

JAMEEL JAFFER  
DEPUTY LEGAL DIRECTOR



September 19, 2014

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

Re: *ACLU v. DOJ et al.* Case No. 12 Civ. 794

AMERICAN CIVIL LIBERTIES  
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OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

Dear Judge McMahon:

On September 5, 2014 the Court directed the ACLU to file a “request for production” indicating which documents identified on the Office of Legal Counsel’s *Vaughn* index it “wish[e]d to be disclosed.” I am writing in response to that direction and also to propose briefing schedules for resolution of issues relating to documents still withheld (in their entirety or in part) by OLC, CIA, and DOD. The ACLU has conferred with the government about these briefing schedules, which are proposed by the parties jointly.

**Request for Production of Records Listed on OLC *Vaughn***

The ACLU seeks disclosure of all records listed on the OLC’s *Vaughn* index except for

- records identified as drafts of Doc Nos. 4 and 5 (Doc Nos. 113; 131-143; 148-237; 238-242); and
- records identified as “open source media materials” (Doc Nos. 123-130).

The ACLU is willing to forgo its claim to other draft legal memoranda listed on the OLC’s *Vaughn* index where the index also lists a final version of those memoranda. Because of redactions on the index, however, the ACLU is not able to identify these draft legal memoranda by number.

The ACLU is also willing to forgo its claim to records identified as Doc Nos. 57-66; 68-71; 73-74; 81; 83; 87-93; 96-100; 102-104; 110; 117; 118; 120-122 if the government can represent to the ACLU that these

documents do not mention Abdulrahman al-Aulaqi (or any spelling variant of that name).

### **Proposed Briefing Schedule for OLC Documents**

The parties understand that the Court intends to rule shortly regarding issues relating to the set of OLC memoranda that the government has provided to the Court *in camera*. The parties jointly propose that the Court set the following briefing schedule for resolution of (i) the OLC's withholding of records other than the memoranda already provided to the Court *in camera*; and (ii) as to the memos already provided to the Court *in camera*, any issues not resolved by the Court's anticipated decision:

- **Oct. 3:** OLC to file its motion for summary judgment, including public *Vaughn* declarations.<sup>1</sup>
- **Oct. 31:** ACLU to file its opposition and cross-motion.
- **Nov. 21:** OLC to file its reply and opposition.
- **Dec. 12:** ACLU to file its reply.

### **Proposed Briefing Schedule for CIA/DOD Documents**

The Court has directed the CIA and DOD to file *Vaughn* indices *in camera* by September 25. The parties respectfully submit that the Court's interest in efficient adjudication of the case would be served by the agencies' filing of public *Vaughn* declarations as well as *ex parte* indices, even if the production of public *Vaughn* declarations requires that the agencies be afforded more time.<sup>2</sup> Accordingly, the parties respectfully propose that the Court set the following briefing schedule for resolution of issues relating to the CIA's and DOD's responses to the ACLU's FOIA request:

- **Nov. 14:** CIA and DOD to file their motion for summary judgment together with *ex parte Vaughn* indices and public *Vaughn* declarations.
- **Dec. 3:** the ACLU to file its opposition and cross-motion.
- **Dec. 19:** the CIA and DOD to file their reply and opposition.
- **Jan. 9:** the ACLU to file its reply.

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<sup>1</sup> The ACLU believes that the OLC has an obligation to provide public *Vaughn* indices, not just *Vaughn* declarations, and reserves its right to seek public indices if they are not provided.

<sup>2</sup> The ACLU believes that the CIA and DOD have an obligation to provide public *Vaughn* indices, not just *Vaughn* declarations, and reserves its right to seek public indices if they are not provided.

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The parties appreciate the Court's attention to this matter.

Respectfully,

/s/ Jameel Jaffer

*Counsel for Plaintiffs American Civil Liberties  
Union and American Civil Liberties Union  
Foundation*

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION