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September 11, 2012

**BY FACSIMILE**

The Honorable Colleen McMahon  
United States District Court  
Southern District of New York  
Room 1350  
500 Pearl Street  
New York, NY 10007

Re: American Civil Liberties Union et al. v. U.S. Department of Justice et al.  
U.S. Southern District of New York File No: 12 CIV 794 (CM)

Dear Judge McMahon:

I am writing on behalf of plaintiffs the American Civil Liberties Union and The American Civil Liberties Union Foundation (collectively, the "ACLU") to bring another official disclosure to the Court's attention. In a recent television interview with Jessica Yellin, the Chief White House Correspondent for CNN, President Obama acknowledged the existence of the targeted killing program, discussed the principles which he says guide the government's targeting decisions, and specifically discussed the legal restrictions on targeting United States citizens. The interview can be found online at: <http://edition.cnn.com/video/#/video/us/2012/09/05/president-obama-on-drone-warfare.cnn>.

President Obama specifically stated that "drones are one tool" the government uses against al-Qaeda and those who the government believes would attack Americans. The President also clearly articulated the following four criteria for when a targeted killing is authorized: (1) "a target that is authorized by our laws," (2) "a threat that is serious and not speculative," (3) "a situation in which we can't capture the individual before they move forward on some sort of operational plot against the United States," and, (4) "we are very careful about avoiding civilian casualties." The President was asked whether the standards are different when the target is an American, and responded that there is

no doubt that when an American has made the decisions to affiliate itself with al-Qaeda and target fellow Americans that there is a legal justification for us to try to stop them from carrying out plots. What is also true though is that as an American citizen they are subject to the protections of the constitutional due process.

The statements made by the President in this interview are yet another official acknowledgment of the existence of a targeted killing program that has been used against United States citizens and a purported legal basis for such killings that has been adopted by the government. In light of this acknowledgment, the positions taken by the government in this

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litigation and in the agency responses to the ACLU's Freedom of Information Act request are not tenable. I also direct the Court to a video distributed by the President's re-election campaign that was played during the recent Democratic National Convention. The video is at <http://www.youtube.com/watch?v=1WbQe-wVK9E>. The relevant portion begins at 3:38. While this video is not independently an official acknowledgment, it further underscores the absurdity of the government's position. In front of this Court, the administration stonewalls the ACLU's Freedom of Information Act request and claims that it will endanger national security to again acknowledge the United States' role in killing Anwar al-Awlaki. However, at the same time, when it is politically advantageous, the President's campaign points to that same killing as an example of how he "persevered . . . as Commander-in-Chief."

The ACLU requests that the Court either consider the videos in question based on this letter or that it grant the ACLU permission to file a brief supplemental affidavit. Thank you for your consideration of this request.

Respectfully,



Eric A. O. Ruzicka

cc: Sarah S. Normand, Esq., United States Attorney (by Email)  
David McCraw, Esq. Counsel for New York Times Plaintiffs (by Email)