compliance with statutory obligations.

23 THE COURT: All right. Just a second.

24 (There was a pause in the proceedings.)

25 THE COURT: Okay. Your request is certainly not an

1 unreasonable one, but I think it's not required in this case
2 given the Government's representations. And so I am going to
3 move forward and set a briefing schedule on the documents as
4 they are. So, they say they want to file December 12th. How
5 long do you need?

6 MS. SHAMSI: We think that they should file in
7 November, Your Honor, because this is a motion, again,
8 there's now been in our view, we don't know how much delay
9 there's been as a result of when the agency received the
10 record or not. This is not an issue that is new to the
11 agency. They've previously briefed the issue of agency
12 record. We don't think --

13 THE COURT: Well, I think that this would be more
14 than that. I mean, Ms. Mei, this is your summary judgment
15 briefing, which will relate to your search and exemptions and
16 everything, I trust. This isn't just a jurisdictional
17 question; right?

18 MS. MEI: Your Honor, for the full SSCI report, I
19 think it would be a jurisdictional question. For the other
20 parts of it, there would be obviously other arguments. But
21 yes, for the exemptions and the withholdings of the other
22 records.

23 MS. SHAMSI: So, Your Honor, we would urge a
24 November date. And as you've correctly pointed out, there is
25 a search issue here. And we might seek to renew the search

1 issue with respect to the CIA as briefing goes forward.

2 THE COURT: All right. I'm going to say December
3 5th. But the problem is if I do 30 days, that's
4 Thanksgiving, and I think that's not terribly appropriate.

5 So, Ms. Shamsi, I'll give you whatever time you
6 want. I know you want to move things along, so if you want
7 your opposition to be more quickly filed, fine. I know we've
8 got the holidays, so whatever you want, I'll accept.

9 Mr. Light, while she's checking her calendar, what's
10 your position for a date?

11 MR. LIGHT: First, Your Honor, you said December 5th
12 for the Government; correct?

13 THE COURT: Right, yes, uh-huh.

14 MR. LIGHT: We would actually ask that they have
15 until December 8. December 5th is a Friday. And our concern
16 is that if their due date is on a Friday, they're going to
17 release it in the evening when the public is not going to be
18 paying attention to it. Let's give them until the 8th. I
19 think they'll be happy to take until that date.

20 THE COURT: For their brief?

21 MR. LIGHT: For their summary judgment brief, I'll
22 give them an extra three days.

23 THE COURT: Okay. The 5th is fine. So what would
24 you like for yours?

25 MR. LIGHT: From the 5th, we could have our

1 opposition ready December 18th.

2 THE COURT: Ms. Shamsi, what -- again, I'll give you
3 what you want, depending on -- meaning your schedule and the
4 holidays, I'm happy to work with.

5 MS. SHAMSI: Yes, Your Honor, and thank you.
6 Because it's not just the holidays, we actually have two
7 other major briefs due during that time. I think we would
8 appreciate getting until January 9th, if the Government files
9 on the 5th, or January 12th, if the Government files on the
10 8th.

11 THE COURT: Okay. January 9th is fine.

12 And, Mr. Light, you can file early if you want, but
13 I'll give you until the same date.

14 And then are you expecting to file an opposition and
15 a cross-motion or just an opposition, Ms. Shamsi, if you
16 know?

17 MS. SHAMSI: Your Honor, I expect to file an
18 opposition and a cross-motion.

19 THE COURT: Okay. All right. So the Government's
20 reply and opposition, so then how is January 30th for your
21 reply and opposition?

22 MS. MEI: That will work.

23 THE COURT: All right. Then is February 14th good
24 for the plaintiffs for their rely, Mr. Light?

25 MR. LIGHT: I think February 14th is a Saturday.

1 THE COURT: I'm sorry, you're right. The 13th is
2 what I meant.

3 MR. LIGHT: That's fine.

4 THE COURT: Is that okay?

5 MR. LIGHT: Yes.

6 THE COURT: Great.

7 Ms. Shamsi, does that work for you?

8 MS. SHAMSI: It does, Your Honor.

9 THE COURT: Okay, good. So I'll memorialize these.
10 And I'll also memorialize the order that the ACLU is not
11 required to file an additional amended complaint or the usual
12 FOIA request.

13 All right. Any other issues then on these three
14 cases, Ms. Shamsi?

15 MS. SHAMSI: No, Your Honor.

16 THE COURT: Mr. Light?

17 MR. LIGHT: I wasn't clear. The dates that we were
18 just talking about, were those for all three cases or just
19 the SSCI report and the Panetta report?

20 THE COURT: I have expected they were for all three
21 cases, is what I understood.

22 MR. LIGHT: Okay.

23 THE COURT: Do you agree with that, Ms. Mei?

24 MS. MEI: Yes, Your Honor.

25 MR. LIGHT: Okay. The third case that relates to

1 the alleged CIA spying on the Senate computers doesn't
2 involve the same kind of factual interconnection --

3 THE COURT: Are you talking about the 1056 case?

4 MR. LIGHT: Right.

5 THE COURT: We will do that afterwards.

6 MR. LIGHT: Oh, okay.

7 THE COURT: Yeah, I'm sorry. The ones I was talking
8 about today, this hearing is just your two 13-24, 1870 and
9 48.

10 MR. LIGHT: Oh, those three. I thought you meant my
11 three.

12 THE COURT: No.

13 MR. LIGHT: All right. I understand that.

14 THE COURT: Okay. Thank you.

15 Ms. Mei, anything else?

16 MS. MEI: No, Your Honor.

17 THE COURT: All right. Thank you, folks. I
18 appreciate your patience and your diligence on this. We'll
19 look for the briefing.

20 Okay. Now let's call the 14-1056 case. So ACLU
21 counsel are excused, thank you.

22 MS. SHAMSI: Thank you.

23 THE COURT: I'll issue an order today memorializing
24 the schedule.

25 MS. SHAMSI: Thank you.

1 (Court adjourned in the above-entitled matter
2 at 10:00 a.m.)

3 - o -
4

5
6 CERTIFICATE OF REPORTER

7 I, Lisa Walker Griffith, certify that the foregoing
8 is a correct transcript from the record of proceedings in the
9 above-entitled matter.
10

11
12
13
14 _____
15 Lisa Walker Griffith, RPR

_____ Date
16
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25

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

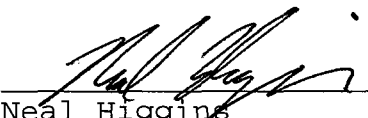
of the Full Report in December 2012, it did so for the sole purpose of allowing the Agency to review the document and provide comments. Indeed, the Committee placed express restrictions on dissemination of the Full Report. The CIA accordingly gave only a limited number of officers access to the December 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

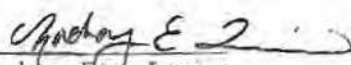
To the Information and Privacy Coordinator:

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.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
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TEL: 212.696.2500
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FEB 14 2013

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

Carmen L. Mallon, Chief of Staff
Office of Information Policy
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OFFICERS AND DIRECTORS
E. SANFORD BODIAN
PRESIDENT

ANTHONY L. BOHRER
EXECUTIVE DIRECTOR

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.

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/SWHsgH>; 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>.

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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).

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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. 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”).

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,

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).

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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/USwxpl>; 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/TZ1Quk>; 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>.

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 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.

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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. Cir. 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

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)(1); 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
American Civil Liberties Union
Foundation
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New York, NY 10004
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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 cursive script, 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

AMERICAN CIVIL LIBERTIES
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OFFICERS AND DIRECTORS
SIBBAN N. HERMAN
PRESIDENT

ANTHONY J. ROMERO
EXECUTIVE DIRECTOR

RICHARD 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, 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.

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/1h1Y0kt>. 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/1hlYOkt>. 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/1kws9v1>. 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. Joachim, *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

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 Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warriek, *Like FBI, CIA Has Used Secret ‘Letters.’* Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

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.

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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/predator-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/3214Pres20071011.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.

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/USwxpl>; 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>.

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.si/1hEjEg>; Marisa Taylor & David Lightman, *CIA's Harsh Interrogation Tactics More Widespread Than Thought, Senate Investigators Found*, McClatchy, Apr. 1, 2014, <http://bit.ly/1hmoXPY>; 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/1cctXqk>.

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/1mBMZ9>.

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).

* * *

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.

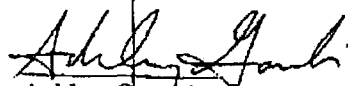
Please furnish the applicable records to:

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

SENATE HEARING, CALIFORNIA, CHAIRMAN
CHRISTOPHER S. BOND, MISSOURI, 1989-1991
JOHN A. ROCKWELLER, N. WEST VIRGINIA
JOHN SPEDDEN, OREGON
GUY H. BATH, MISSISSIPPI
BARBARA A. MICHAEL, MARYLAND
EDWARD D. FEINSTEIN, WISCONSIN
BILLY NELSON, FLORIDA
MELDON W. BROWN, MISSISSIPPI
SEN. MATTHEW DEAN
OLYMPIA J. SNOWE, MAINE
BOBBY COHEN, GEORGIA
BENJAMIN L. CARDIN, MARYLAND
JAMES E. BROWN, MISSISSIPPI
HARRY REID, MISSOURI, EX OFFICIO
MITCH MCCONNELL, KENTUCKY, EX OFFICIO
CARL LEVIN, MICHIGAN, EX OFFICIO
JOHN CORNYN, ARIZONA, EX OFFICIO
DAVID GRANNE, STAFF DIRECTOR
LOUIS E. RUCKELSHAUSEN, STAFF DIRECTOR
KATHLEEN F. MACHLE, CHIEF CLERK

~~SECRET~~
United States Senate
SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510-6475

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 matter, 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.

~~SECRET~~

APPROVED FOR
RELEASE DATE:
14-Jan-2015

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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 U.S.C. 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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The Honorable Leon Panetta
June 2, 2009
Page Three

integrate these records into its records filing systems, 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 material, 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

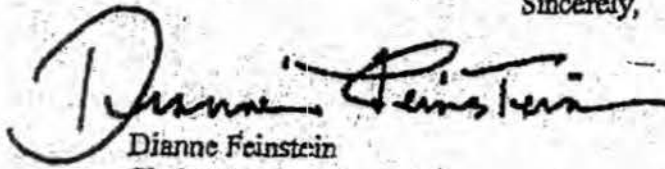
~~SECRET~~

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 10:51:18 PM for [redacted]
[redacted] Mark David Agrast
Cc: [redacted]

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**

AMERICAN CIVIL LIBERTIES UNION,)	
and AMERICAN CIVIL LIBERTIES)	
UNION FOUNDATION,)	
)	
Plaintiffs,)	Civil Action No. 1:13-cv-01870 (JEB)
)	
v.)	
)	
CENTRAL INTELLIGENCE AGENCY, et)	
al.)	
)	
Defendants.)	

DECLARATION OF JULIA E. FRIFIELD

Pursuant to 28 U.S.C. § 1746, I, Julia E. Frifield, declare and state as follows:

1. I am the Assistant Secretary of the Bureau of Legislative Affairs (“H”) of the U.S. Department of State (“Department”). In this capacity, I am responsible for advising the Secretary of State on legislative matters, and directing the staff of H. Prior to holding this position, I served as Chief of Staff to U.S. Senator Barbara Mikulski.

2. H coordinates legislative activity for the Department and advises the Secretary, the Deputy Secretaries, and other Department principals on legislative strategy. H facilitates effective communication between Department officials and the Members of Congress and their staffs. H works closely with authorizing, appropriations, and oversight committees of the House

and Senate, as well as with individual Members that have an interest in Department or foreign policy issues.

3. Through the exercise of my official duties, I am familiar with this civil action and the underlying Freedom of Information Act (“FOIA”) request at issue. The purpose of this declaration is to explain the Department’s receipt, treatment, and handling of the record sought, the full revised Senate Select Committee on Intelligence’s report, *Study of the CIA’s Detention and Interrogation Program* (“SSCI Report”). Additionally, this declaration details the instructions the Department has received from Congress regarding treatment of the report.

4. This declaration is based on my personal knowledge and information acquired in my official capacity in the performance of my official functions.

PLAINTIFF’S FOIA REQUEST

5. I have been informed that, by letter dated May 6, 2014, the American Civil Liberties Union and the American Civil Liberties Union Foundation (“Plaintiffs”) submitted a FOIA request to the Department, excerpted in relevant part below:

“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).”

6. Plaintiffs filed a second amended complaint in this lawsuit to compel the Department’s production of the report on June 5, 2014.

THE DEPARTMENT'S RECEIPT AND TREATMENT OF THE SSCI REPORT

7. By cover letter dated December 10, 2014, Senator Dianne Feinstein, then Chairman of the Senate Select Committee on Intelligence, transmitted to President Barack Obama the “full and final” version of the SSCI Report. Numerous Executive Branch officials were copied on the letter, including Secretary of State John F. Kerry. Prior to the issuance of this letter, the Department had never received the full updated version of the SSCI Report. In the letter, Senator Feinstein requested that the report be made available to Executive Branch agencies “as appropriate to help make sure this experience is never repeated.”

8. On December 12, 2014, the Feinstein letter and a compact disc (“CD”) were hand-delivered by an official from SSCI to a Department official within H’s Office of Senate Affairs. The CD was classified at the Top Secret level and marked as containing Sensitive Compartmented Information (“SCI”), as labeled on the inner envelope holding the CD. SCI refers to a method of handling certain types of classified information related to specific national security topics, particularly intelligence sources, analysis, and methods. The inner envelope containing the CD was never opened, and the CD was immediately placed into a secure storage facility. It was later transferred to a secured location within the Bureau of Intelligence and Research (“INR”), which is the focal point for receiving and storing sensitive compartmented classified information. The inner envelope containing the CD remains sealed and the Department has marked the outer envelope “Congressional Record – Do Not Open, Do Not Access.”


9. Since receiving the CD in the Department, the contents of the disc have never been opened, accessed, or read, as indicated by the fact that the inner envelope remains sealed. Neither the CD nor its contents have been integrated into the Department’s files or records

systems. To the extent certain individuals have handled the CD, it has been for the sole purpose of ensuring it is properly and securely stored.

10. By letter dated January 14, 2015, the current Chairman of the Senate Select Committee on Intelligence, Senator Richard Burr, sent a letter to President Obama, cc'ing Secretary of State John F. Kerry, among others. In this letter, Chairman Burr made it clear that he considers the report "to be a highly classified and committee sensitive report," and that "[i]t should not be entered into any Executive Branch systems of records." Accordingly, he requested that the SSCI Report be returned to the Committee and that, should Executive Branch officials wish to view the report, the Committee would attempt to make other accommodations available.

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

Executed this 21 day of January 2015, Washington, D.C.



Julia E. Frifield

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

AMERICAN CIVIL LIBERTIES UNION,
and AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et
al.

Defendants.

)
)
)
)
)
) Civil Action No. 1:13-cv-01870 (JEB)
)
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DECLARATION OF MARK H. HERRINGTON

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of General Counsel (“OGC”) (Office of Litigation Counsel) of the United States Department of Defense (“DoD”). OGC provides legal advice to the Secretary of Defense and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act (“FOIA”) litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency.

2. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. Specifically, I am the OGC counsel assigned to this case.

Purpose of this Declaration

3. I submit this declaration to provide information regarding DoD's handling of the record that is the subject of this litigation.

Plaintiff's Request

4. On May 6, 2014, Plaintiffs requested "the updated version of the Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program*." ("SSCI Report")

Status

5. At the time of Plaintiffs' request, DoD did not have a complete version of the SSCI Report. DoD had previously received a copy of the SSCI Report executive summary during the classification review conducted by the Executive Branch prior to the release of the declassified version of that executive summary. DoD first received a copy of the full version in December 2014 after the SSCI publically released the declassified Executive Summary of the SSCI Report. The SSCI report was transmitted with a letter dated December 10, 2014, from Senator Dianne Feinstein, who was then SSCI Chairman.

6. DoD has treated the SSCI Report as a congressional record and continues to do so. The Report has not been placed within a DoD system of records, it is stored in secure locations, access to it is limited to an small number of persons with proper clearance and a need to know, and access is strictly controlled by the Under Secretary of Defense for Intelligence.

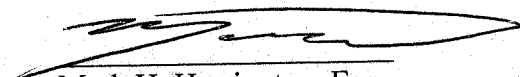
7. Through inter-agency discussions within the Executive Branch, DoD was aware that the SSCI had been adamant that the draft version of the Report could not be integrated with agency record filing systems, and that disposition and control over the records, even after the completion of the Committee's review, lay exclusively with the Committee. With those

admonishments in mind, DoD has treated the classified executive summary and this full version similarly. DoD has two copies of the full SSCI Report and both are kept in sensitive compartmented information facilities ("SCIF"s). One is kept in a safe in the SCIF office of the Under Secretary of Defense for Intelligence. The other copy is on a stand-alone, TOP SECRET laptop in the SCIF office of the Under Secretary's principal legal adviser, the DoD Deputy General Counsel (Intelligence), so that she may address/advise on litigation and other legal related matters, as necessary. Only the Deputy General Counsel has access to that copy. Further, given the highly classified nature of the report, broad dissemination throughout DoD is not possible.

8. DoD's treatment of the full SSCI Report is consistent with all previous indications from Congress about the use of the Report. DOD interpreted the December 10, 2014, letter from Senator Feinstein as consistent with these caveats, and has continued to treat the Report consistent with the understanding that the Report remains a congressional record.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 21st day of January, 2015, in Arlington, VA.



Mark H. Herrington, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION,)
and AMERICAN CIVIL LIBERTIES)
UNION FOUNDATION,)
)
Plaintiffs,) Civil Action No. 1:13-cv-01870 (JEB)
)
v.)
)
CENTRAL INTELLIGENCE AGENCY, et)
al.)
)
Defendants.)

**DECLARATION OF PETER J. KADZIK
ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS
U.S. DEPARTMENT OF JUSTICE**

I, PETER J. KADZIK, hereby declare and state:

1. I have served as the Assistant Attorney General for Legislative Affairs at the Department of Justice (DOJ or Department) since I was confirmed by the Senate in June 2014. In the year prior to that, I was a Deputy Assistant Attorney General and then the Principal Deputy Assistant Attorney General for Legislative Affairs. Prior to joining DOJ, I was in private practice at Dickstein Shapiro LLP. Earlier in my career, I served as an Assistant United States Attorney in the District of Columbia. As Assistant Attorney General for Legislative Affairs, I head the DOJ's Office of Legislative Affairs (OLA), which is responsible for managing the Department's relationship with Congress. OLA represents the Department in communications to Congress and articulates congressional interests and priorities to Department leadership. This involves communications about legislative, oversight, and other matters of interest to Members

of Congress. In particular, I interact regularly with Members and staff of the Senate Select Committee on Intelligence (SSCI) about legislative and oversight matters.

2. 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 DOJ’s receipt and treatment of the document at issue in this litigation – the current version of the full report authored by SSCI concerning the CIA’s former detention and interrogation program (the “Full Report”).

3. The statements in this declaration are based on my personal knowledge and information made available to me in my official capacity.

PLAINTIFF’S FOIA REQUEST

4. By letter dated May 6, 2014, the plaintiffs in this case submitted a FOIA request to DOJ, 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 A. On May 22, 2014, Vanessa Brinkmann, Senior Counsel in the Office of Information Policy, responded on behalf of OLA that, “the Central Intelligence Agency (CIA) is the agency best suited to respond to your request. I understand that you have already submitted your request to the CIA. That agency will respond to you directly if it has not done so already.” A true and correct copy of this letter is attached hereto as Exhibit B. On June 5, 2014, the plaintiffs amended their prior complaint in this lawsuit to seek the release of the “Updated SSCI Report,” and added DOJ as a defendant on that claim. DOJ has interpreted this to refer to the most current version of the Full Report – the December 2014 version, which is the only updated version of the Full Report that DOJ has received since DOJ was added as a defendant in this lawsuit.

DOJ'S RECEIPT AND TREATMENT OF THE FULL REPORT

5. I am informed that on December 12, 2014, a former member of my staff received two copies of the Full Report by hand delivery from a SSCI Security Officer. One copy was for DOJ; the other copy was for the Federal Bureau of Investigation (FBI). Each copy was accompanied by a December 10, 2014 letter from SSCI Chairman Dianne Feinstein to the President. The package is classified as "Top Secret/Sensitive Compartmented Information ("TS/SCI") with additional classification markings for the applicable codeword. SCI is classified information concerning, or derived from, intelligence sources, methods, or analytical processes requiring handling within formal access control systems. SCI is sometimes referred to as "codeword" information, and its sensitivity requires that it be protected in a much more controlled environment than other classified information.

6. The two copies of the Full Report were delivered in a single package containing two discs. The same former staff member, who was the only member of the OLA staff other than I who – because of the classification level of the Full Report – had the clearances required to handle that document, signed for the copies for both DOJ and the FBI, and took the package to the OLA Sensitive Compartmented Information Facility ("SCIF") where he opened it and retrieved the DOJ copy of the Full Report with the accompanying letter. He rewrapped the copy for the FBI in the original wrapping, the interior of which was marked TS/SCI with the applicable codeword, placed the DOJ copy in another envelope, marked it with the same classification markings, as well as "Senate Intel RDI Report," and immediately placed both copies into OLA's SCIF. The CDs themselves were also marked TS/SCI, with the applicable codeword marking.

7. The copies of the Full Report that OLA received were not distributed further, and I am advised that the member of OLA's staff who signed for the documents and placed them in the SCIF did not open either of the CD cases, and has not reviewed the documents.

8. I have not reviewed the Full Report, and the FBI has neither retrieved nor reviewed its copy of the Full Report, which remains in the OLA SCIF. The DOJ copy of the Full Report also remains unopened in the OLA SCIF, and has exterior markings that state: "Senate Intel RDI Report," "Congressional Record," and is marked "TS/SCI" with the applicable codeword marking.

9. The disc itself has not been integrated into any agency records system, although the cover letter that accompanied it, a copy of a letter from Senator Feinstein to the President, was separated from the disc and assigned an agency tracking number. The disc itself is referenced as a classified attachment to the letter.

* * *

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

Executed this 21st day of January 2015.



PETER J. KADZIK
Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice

Exhibit A

LEGAL DEPARTMENT



RECEIVED

MAY 12 2014

Office of Information Policy

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

Carmen L. Mallon, Chief of Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, N.W., Suite 11050
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AMERICAN CIVIL LIBERTIES
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EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

14-F-0802
OLA
FOIA
SBT
DRH Reviewer
May 6, 2014

**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.

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/1h1Y0kt>. 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/1hlY0kt>. 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/1kws9vI>. 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. Joachim, *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. 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”).

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.

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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

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 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).

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.

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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/predator-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.

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 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>.

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/1eejlaR>; 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/1hmoXPY>; Greg Miller, Adam Goldman, & Ellen Nakashima, *CIA Misled on Interrogation Program, Senate Report*

Says, Wash. Post, Mar. 31, 2014, <http://wapo.st/1eeujNM>; 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/1eetXqk>.

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/1mBMZ9>.

Expedited processing should be granted.

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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)(I); *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).

* * *

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

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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 B

May 22, 2014

Ms. Ashley Gorski
American Civil Liberties Union Foundation
18th Floor
125 Broad Street
New York, NY 10004
agorski@aclu.org

Re: OLA/14-02816 (F)
VRB:DRH:SBT

Dear Ms. Gorski:

This responds to your Freedom of Information Act request dated May 6, 2014, and received in this Office on May 12, 2014, seeking the updated version of the Senate Select Committee on Intelligence's report *Study of the Central Intelligence Agency's Detention and Interrogation Program* cited in an April 7, 2014 letter from Committee Chair Dianne Feinstein to President Barack Obama. This response is made on behalf of the Office of Legislative Affairs.

I have determined that the Central Intelligence Agency (CIA) is the agency best suited to respond to your request. I understand that you have already submitted your request to the CIA. That agency will respond to you directly if it has not done so already.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through this Office's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Vanessa R. Brinkmann
Senior Counsel

Exhibit 1

JOHN D. ROCKEFELLER IV, WEST VIRGINIA
RON WYDEN, OREGON
BARBARA A. MIKULSKI, MARYLAND
BILL NELSON, FLORIDA
KENT CONRAD, NORTH DAKOTA
MARK UDALL, COLORADO
MARK WARNER, VIRGINIA

OLYMPIA J. SNOWE, MAINE
RICHARD BURR, NORTH CAROLINA
JAMES E. RISCH, IDAHO
DANIEL COATS, INDIANA
ROY BLUNT, MISSOURI
MARCO RUBIO, FLORIDA



United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510-6475

HARRY REID, NEVADA, EX OFFICIO
MITCH MCCONNELL, KENTUCKY, EX OFFICIO
CARL LEVIN, MICHIGAN, EX OFFICIO
JOHN MCCAIN, ARIZONA, EX OFFICIO

DAVID GRANNIS, STAFF DIRECTOR
MARTHA SCOTT POINDEXTER, MINORITY STAFF DIRECTOR
KATHLEEN P. McPHEE, CHIEF CLERK

December 14, 2012

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

I am pleased to inform you that the Senate Select Committee on Intelligence has completed its study of the CIA's former detention and interrogation program, and has produced a 6,000 page report, complete with an executive summary, findings, and conclusions. Yesterday, the Committee approved the report by a vote of 9-6. I will be providing a copy of the report for your review as it involves the implementation of a program conducted under the authority of the President.

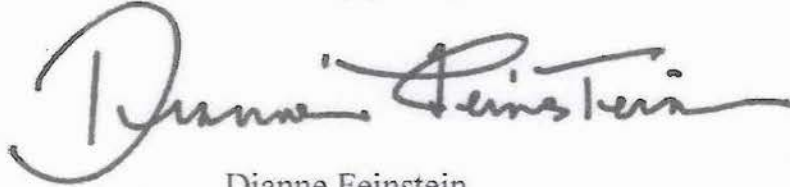
This review is by far the most comprehensive intelligence oversight activity ever conducted by this Committee. We have built a factual record, based on more than six million pages of Intelligence Community records. Facts detailed in the report are footnoted extensively to CIA and other Intelligence Community documents. Editorial comments are kept to a minimum, clearly marked, and included to provide context. We have taken great care to report the facts as we have found them.

I am also sending copies of the report to appropriate Executive Branch agencies. I ask that the White House coordinate any response from these agencies, and present any suggested edits or comments to the Committee by February 15, 2012. After consideration of these views, I intend to present this report with any accepted changes again to the Committee to consider how to handle any public release of the report, in full or otherwise.

The report contradicts information previously disclosed about the CIA detention and interrogation program, and it raises a number of issues relating to how the CIA interacts with the White House, other parts of the Executive Branch,

and Congress. Recognizing the many important issues before you, I urge you to review or get briefed on the report as soon as possible. I will be pleased to make myself, and staff, available to discuss the report at your convenience.

Sincerely yours,

A handwritten signature in black ink, reading "Dianne Feinstein". The signature is written in a cursive style with a large initial "D".

Dianne Feinstein
Chairman

cc: Mr. Michael Morell, Acting Director, Central Intelligence Agency
The Honorable James Clapper, Director of National Intelligence
The Honorable Eric Holder, Attorney General
The Honorable Leon Panetta, Secretary of Defense
The Honorable Hillary Clinton, Secretary of State

Exhibit 2

DANNIE FENSTER, CALIFORNIA, CLERK
SAXBY CHAMBLISS, GEORGIA, VICE CHAIRMAN
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
RON WYDEN, OREGON
BARBARA A. MILKULSKI, MARYLAND
MARK UDALL, COLORADO
MARK WARNER, VIRGINIA
MARTIN HEINRICH, NEW MEXICO
ANGUS KING, MAINE
RICHARD BURR, NORTH CAROLINA
JAMES E. RISH, IDAHO
DANIEL CLATS, INDIANA
MARCO RUBIO, FLORIDA
SUSAN COLLINS, MAINE
TOM COBURN, OKLAHOMA
HARRY REID, NEVADA, EX OFFICIO
MITCH MCCONNELL, KENTUCKY, EX OFFICIO
CARL LEVIN, MICHIGAN, EX OFFICIO
JAMIE HHOFE, OKLAHOMA, EX OFFICIO
DAVID GRANIS, STAFF DIRECTOR
MARTHA SCOTT PONDEXTER, MINORITY STAFF DIRECTOR
DESIREE THOMPSON SAYLE, CHIEF CLERK



United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20540-5425

April 7, 2014

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

I am pleased to inform you that the Senate Select Committee on Intelligence has voted to send for declassification the Findings and Conclusions and Executive Summary of an updated version of the Committee's Study of the CIA's Detention and Interrogation Program. Both are enclosed. I request that you declassify these documents, and that you do so quickly and with minimal redactions. If Committee members write additional or minority views that they wish to have declassified and released as well, I will transmit those separately.

As this report covers a covert action program under the authority of the President and National Security Council, I respectfully request that the White House take the lead in the declassification process. I very much appreciate your past statements – and those of your Administration – in support of declassification of the Executive Summary and Findings and Conclusions with only redactions as necessary for remaining national security concerns. I also strongly share your Administration's goal to "ensure that such a program will not be contemplated by a future administration," as your White House Counsel wrote in a February 10, 2014, letter.

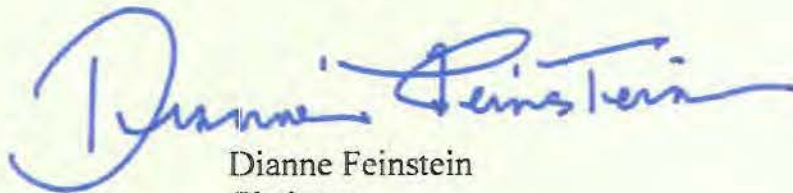
In addition to the Findings and Conclusions and Executive Summary, I will transmit separately copies of the full, updated classified report to you and to appropriate Executive Branch agencies. This report is divided into three volumes, exceeds 6,600 pages, and includes over 37,000 footnotes, and updates the version of the report I provided in December 2012. This full report should be considered as the final and official report from the Committee. I encourage and approve the

dissemination of the updated report to all relevant Executive Branch agencies, especially those who were provided with access to the previous version. This is the most comprehensive accounting of the CIA's Detention and Interrogation Program, and I believe it should be viewed within the U.S. Government as the authoritative report on the CIA's actions.

As I stated in my letter to you on December 14, 2012, the Committee's report contradicts information previously disclosed about the CIA Detention and Interrogation Program, and it raises a number of issues relating to how the CIA interacts with the White House, other parts of the Executive Branch, and Congress. I ask that your Administration declassify the Findings and Conclusions and Executive Summary of this updated report as soon as possible. I also look forward to working with you and your Administration in discussing recommendations that should be drawn from this report.

Thank you very much for your continued attention to this issue.

Sincerely yours,



Dianne Feinstein
Chairman

Enclosures: as stated

cc: The Honorable James Clapper, Director of National Intelligence
The Honorable John Brennan, Director, Central Intelligence Agency
The Honorable Eric Holder, Attorney General
The Honorable Chuck Hagel, Secretary of Defense
The Honorable John F. Kerry, Secretary of State

Exhibit 3

DIANNE FEINSTEIN, CALIFORNIA, CHAIRMAN	MARK CHABERSKI, PENNSYLVANIA, CHAIRMAN
JOHN D. ROCKEFELLER IV, WEST VIRGINIA	RICHARD BURR, NORTH CAROLINA
RON WYDEN, OREGON	JAMES E. RISCH, IDAHO
BARBARA A. MILKULSKI, MARYLAND	DANIEL COATS, INDIANA
MARK UDALL, COLORADO	MARCO RUBIO, FLORIDA
MARK WARNER, VIRGINIA	SUSAN COLLINS, MAINE
MARTIN HEINRICH, NEW MEXICO	TOM COBURN, OKLAHOMA
ANGUS KING, MAINE	



United States Senate

HARRY REID, NEVADA, EX OFFICIO
 MITCH McCONNELL, KENTUCKY, EX OFFICIO
 CARL LEVIN, MICHIGAN, EX OFFICIO
 JAMES INHOFE, OKLAHOMA, EX OFFICIO

DAVID GRANNIS, STAFF DIRECTOR
 MARTHA SCOTT POINDEXTER, MINORITY STAFF DIRECTOR
 DESIREE THOMPSON SAYLE, CHIEF CLERK

SELECT COMMITTEE ON INTELLIGENCE
 WASHINGTON, DC 20510-6475

SSCI# 2014-3514

December 10, 2014

The Honorable Barack Obama
 The White House
 1600 Pennsylvania Avenue NW
 Washington, DC 20500

Dear Mr. President,

Yesterday the Senate Select Committee on Intelligence formally filed the full version of its Study of the Central Intelligence Agency’s Detention and Interrogation Program with the Senate and publicly released the declassified Executive Summary and Findings and Conclusions, as well as the declassified additional and minority views.

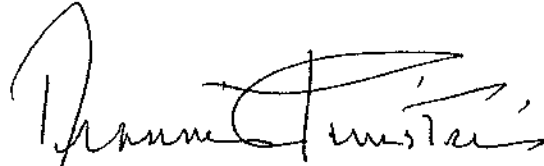
The full and final report is enclosed with this letter. It is divided into three volumes, exceeds 6,700 pages, and includes over 37,700 footnotes.

As you said publicly on August 1, 2014, the CIA’s coercive interrogation techniques were techniques that “any fair-minded person would believe were torture,” and “we have to, as a country, take responsibility for that so that, hopefully, we don’t do it again in the future.”

I strongly share your goal to ensure that such a program will not be contemplated by the United States ever again and look forward to working with you to strengthen our resolve against torture. Therefore, the 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 programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit.

Thank you very much for your continued attention to this issue.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dianne Feinstein". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Dianne Feinstein
Chairman

cc: The Honorable James Clapper, Director of National Intelligence
The Honorable John Brennan, Director, Central Intelligence Agency
The Honorable Eric Holder, Attorney General
The Honorable Chuck Hagel, Secretary of Defense
The Honorable John F. Kerry, Secretary of State
The Honorable James B. Comey, Director, Federal Bureau of Investigation
The Honorable David Buckley, CIA Inspector General

Exhibit 4

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510-6475

January 14, 2015

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

It has recently come to my attention that on December 10, 2014, Senator Feinstein, in her capacity as the Chairman of the U.S. Senate Select Committee on Intelligence, provided a digital copy of the full and final report of the Committee's Study of the Central Intelligence Agency's Detention and Interrogation program (divided into three volumes and exceeding 6,700 pages) to you, the Director of National Intelligence, the Director of the Central Intelligence Agency (CIA), the Attorney General, the Secretary of Defense, the Secretary of State, the Director of the Federal Bureau of Investigation, and the CIA Inspector General. You may recall that Senator Chambliss, the Vice Chairman of the Committee at that time, was not copied on that letter. As the Chairman of the Committee, I consider that report to be a highly classified and committee sensitive document. It should not be entered into any Executive Branch system of records. For that reason, I request that all copies of the full and final report in the possession of the Executive Branch be returned immediately to the Committee. If an Executive Branch agency would like to review the full and final report, please have them contact the Committee and we will attempt to arrive at a satisfactory accommodation for such a request.

Thank you for your continued attention to this issue.

Sincerely,



Richard Burr
Chairman
Senate Select Committee on Intelligence

Cc: The Honorable Dianne Feinstein, Vice Chairman, Senate Select Committee on Intelligence
The Honorable James Clapper, Director of National Intelligence
The Honorable John Brennan, Director, Central Intelligence Agency
The Honorable Eric Holder, Attorney General
The Honorable Chuck Hagel, Secretary of Defense
The Honorable John F. Kerry, Secretary of State
The Honorable James B. Comey, Director, Federal Bureau of Investigation
The Honorable David Buckley, CIA Inspector General

Exhibit 5

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

January 16, 2015

SSCI# 2015-0374

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

I write in response to Chairman Richard Burr's letter to you dated January 14, 2015, in which he requested that the Executive Branch return all copies of the Committee's Study of the Central Intelligence Agency's Detention and Interrogation Program. I do not support this request and believe it is important for appropriately cleared individuals in the Executive Branch to have access to the Committee's full, classified report.

The full, 6,963-page classified report transmitted on December 10, 2014, is an official Senate report (S. Rep. 113-288). The report has the same legal status of any other official Senate report from this Committee or any other Senate committee. At the December 2012 vote to approve the report and the April 2014 vote to send parts of the report for declassification, among other times, it was clear that the final, updated classified version of the report was the official version of the Study and that it would be transmitted to appropriate Executive Branch agencies. There was never any objection to providing the full, official report to the Executive Branch, consistent with appropriate limitations due to classification. I therefore disagree with Chairman Burr's analysis that the report should be considered "Committee Sensitive" as that term is defined in the SSCI's Rules of Procedure.¹

As you and I have discussed and strongly agree, the purpose of the Committee's report is to ensure that nothing like the CIA's detention and interrogation program from 2002 to 2008 can ever happen again. The realization of that goal depends in part on future Executive Branch decisionmakers having and utilizing a comprehensive record of this program, in far more detail than what we were able to provide in the now declassified and released Executive Summary. In this regard, I appreciate the CIA's proposed

¹ See Rule 9.3, Rules of Procedure, available at <http://www.intelligence.senate.gov/pdfs/11214.pdf>.

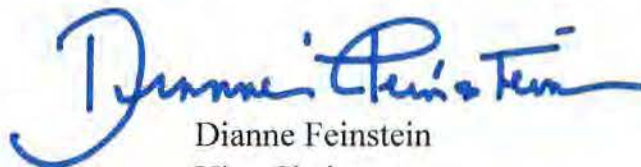
reforms, first described in the CIA's response to the Committee's report in June 2013 and recently repeated by Director John Brennan in his post-release press conference.

Finally, I do want to respond to the inference in Senator Burr's letter that I somehow did not inform former Vice Chairman Saxby Chambliss or other Members of my December 10, 2014, letter. In fact, all Members of the Senate Intelligence Committee – including Senators Chambliss and Burr – received access to my December 10, 2014, transmittal letter (along with access to the full report) on the day it was sent. It is standard Committee practice to make such correspondence available to all Members and appropriately cleared staff through the Committee's internal document system. Any implication that Senator Chambliss or any other Committee Member did not have access to the December 10, 2014, letter is simply false.

Therefore, I reiterate the request from my December 10, 2014, letter and ask that you retain the full 6,963-page classified report within appropriate Executive branch systems of record, with access to appropriately cleared individuals with a need to know, so as to ensure the history of the CIA Detention and Interrogation Program is available and appropriate lessons can be learned from it.

Thank you very much for your continued attention to this issue.

Sincerely yours,



Dianne Feinstein
Vice Chairman

cc: Members, Senate Select Committee on Intelligence
The Honorable James Clapper, Director of National Intelligence
The Honorable John Brennan, Director, Central Intelligence Agency
The Honorable Eric Holder, Attorney General
The Honorable Chuck Hagel, Secretary of Defense
The Honorable John F. Kerry, Secretary of State
The Honorable James B. Comey, Director, Federal Bureau of Investigation
The Honorable David Buckley, CIA Inspector General

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES
UNION, *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,
et al.,

Defendants.

Civil Action No. 13-1870 (JEB)

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, the Court
ORDERS that:

1. Defendants' Motion to Dismiss is GRANTED;
2. The CIA's Motion for Summary Judgment is GRANTED;
3. Plaintiffs' Cross-Motion for Summary Judgment is DENIED; and
4. Judgment is ENTERED in favor of Defendants.

IT IS SO ORDERED.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: May 20, 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES
UNION, *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,
et al.,

Defendants.

Civil Action No. 13-1870 (JEB)

MEMORANDUM OPINION

A lightning rod for controversy, the Central Intelligence Agency's former detention and interrogation program has spawned a welter of cases under the Freedom of Information Act demanding access to the inside story. In this particular suit, the American Civil Liberties Union and the American Civil Liberties Union Foundation seek to compel disclosure of two records relating to the program: the 6,963-page "Final Full Report" drafted by the Senate Select Committee on Intelligence after a comprehensive investigation, and a separate internal CIA study commissioned by former Director Leon Panetta. Contending that the Final Full Report is a congressional record exempt from the strictures of FOIA, the four defendant agencies move to dismiss that count of the Complaint. The CIA – the only agency asked to produce the Panetta Review – separately seeks summary judgment on that withholding, invoking FOIA Exemptions 1, 3, and 5. Concurring in full with the Government, the Court will enter judgment in its favor.

I. Background

Given the circumstances surrounding the genesis of the disputed records, an overview of these events and the origins of the FOIA requests here may prove useful to the reader. In its

explication, the Court first addresses the SSCI Report and the FOIA request pertaining to it, then turns to the Panetta Review and its corresponding request.

A. The SSCI Report

1. *Initiation of Investigation*

In March 2009, the Senate Select Committee on Intelligence announced plans to comprehensively review the CIA's former detention and interrogation program. See Def. Mot. for Summary Judgment, Att. 1 (Declaration of Martha M. Lutz, Chief of the Litigation Support Unit, CIA), ¶ 11. To fulfill that ambition, Committee personnel required "unprecedented direct access to millions of pages of unredacted CIA documents." Id. Wary of freewheeling disclosure of such sensitive information, the CIA negotiated with SSCI to devise accommodations that "respected both the President's constitutional authorities over classified information and . . . Congress's constitutional authority to conduct oversight of the Executive Branch." Def. Mot. to Dismiss, Att. 1 (Declaration of Neal Higgins, Director of the Office of Congressional Affairs, CIA), ¶ 11.

Those efforts were realized in a June 2, 2009, letter from the SSCI Chairman and Vice Chairman to the CIA Director, in which the Committee agreed that its review of Agency records would take place in a secure electronic reading room at a CIA facility. See id., ¶¶ 10-11; see also id., Exh. D (June 2, 2009, Letter from SSCI to the CIA), ¶ 2. The Agency would, in turn, create a segregated network drive there where SSCI members and staffers could "prepare and store their work product . . . in a secure environment." Higgins Decl., ¶ 11; see also June 2, 2009, SSCI Letter, ¶¶ 5-6.

One key provision of the 2009 letter, and “a condition upon which SSCI insisted,” concerned the status of such work product. See Higgins Decl., ¶ 12. More specifically, the letter instructed:

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. . . . 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.

June 2, 2009, SSCI Letter, ¶ 6 (emphasis added). The governing terms so defined, SSCI began its Brobdingnagian task.

2. *Approval and Transmission of Early Drafts*

More than three years later, on December 13, 2012, SSCI held a closed session in which it approved an initial version of its full investigative report, as well as a stand-alone “Executive Summary.” See Higgins Decl., ¶ 15. It then transmitted both drafts to the Executive Branch for review, soliciting “suggested edits or comments” but limiting dissemination to specific individuals identified in advance to the Chairman. See ECF No. 41-1 (December 14, 2012, Letter from Senator Dianne Feinstein to President Barack Obama).

On April 3, 2014, after revising both documents in response to the CIA’s feedback, the Committee met again in closed session to determine their proper disposition. See Higgins Decl., ¶ 17. It ultimately voted to approve both documents, but to designate at that time only the

Executive Summary for declassification and eventual public release. See SSCI, Committee Study of the CIA's Detention and Interrogation Program: Executive Summary at 8 (Dec. 3, 2014) [hereinafter "Executive Summary"], available at <http://www.intelligence.senate.gov/study2014/executive-summary.pdf>; Higgins Decl., Exh. F. (April 3, 2014, Senator Feinstein Press Release) ("The full 6,200-page full report has been updated and will be held for declassification at a later time."). Both documents were transmitted to the Executive Branch in the summer of 2014. See Higgins Decl., ¶ 21.

Over the next several months, SSCI and the CIA engaged in further discussions regarding the processing of the Executive Summary, and the Committee continued to edit that document – and the Full Report – in light of those conversations. See Higgins Decl., ¶ 19. After much negotiation, the Director of National Intelligence declassified a minimally redacted final version of the Executive Summary, which SSCI then publicly released on December 9, 2014. See id., ¶ 20.

In her foreword to the Summary, Chairman Feinstein described the Full Report, clarifying that it is "now final and represents the official views of the Committee." See Executive Summary, Chairman's Foreword at 5 (Dec. 3, 2014) [hereinafter "Chairman's Foreword"], available at <http://www.intelligence.senate.gov/study2014/foreword.pdf>. She further expressed her desire that "[t]his and future Administrations should use this Study to guide future programs, correct past mistakes, increase oversight of CIA representations to policymakers, and ensure coercive interrogation practices are not used by our government again." Id. at 5. In keeping with the Committee's earlier decision, however, the Final Full Report was neither sent for declassification nor publicly released. See id. at 3 ("I chose not to seek declassification of the full Committee Study at this time.").

3. *Transmission of Final Full Report*

Instead, during the several days immediately following the public release of the Executive Summary, SSCI sent a copy of the Final Full Report to President Obama and each Defendant agency. See Higgins Decl., ¶ 21; Def. Mot. to Dismiss, Att. 2 (Declaration of Julia Frifield, Department of State), ¶ 7; id., Att. 3 (Declaration of Mark Herrington, Department of Defense), ¶ 5; id., Att. 4 (Declaration of Peter Kadzik, Department of Justice), ¶ 5. Chairman Feinstein's transmittal letter – addressed to the President – stated as follows:

As you said publicly on August 1, 2014, the CIA's coercive interrogation techniques were techniques that "any fair-minded person would believe were torture," and "we have to, as a country, take responsibility for that so that, hopefully, we don't do it again in the future."

I strongly share your goal to ensure that such a program will not be contemplated by the United States ever again and look forward to working with you to strengthen our resolve against torture. Therefore, the 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 programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit.

Def. Mot. to Dismiss, Exh. 3 (December 10, 2014, Letter from Senator Dianne Feinstein to President Barack Obama) at 1.

The decision to share the Final Full Report within the Executive Branch has since drawn official Senate criticism, in large part due to a shift in Committee leadership that occurred after the 2014 elections gave the Republicans a Senate majority. Shortly after his installation as the new Chairman, Senator Richard Burr sent a letter to the President indicating that he had not been aware of the Report's transmission at the time it occurred. See Def. Mot. to Dismiss, Exh. 4 (January 14, 2015, Letter from Senator Richard Burr to President Barack Obama). He further

advised that he considered the Report to be “a highly classified and committee sensitive document” and therefore requested that “all copies of the full and final report in the possession of the Executive Branch be returned immediately to the Committee.” Id. The Chairman added: “If an Executive Branch agency would like to review the full and final report, please have them contact the Committee and we will attempt to arrive at a satisfactory accommodation for such a request.” Id.

In response, now-SSCI Vice Chairman Feinstein wrote the President saying that she “do[es] not support” the request that all copies of the Full Report be returned to the Committee. See Def. Mot. to Dismiss, Exh. 5 (January 16, 2015, Letter from Senator Dianne Feinstein to President Barack Obama) at 1. She further reiterated the sentiment of her December 10, 2014, letter and asked that the Final Report be retained “within appropriate Executive branch systems of record, with access to appropriately cleared individuals with a need to know.” Id. at 1-2. No action has yet been taken in response to Senator Burr’s letter, as Defendants have agreed to retain their respective copies of the Report pending the Court’s adjudication of the dispute at hand. See ECF No. 42 (Defendants’ Response to Plaintiffs’ Emergency Motion for an Order Protecting Jurisdiction).

4. *FOIA Request and Initiation of Suit*

In the midst of all this back-and-forth, the ACLU and the ACLU Foundation (jointly, “ACLU” or “Plaintiff”) sent a FOIA request to the CIA, seeking “disclosure of the recently adopted [SSCI] report . . . relating to the CIA’s post-9/11 program of rendition, detention, and interrogation.” Def. Original Mot. to Dismiss, Att. 2 (Affidavit of Neal Higgins), Exh. A (February 13, 2013, FOIA Request). The CIA promptly denied the request, characterizing the Report as a “[c]ongressionally generated and controlled document” exempt from FOIA. See

Higgins Aff., Exh. B (February 22, 2013, Letter from Michele Meeks, CIA Information and Privacy Coordinator). Unconvinced, the ACLU filed suit against the CIA to compel disclosure on November 26, 2013. Plaintiff also initially sought access to the CIA's official response to the SSCI Report. See Compl., ¶ 22. In light of its subsequent public release on December 9, 2014, the ACLU has since withdrawn that portion of its request. See Pl. Cross-Mot. & Opp. at 7 n.4.

By way of an additional FOIA request, amendments to its Complaint, and various status conferences, Plaintiff has since named three additional agencies as defendants – the Department of Defense, the Department of Justice, and the Department of State – and made clear that it seeks the final version of the Full SSCI Report. See id. at 7. Each of the agencies has now moved to dismiss the ACLU's claim under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. They argue that the Report remains a congressional record notwithstanding its transmittal to the Executive Branch and thus falls outside the scope of FOIA. Plaintiff opposes, maintaining that the Report should be considered an agency record.

B. The Panetta Review

The ACLU's case, however, sweeps wider still. It also seeks an entirely separate set of documents created by the CIA during the early stages of SSCI's investigation, which the media has now dubbed the "Panetta Review."

1. *Creation of Review*

In 2009, mindful of the magnitude and sensitivity of the records being disclosed to SSCI for its investigation, the CIA formed a "Special Review Team" to review the documents SSCI was accessing and to "prepar[e] summaries of certain key information." Lutz Decl., ¶ 14. As this Court has already detailed in a very recent Opinion, Leopold v. CIA, No. 14-48, 2015 WL 1445106 (D.D.C. Mar. 31, 2015), then-Director of the CIA Leon Panetta and other senior CIA

officials wished to remain apprised of “the most noteworthy information contained in the millions of pages of documents being made available to the SSCI” so as to “inform other policy decisions related to the Committee’s study.” Lutz Decl., ¶¶ 8, 13.

The SRT carried out its assigned task for approximately a year, producing a series of more than 40 draft documents that are now generally referred to as the Panetta Review. See Leopold, 2015 WL 1445106, at *2. Team leaders would assign research topics to team members, who in turn would conduct searches for documents “related to their assigned topic” and review the results to “determine[] whether certain contents of those documents might be relevant to informing senior CIA leaders in connection with the SSCI’s study.” Lutz Decl., ¶ 15. If a team member found information that she “believed was significant” about her topic, she would describe the information in her review. See id.

In 2010, however, the project was abandoned. The Agency determined that its “continued work on the Review[] could potentially complicate a separate criminal investigation by the Department of Justice into the detention and interrogation program.” Id., ¶ 18. As a result, the project was never finished. Id., ¶ 19. Indeed, when cast aside, the reviews “covered less than half of the millions of pages of documents that the CIA ultimately made available to the SSCI” and remained in draft form. Id. According to the Agency, had the project not been forsaken, the drafts “would likely have been reviewed and edited by a number of senior CIA officials . . . before being presented to the Director as finished products.” Id.

2. FOIA Request and Procedural History

Fast-forward several years. On December 17, 2013, then-Senator Mark Udall publicly referenced an “internal study” that the CIA had allegedly drafted about its former detention and

interrogation program. Its antennae finely tuned for such statements, Plaintiff quickly submitted a FOIA request seeking:

[A] report commissioned by former Central Intelligence Agency (“CIA”) Director Leon Panetta on the Agency’s detention and interrogation programs (the “Panetta Report”), which was referred to by Senator Mark Udall on December 17, 2013, during the confirmation hearing for CIA General Counsel nominee Caroline Diane Krass.

Lutz Decl., Exh. A (December 19, 2013, FOIA Request). The CIA responded within the week, indicating that it would accept and process the request, but that it would unlikely be able to respond within 20 working days. See Lutz Decl, Exh. B (December 24, 2013, Letter from Michele Meeks, CIA Information and Privacy Coordinator). On January 27, 2014, still awaiting a substantive response to its request, Plaintiff amended its Complaint in this case to include a claim against the CIA for disclosure of the Panetta Review. See Lutz Decl., ¶ 7; Am. Compl. at 8-9.

The Agency has now moved for summary judgment on the ground that it properly withheld the Review, relying on FOIA Exemptions 1, 3, and 5. Plaintiff cross-moves, arguing the contrary.

II. Legal Standard

A. Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(1), a court must dismiss a claim for relief when the complaint “lack[s] . . . subject-matter jurisdiction.” To survive a motion to dismiss under Rule 12(b)(1), a plaintiff bears the burden of proving that the Court has subject-matter jurisdiction to hear its claims. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992); U.S. Ecology, Inc. v. Dep’t of Interior, 231 F.3d 20, 24 (D.C. Cir. 2000). A court has an “independent obligation to determine whether subject-matter jurisdiction exists, even in the

absence of a challenge from any party.” Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006).

“For this reason ‘the [p]laintiff’s factual allegations in the complaint . . . will bear closer scrutiny in resolving a 12(b)(1) motion’ than in resolving a 12(b)(6) motion for failure to state a claim.”

Grand Lodge of the Fraternal Order of Police v. Ashcroft, 185 F. Supp. 2d 9, 13-14 (D.D.C.

2001) (alterations in original) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal

Practice and Procedure § 1350 (2d ed. 1987)). Additionally, unlike with a motion to dismiss

under Rule 12(b)(6), the Court “may consider materials outside the pleadings in deciding

whether to grant a motion to dismiss for lack of jurisdiction.” Jerome Stevens Pharms. v. FDA,

402 F.3d 1249, 1253 (D.C. Cir. 2005); see also Venetian Casino Resort, LLC v. EEOC, 409 F.3d

359, 366 (D.C. Cir. 2005) (“[G]iven the present posture of this case – a dismissal under Rule

12(b)(1) on ripeness grounds – the court may consider materials outside the pleadings.”); Herbert

v. Nat’l Acad. of Sciences, 974 F.2d 192, 197 (D.C. Cir. 1992).

B. Summary Judgment

Summary judgment may be granted if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.

56(a); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986); Holcomb v.

Powell, 433 F.3d 889, 895 (D.C. Cir. 2006). A fact is “material” if it is capable of affecting the

substantive outcome of the litigation. See Liberty Lobby, 477 U.S. at 248; Holcomb, 433 F.3d at

895. A dispute is “genuine” if the evidence is such that a reasonable jury could return a verdict

for the nonmoving party. See Scott v. Harris, 550 U.S. 372, 380 (2007); Liberty Lobby, 477

U.S. at 248; Holcomb, 433 F.3d at 895. “A party asserting that a fact cannot be or is genuinely

disputed must support the assertion” by “citing to particular parts of materials in the record” or

“showing that the materials cited do not establish the absence or presence of a genuine dispute,

or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The moving party bears the burden of demonstrating the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

FOIA cases typically and appropriately are decided on motions for summary judgment. See Brayton v. Office of U.S. Trade Rep., 641 F.3d 521, 527 (D.C. Cir. 2011). In a FOIA case, the Court may grant summary judgment based solely on information provided in an agency’s affidavits or declarations when they “describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” Larson v. Dep’t of State, 565 F.3d 857, 862 (D.C. Cir. 2009) (citation omitted).

III. Analysis

As previously articulated, Plaintiff in this case seeks two discrete documents: the Full SSCI Report and the Panetta Review. The Court will treat each in turn, ultimately concluding that neither is subject to release under FOIA.

A. The SSCI Report

FOIA mandates that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . , shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A). A plaintiff thus states a claim under that Act where it properly alleges that ““an agency has (1) improperly (2) withheld (3) agency records.”” United States Dep’t of Justice v. Tax Analysts, 492 U.S. 136, 142 (1989) (quoting Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136, 150 (1980)) (internal quotation marks omitted); 5 U.S.C. § 552(a)(4)(B) (granting federal district courts

jurisdiction “to order the production of any agency records improperly withheld from the complainant”) (emphasis added).

For purposes of FOIA, the definition of an “agency” specifically excludes Congress, legislative agencies, and other entities within the legislative branch. See 5 U.S.C. §§ 551(1), 552(f); see also United We Stand America, Inc. v. Internal Revenue Serv., 359 F.3d 595, 597 (D.C. Cir. 2004) (“The Freedom of Information Act does not cover congressional documents.”). Neither party, accordingly, disputes that at the time SSCI drafted the Full Report, it constituted a congressional document exempt from FOIA. The bone of contention, instead, is whether the Report, once transmitted to Defendants, became an “agency record” subject to FOIA.

1. *Legal Framework*

As a starting point, “not all documents in the possession of a FOIA-covered agency are ‘agency records’ for the purpose of that Act.” Judicial Watch, Inc. v. U.S. Secret Serv., 726 F.3d 208, 216 (D.C. Cir. 2013); see also, e.g., Kissinger, 445 U.S. at 157 (“mere physical location of papers and materials” does not confer “agency-record” status). As the Supreme Court instructed in Tax Analysts, the term “agency records” extends only to those documents that an agency both (1) “create[s] or obtain[s],” and (2) “control[s] . . . at the time the FOIA request [was] made.” 492 U.S. at 144-45. Turning briefly to Tax Analysts’ first prong, Defendant agencies do not dispute that the Full SSCI Report was delivered to them in December 2014 – *i.e.*, that they obtained it. See Def. Mot. to Dismiss at 11-12. Instead, the parties clash over whether the SSCI Report is under agency “control.”

In the typical case, this Circuit looks to four factors to determine “whether an agency has sufficient control over a document to make it an agency record.” Judicial Watch, 726 F.3d at 218 (internal quotation marks omitted). They are:

[1] the intent of the document's creator to retain or relinquish control over the records; [2] the ability of the agency to use and dispose of the record as it sees fit; [3] the extent to which agency personnel have read or relied upon the document; and [4] the degree to which the document was integrated into the agency's record system or files.

Id.; accord United We Stand, 359 F.3d at 599; Burka v. U.S. Dep't of Health & Human Servs., 87 F.3d 508, 515 (D.C. Cir. 1996).

Because the present case concerns documents obtained by the agencies from Congress, however, the usual four-part test does not apply. See Judicial Watch, 726 F.3d at 221; United We Stand, 359 F.3d at 599. Rather, in such cases, "special policy considerations . . . counsel in favor of according due deference to Congress' affirmatively expressed intent to control its own documents." Judicial Watch, 726 F.3d at 221 (quoting Paisley v. CIA, 712 F.2d 686, 693 n.30 (D.C. Cir. 1983)). As this Circuit has repeatedly emphasized, "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 accordance with Congress' originating intent." United We Stand, 359 F.3d at 599 (quoting Goland v. CIA, 607 F.2d 339, 346 (D.C. Cir. 1978)). Failure to heed congressional intent "would force Congress 'either to surrender its constitutional prerogative of maintaining secrecy, or to suffer an impairment of its oversight role.'" Id. (quoting Goland, 607 F.2d at 346). In suits involving congressional documents, consequently, "the first two factors of the standard test" are "effectively dispositive." Judicial Watch, 726 F.3d at 221.

Yet basic analysis reveals that even this formulation is needlessly cumbersome. In truth, the first two factors represent two sides of the same coin: that is, if "Congress has manifested its own intent to retain control, then the agency – by definition – cannot lawfully 'control' the documents." Paisley, 712 F.2d at 693. Conversely, if Congress intends to relinquish its control

over the document, then the agency may use it as it sees fit. See id.; see also United We Stand, 359 F.3d at 600 (“Congress’s intent to control and the agency’s ability to control ‘fit together in standing for the general proposition that the agency to whom the FOIA request is directed must have exclusive control of the disputed documents.’”) (quoting Paisley, 712 F.2d at 693). The Court’s inquiry, therefore, is a streamlined one: do there exist “sufficient indicia of congressional intent to control,” id., the Full SSCI Report?

2. *Control of SSCI Report*

Although this case is no slam dunk for the Government, the Court answers that question in the affirmative. In so doing, it focuses on three pieces of evidence: SSCI’s June 2009 letter to the CIA, Senator Feinstein’s December 2014 letter transmitting the Final Report, and SSCI’s treatment of the Executive Summary.

a. SSCI’s 2009 Letter

The Court begins with “the circumstances surrounding the . . . creation” of the Report. United We Stand, 359 F.3d at 600. In its June 2009 letter to the CIA, SSCI expressly stated its intent that the documents it generated during its investigation “remain congressional records in their entirety and disposition,” such that “control over these records, even after the completion of the Committee’s review,” would “lie[] exclusively with the Committee.” June 2, 2009, SSCI Letter, ¶ 6. Making its wishes even more explicit, it continued, “As such, these records are not CIA records under the Freedom of Information Act, or any other law.” Id.

Such admonitions related to the creation of documents resemble those previously relied on by the D.C. Circuit to sustain an agency withholding. In United We Stand, the Joint Committee on Taxation sent a letter to the Internal Revenue Service requesting specified categories of documents and information. The letter concluded: “This document is a

Congressional record and is entrusted to the Internal Revenue Service for your use only.” Id. at 600-01. In response, the IRS prepared and sent to the Joint Committee a seventeen-page letter with three attachments. See id. at 597. Some three years later, United We Stand America brought suit under FOIA seeking that response in its entirety. Although the Circuit ultimately deemed some portions subject to disclosure, it held the remaining portions to be congressional records not subject to FOIA. Specifically, it found that the Joint Committee’s originating letter reflected “sufficient . . . intent to control” not only its original request but also those portions of the IRS’s subsequent response “that would reveal that request.” Id. at 600 (emphasizing the confidentiality directive contained in the Joint Committee’s letter). Here, too, Congress’s previously expressed intent to retain control over the Report militates heavily in Defendants’ favor.

Plaintiff rejoins that the June 2009 letter bears no relevance to the Full Report, as it “applied only to documents residing on the SSCI’s network drive at the CIA’s secure facility.” See Pl. Cross-Mot. & Opp. at 18-19. According to the ACLU, the letter’s restrictions “understandably reflected the underlying purpose and spirit of the SSCI-CIA agreement at that time” – *i.e.*, “to protect the SSCI’s work product, which was stored on the computer system of the agency it was overseeing.” Id. at 19. As Defendants concede, the Final Full Report never resided on that system; although the Committee used the segregated shared drive to draft early versions of its Report, those drafts were ultimately transferred to secure facilities at the U.S. Capitol complex so that SSCI could complete the final drafting process in its own workspaces. See Higgins Decl., ¶ 13.

By its express terms, however, the SSCI-CIA agreement is not so limited. It applies both to “documents generated on the network drive” and to “any other notes, documents, draft and

final recommendations, reports or other materials generated by Committee staff or members.” June 2, 2009, SSCI Letter, ¶ 6. That language encompasses the Final Full Report, which by its own title is plainly a “final . . . report[] or other material[] generated by Committee staff or members.” This literal construction is also the more sensible one. While the ACLU is undoubtedly correct that SSCI had FOIA-related concerns arising from its usage of the CIA’s network drive, the Committee was presumably also concerned about maintaining control over any public disclosure of its work product – regardless of which computer systems ultimately housed them. The letter’s expansive language is consistent with such intent.

One final point bears mention. Defendants’ own characterizations of the scope of the letter vary somewhat in their submissions. Compare, e.g., Higgins Decl., ¶ 12 (“One key principle necessary to this inter-branch accommodation . . . was that the materials created by SSCI personnel on [the] segregated shared drive would not become ‘agency records’ even if those documents were stored on a CIA computer system or at a CIA facility.”) (emphasis added), with Def. Reply at 5 (explaining that the language of the June 2009 letter “covers the Full Report” as a “final . . . report[] or other material[] generated by Committee staff or members,” even though it did not reside on the network drive). Although these divergent representations are slightly disconcerting, they are ultimately of little consequence. The United We Stand inquiry focuses on “Congress’ intent to control (and not on the agency’s).” 359 F.3d at 600 (internal quotation marks omitted; emphasis added). The agencies’ inconsistency in paraphrasing SSCI’s June 2009 letter thus cannot undermine the plain import of the language therein.

b. Senator Feinstein’s December 10, 2014, Letter

Undeterred, the ACLU characterizes the 2009 agreement as “irrelevant, indirect evidence of past intent.” Pl. Cross-Mot. & Opp. at 18. It insists that any evidence of congressional

control “must be contemporaneous with the transmission of the document.” Id. at 16. And, according to Plaintiff, “[t]he contemporaneous record is clear that the SSCI relinquished control over the Final Full Report when it sent the report to Defendants . . . in December 2014.” Id. at 17.

As its *pièce de résistance*, the ACLU seizes on the December 10, 2014, transmittal letter from Senator Feinstein, claiming it represents “direct evidence of the SSCI’s intentions for the Final Full Report.” Id. That letter, to recap, states:

[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 this result, I hope you will encourage use of the full report in the future development of CIA training programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit.

December 10, 2014, Feinstein Letter. “By encouraging the use and dissemination of the Final Full Report among the executive branch, and by leaving to the executive branch the decision as to how ‘broadly’ the report should be used within the agencies,” claims Plaintiff, “SSCI relinquished its control over the document.” Pl. Cross-Mot. & Opp. at 17-18.

As a threshold matter, the ACLU’s attempt to unduly narrow the universe of relevant evidence ignores on-point precedent. The D.C. Circuit specifically rejected an analogous argument in Holy Spirit Association for the Unification of World Christianity v. CIA, 636 F.2d 838 (D.C. Cir. 1980), which likewise dealt with congressional documents in the possession of an agency. Although ultimately holding that the relevant documents constituted agency records, the court there explicitly declared that it was “not adopt[ing] appellant’s position that Congress must give contemporaneous instructions when forwarding congressional records to an agency.” Id. at 842 (emphasis added). Similarly, in Judicial Watch – which applied the United We Stand

inquiry to documents created at the behest of the Office of the President – the court relied heavily on a Memorandum of Understanding executed “well before the creation and transfer of the documents at issue” in that case. See 726 F.3d at 223 & n.20. The Court, therefore, need not confine its consideration to the moment of transmission. On the contrary, SSCI’s 2009 letter sets the appropriate backdrop against which Senator Feinstein’s 2014 letter can be properly understood.

So teed up, her letter does not evince congressional intent to surrender substantial control over the Full SSCI Report. While it does bestow a certain amount of discretion upon the agencies to determine how broadly to circulate the Report, such discretion is not boundless. Most significantly, the dissemination authorized by the letter is limited to the Executive Branch alone. It plainly does not purport to authorize the agencies to dispose of the Report as they wish – *e.g.*, to the public at large.

This distinction is critical. Congress “has undoubted authority to keep its records secret, authority rooted in the Constitution, longstanding practice, and current congressional rules.” Goland, 607 F.2d at 346. Yet Congress also “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 accordance with Congress’ originating intent.” Id.; see also Paisley, 712 F.2d at 694 n.30 (emphasizing Congress’s “vital function as overseer of the Executive Branch”). As a result, it frequently transmits documents to the Executive Branch with the understanding that relevant agencies should make appropriate internal use of the information. See Goland, 607 F.2d at 346. Such tender should not be readily interpreted to suggest more wholesale abdication of control. See id. at 347-48 (holding that CIA’s possession of congressional hearing transcript “for internal reference purposes” did not convert document to

an agency record). Especially here, where SSCI's 2009 letter affirmatively manifests its intent to retain control of its work product, the Court declines to assume the contrary "absent a more convincing showing of self-abnegating congressional intent." Id. at 346.

c. SSCI's Handling of Executive Summary

This conclusion is further reinforced by SSCI's divergent treatment of the Executive Summary. On April 3, 2014, when the Committee met to determine the proper disposition of the Executive Summary and Full Report, it voted to approve the updated versions of both, but to send only the former to the President for declassification and eventual public release. See Executive Summary at 9; see also, e.g., April 3, 2014, Feinstein Press Release ("The full 6,200-page full report has been updated and will be held for declassification at a later time."). After the Executive Summary underwent further editing, a minimally redacted version was declassified by the Director of National Intelligence and publicly released by SSCI on December 9, 2014. See Higgins Decl., ¶¶ 19-20. In the foreword to the publicly released summary, Chairman Feinstein explained, "I chose not to seek declassification of the full Committee Study at this time. I believe that the Executive Summary includes enough information to adequately describe the CIA's Detention and Interrogation Program. . . . Decisions will be made later on the declassification and release of the full 6,700 page Study." Chairman's Foreword at 3. SSCI's deliberate decision not to publicly release the Full Report, combined with its assertion that it would consider that course of action in the future, serve to further undermine Plaintiff's theory that Congress intended to relinquish control over the document only days later.

d. Remaining Arguments

Given the Court's decision, it need not wrestle with two other arguments Defendants raise – namely, that SSCI's closed sessions and marking of the Full Report "TOP SECRET," as well as now-Chairman Burr's January 14, 2015, letter seeking return of all copies of the Report,

signify abiding congressional control over the document. See Def. Mot. to Dismiss at 16-17, 21. These arguments would not likely gain much traction. See Pl. Cross-Mot. & Opp. at 20 (persuasively arguing on first point that such indicia of confidentiality merely reflect SSCI's acknowledgement of "the CIA's classification decisions . . . with respect to [A]gency documents that form the basis of the Final Full Report" and thus fail to reflect Congress's intent); Holy Spirit, 636 F.2d at 842 (letter from House of Representatives written after transfer of records did not establish congressional control); United We Stand, 359 F.3d at 602 (Congress's "post-hoc objections to disclosure cannot manifest the clear assertion of congressional control that our case law requires."). The Court need not, however, definitively resolve these final points. Even excluding them from the Government's side of the ledger, it has made the requisite showing of congressional intent to retain control.

* * * *

At the end of the day, the ACLU asks the Court to interject itself into a high-profile conversation that has been carried out in a thoughtful and careful way by the other two branches of government. As this is no trivial invitation, it should not be blithely accepted. Absent more convincing evidence that the SSCI Report has "passed from the control of Congress and become property subject to the free disposition of the agenc[ies] with which the document resides," Goland, 607 F.2d at 347, the Court must hold that it remains exempt from disclosure under FOIA. To be sure, Plaintiff – and the public – may well ultimately gain access to the document it seeks. But it is not for the Court to expedite that process.

B. Panetta Review

The Court now directs its attention to the ACLU's request for the Panetta Review – *i.e.*, the series of "more than forty draft documents" created by the SRT. The CIA maintains that

such documents are entirely exempt from disclosure under FOIA Exemption 5's deliberative-process privilege or, in the alternative, that portions of the Review are protected by Exemption 1 (which covers materials classified by Executive Order) and Exemption 3 (which covers materials specifically exempted from disclosure by statute).

1. *Prior Decision*

In the immortal words of Yogi Berra, "It's *déjà vu* all over again." The Court's recent decision in Leopold v. Central Intelligence Agency, No. 14-48, 2015 WL 1445106, at *1 (D.D.C. Mar. 31, 2015), issued while this Motion was pending, addressed precisely this withholding. The plaintiff in that case – journalist Jason Leopold – likewise demanded release of the Panetta Review, and the CIA, in turn, refused, citing Exemptions 1, 3, and 5. See id. at 3-4. Concluding that "Exemption 5 acts as a complete shield" over the contested documents – and that it therefore need not address the other exemptions – the Court granted summary judgment to the Agency. See id. at 6.

In so holding, the Court first outlined the parameters of Exemption 5, which protects from disclosure "documents that would ordinarily be unavailable to an opposing party through discovery," including those that fall within the deliberative-process privilege. See United States v. Weber Aircraft Corp., 465 U.S. 792, 800 (1984); Martin v. Office of Special Counsel, 819 F.2d 1181, 1184-85 (D.C. Cir. 1987). To come under that umbrella, documents must be both "predecisional" and "deliberative." Mapother v. Dep't of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993).

Drawing on relevant precedent, the Court found that the Panetta Review met both criteria. The "predecisional" component, it explained, is satisfied where material is "prepared . . . to assist an agency decisionmaker in arriving at his decision," rather than "to support a decision

already made.” Petroleum Info. Corp. v. Dep’t of Interior, 976 F.2d 1429, 1434 (D.C. Cir. 1992). An agency need not, however, “identify a specific decision to which withheld materials contributed,” as the exemption is “aimed at protecting [an agency’s] decisional process.” Leopold, 2015 WL 1445106, at *9 (internal quotation marks omitted). Observing that the Panetta Review was generated by lower-level employees “to aid senior agency officials’ deliberations about how to respond” to SSCI’s ongoing investigation into the CIA’s former detention and interrogation program, as well as “how to deal with other policy issues that might arise therefrom,” the Court found that the CIA had sufficiently defined a forward-looking “decisionmaking process” to which the documents were designed to contribute. Leopold, 2015 WL 1445106, at *4, *9, *11.

It then turned to the “deliberative” prong, which asks whether material “reflects the give-and-take of the consultative process.” Coastal States Gas Corp. v. U.S. Dep’t of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980). Although Leopold argued that the draft reviews contained “purely factual material” – which ordinarily cannot be withheld under Exemption 5 – the Court explained that such material can be exempt where “it reflects an exercise of discretion and judgment calls” and “where its exposure would enable the public to probe an agency’s deliberative processes.” Leopold, 2015 WL 1445106, at *6 (internal quotation marks omitted). “[T]he legitimacy of withholding,” accordingly, “does not turn on whether the material is purely factual in nature or whether it is already in the public domain, but rather on whether the selection or organization of facts is part of an agency’s deliberative process.” Ancient Coin Collectors Guild v. Dep’t of State, 641 F.3d 504, 513 (D.C. Cir. 2011).

The Review, found the Court, was compiled in just such fashion. “[I]ntended to facilitate or assist development of the agency’s final position on the relevant issue[s],” the drafts were

neither “comprehensive, matter-of-fact summaries” nor “rote recitations of facts.” Leopold, 2015 WL 1445106, at *8 (internal quotation marks omitted). On the contrary, “the authors strove to write briefing materials that would aid senior officials’ decisionmaking,” “ma[king] judgments about the salience of particular facts in light of the larger policy issues that senior CIA leaders might face in connection with the SSCI’s study” and “organiz[ing] that information in a way that would be most useful to senior CIA officials.” Id. (internal quotation marks omitted). In light of the significant discretion exercised by the authors, the Court concluded that requiring disclosure of the draft reviews would “cause the sort of harm that the deliberative-process privilege was designed to prevent – *i.e.*, inhibiting frank and open communications among agency personnel.” Id. at *9. The Panetta Review, consequently, merited protection under the deliberative-process privilege.

The arguments raised by the ACLU in the present suit echo those already rejected by the Court in Leopold. Its attack on the “predecisional” prong, for instance, centers on the claim that the CIA failed to sufficiently identify a decisionmaking process to which the Panetta Review was designed to contribute. See Pl. Cross-Mot. & Opp. at 29-31. Likewise, in claiming that the documents are not “deliberative,” it principally argues that the drafts “consist largely or entirely of factual summaries” and are thus subject to disclosure. See id. at 31-37. Plaintiff’s rehashing of Leopold’s arguments – although at times more developed – is no more persuasive. The Court sees no reason to disturb its prior conclusion: the Panetta Review is properly characterized as both predecisional and deliberative.

2. *Novel Arguments*

The Court will, however, briefly address two ancillary points raised by the ACLU, neither of which the prior Opinion had occasion to consider. First, Plaintiff highlights certain

statements made by former Senator Mark Udall, who claims to have read portions of the Review. According to him – notwithstanding the manner in which various CIA officials have characterized it – “the Panetta review is much more than a ‘summary’ and ‘incomplete drafts.’” Pl. Cross-Mot. & Opp., Att. 1 (Declaration of Ashley Gorski), Exh. A (Senator Mark Udall’s December 10, 2014, Floor Speech) at 3. In point of fact, it is “a smoking gun” that “acknowledges significant problems and errors made in the CIA’s detention and interrogation program.” Id. In particular, says the Senator, the Report concludes that “the CIA repeatedly provided inaccurate information to the Congress, the President, and the public on the efficacy of its coercive techniques.” Id. He asserts that “the CIA is lying” about the Report’s contents in order to “minimize its significance.” Id.

These statements are deeply troubling, to say the least. That a United States Senator believes the CIA is dissembling as to the true nature of the Panetta Review is a heady accusation. The Court notes, however, that Senator Udall’s statements on the Senate floor were not a point-by-point rebuttal intended to discredit the declaration submitted by the CIA in this case (or the similar one proffered in Leopold). Instead, his speech was intended to respond more broadly to statements made outside the litigation context by CIA Director John Brennan and other Agency officials, and his allegations must be viewed in that light.

More fundamentally, however, the ACLU’s reliance on his statements is noticeably half-hearted. Although its briefing is long on his allegations, it is decidedly short as to the conclusion to be drawn from them. Such reticence is unsurprising. If Senator Udall’s statements are correct, they serve to confirm, rather than undermine, the Panetta Review’s privileged status. That is, insofar as he asserts that the draft reviews contain analyses and conclusions rather than primarily facts, their deliberative nature is only bolstered. See Playboy Enterprises, Inc. v. Dep’t

of Justice, 677 F.2d 931, 937 (D.C. Cir. 1982) (“The report may contain conclusions, recommendations, or opinions These parts of the report are not subject to disclosure.”). His statements thus do little to advance Plaintiff’s case.

The ACLU next argues that even if the Panetta Review falls within the ambit of the deliberative-process privilege, the “official-acknowledgment” doctrine precludes the CIA from withholding the documents in their entirety. As Plaintiff notes, “[W]hen information has been ‘officially acknowledged,’ its disclosure may be compelled even over an agency’s otherwise valid exemption claim.” Wolf v. CIA, 473 F.3d 370, 378 (D.C. Cir. 2007) (internal quotation marks omitted). According to the ACLU, “[I]t is a near certainty that the Panetta report contains information that has been revealed publicly.” Pl. Cross-Mot. & Opp. at 39. More specifically, “[a]t least some of the information contained within the Panetta Report documents has almost certainly been officially acknowledged by the CIA in its June 2013 response to the Initial SSCI Report – among other public disclosures – as well as by the SSCI in its publicly released Executive Summary.” Id.

Although it may well be that some of the facts contained within the Panetta Review have been otherwise disclosed, the Court does not believe that the official-acknowledgement doctrine has resonance in this case. As courts in this Circuit have recognized, “Even if the information sought is exactly the same as the information which was acknowledged, . . . ‘the very fact that a known datum appears in a certain context or with a certain frequency may itself be information that the government is entitled to withhold.’” Pub. Citizen v. Dep’t of State, 787 F. Supp. 12, 14 (D.D.C. 1992) (quoting Afshar v. Dep’t of State, 702 F.2d 1125, 1130 (D.C. Cir. 1983)). Such is the case here. As the Court’s prior Opinion emphasized, the Panetta Review’s protection under the deliberative-process privilege derives from the “judgments” its authors needed to make

“about the salience of particular facts in light of the larger policy issues that senior CIA leaders might face in connection with the SSCI’s study.” Leopold, 2015 WL 1445106, at *8. Divulging which facts were culled for inclusion, or even the topics that agency officials selected for the Review, would risk “expos[ure] [of] their internal thought processes.” Id. This logic retains its force even if the underlying facts have been otherwise shared with the public, for it is their inclusion in the Review that warrants protection as deliberative. Application of the official-acknowledgement doctrine under the circumstances here thus cannot defeat the CIA’s proper invocation of the privilege.

IV. Conclusion

For the foregoing reasons, the Court will grant Defendants’ Motion to Dismiss and the CIA’s Motion for Summary Judgment. A contemporaneous Order so stating shall issue this day.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: May 20, 2015

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

AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et*
al.,

Defendants.

No. 1:13-cv-01870 (JEB)

NOTICE OF APPEAL

Plaintiffs American Civil Liberties Union and American Civil Liberties Union
Foundation hereby appeal to the United States Court of Appeals for the District of Columbia
Circuit from the final judgment entered in this action on the 20th day of May, 2015.

/s/ Hina Shamsi

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Dated: June 26, 2015