14-4432-cv(L), 14-4764-cv(CON)

United States Court of Appeals

for the

Second Circuit

THE NEW YORK TIMES COMPANY, CHARLIE SAVAGE, SCOTT SHANE, AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION,

Plaintiffs-Appellants,

– v. –

UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF DEFENSE, Including its component U.S. Special Operations Command, CENTRAL INTELLIGENCE AGENCY,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION FOUNDATION

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INTRODUCTION

Emblematic of the positions the government has taken in this litigation from the outset are three sentences buried in a footnote to the government's brief. In that footnote, the government contends that this Court was mistaken to conclude that senior officials had officially acknowledged certain legal analysis in the July 2010 OLC Memo (though, as the Court observed in its earlier ruling, senior officials repeatedly discussed that legal analysis in interviews, testimony, and speeches); asserts that it is "preserv[ing] its argument for potential further review" (though it failed to file a petition for *certiorari* when it could have); and asserts, most remarkably, that although this Court has now, after careful deliberation, published a redacted version of the July 2010 OLC Memo, the government itself still regards the memorandum to be a national security secret. Opp. 47 n.10 ("We further note that the Court's release of the OLC-DOD Memorandum and its order compelling disclosure by the government of additional information would not themselves constitute an independent official disclosure or waiver by the government that would strip protection from otherwise exempt information and material.").

This kind of through-the-looking-glass reasoning has characterized the government's arguments from the beginning of this litigation and in related litigation before the D.C. Circuit. *Cf. Am. Civil Liberties Union v. CIA*, 710 F.3d

422, 431 (D.C. Cir. 2013) ("[T]he CIA [has] asked the courts to stretch th[e] [*Glomar*] doctrine too far—to give their imprimatur to a fiction of deniability that no reasonable person would regard as plausible."). It reflects a sustained and calculated effort to undermine the rights that the Freedom of Information Act ("FOIA") was meant to guarantee.

The government's withholding of the remaining OLC memoranda is unlawful. First, legal analysis in the memoranda may not be withheld under Exemptions 1 or 3 unless it is inextricably intertwined with properly classified facts, and it is simply not plausible that all of the legal analysis in the memoranda meets this standard. Second, legal analysis in the memoranda may not be withheld under Exemption 5 because it constitutes the government's effective law and policy relating to the targeted-killing program. The government manages to defend the withholding of the memoranda only by adopting a construction of the "working law" doctrine that is completely at odds with relevant precedent from this Court, the D.C. Circuit, and the Supreme Court. Finally, even if the memoranda could once have been withheld in their entirety under the FOIA, the government must now disclose the memoranda to the extent that they contain legal analysis or factual information that the government has officially acknowledged. It is clear that at least *some* of the information in the memoranda has been officially acknowledged under any reasonable conception of the relevant test.

Plaintiffs respectfully urge the Court to vacate the district court's judgment and review the withheld memoranda *in camera* to determine which portions the FOIA requires the government to release. In the alternative, the Court should review a subset of the records *in camera* to guide the district court's analysis of the remainder of the records.[1]

ARGUMENT

I. Legal analysis in the OLC memoranda cannot be withheld under Exemptions 1 and 3 except to the extent it is inextricably intertwined with properly classified facts that have not been officially acknowledged.

Despite the government's suggestion to the contrary, Opp. 47, the parties appear largely to agree about the circumstances in which legal analysis can be withheld from disclosure under Exemptions 1 or 3, ACLU Br. 25–28. In any event, this Court has already recognized that (i) legal analysis cannot be withheld as a "source or method," SPA130 ("legal analysis is not an 'intelligence source or method'"); and (ii) legal analysis can be withheld if its disclosure would disclose properly classified facts. SPA130 ("We . . . recognize that in some circumstances legal analysis could be so intertwined with facts entitled to protection that

[1] As Plaintiffs explain in their opening brief, ACLU Br. 35, the extensive redactions in the district court's remand opinion violate the public's constitutional right of access. Plaintiffs do not further address this point here, but they adopt in full the arguments made in the reply brief filed today by The New York Times.

disclosure of the analysis would disclose such facts."). The disagreement here is not about the analytical framework but about the application of it.

As Plaintiffs have already explained, ACLU Br. 25–28, it is simply implausible that all of the analysis in the still-withheld memoranda is inextricably intertwined with properly classified facts—particularly because so many once-classified facts have been officially acknowledged. This Court managed to disentangle legal analysis from classified facts when it published the July 2010 OLC Memo. Senior officials managed to do the same when they delivered public speeches about the targeted-killing program. The government also managed to disentangle legal analysis from classified facts when it published OLC memoranda relating to the CIA's interrogation program. Press Release, White House, Statement of President Barack Obama on Release of OLC Memos (Apr. 16, 2009).[2] The redactions to the district court's opinion of course limit Plaintiffs' ability to understand the district court's reasoning, but the fact that the district court allowed the government to withhold eight memoranda *in their entirety* makes clear that the court did not conduct the kind of analysis that it should have.

[2] *Available at* https://www.whitehouse.gov/the_press_office/Statement-of-President-Barack-Obama-on-Release-of-OLC-Memos.

II. Legal analysis in the OLC memoranda cannot be withheld under Exemption 5 because it constitutes the agencies' "working law."

In the earlier appeal in this case, the government argued that the July 2010 OLC Memo was not working law because it had "no legal effect on private parties." Opp., Dkt. 95, at 55, *N.Y. Times v. Dep't of Justice*, No. 13-422 (2d. Cir. 2014). In this appeal, the government abandons its earlier argument but contends instead that OLC memoranda can *never* be working law because such memoranda are never "dispositive as to any policy adopted." Opp. 51. The government misunderstands the doctrine and its underlying purpose.

As Plaintiffs have explained, ACLU Br. 28–32, legal analysis need not dictate a specific policy decision in order to constitute working law. It is enough that the analysis supply the legal framework within which agency decisions are made. ACLU Br. 30–31; *see, e.g.*, *Tax Analysts v. IRS* (*Tax Analysts II*), 294 F.3d 71, 81 (D.C. Cir. 2002) ("[I]t is not necessary that the [memoranda] reflect the final *programmatic* decisions of the program officers … [so long as they] represent the [Office of Chief Counsel's] final *legal* position concerning the Internal Revenue Code, tax exemptions, and proper procedures.") (emphasis in original); *Coastal States Gas Co. v. Dep't of Energy*, 617 F.2d 854, 869 (D.C. Cir. 1980) (rejecting agency's contention that legal memoranda were not "absolutely binding on auditors" as "miss[ing] the point"); *id.* at 866 ("whatever the formal powers of regional counsel to issue binding interpretations of the regulations, in practice [the

memoranda] represent interpretations of established policy on which the agency relies in discharging its regulatory responsibilities").

Indeed, it would make little sense to say that legal analysis can constitute working law only if it directs a specific policy decision, because legal analysis—like *law*—almost always leaves a decision-maker with a range of options within a set of parameters. To say, as the government seems to, that legal analysis constitutes working law only when it dictates a *specific* policy decision is effectively to say that legal analysis, as such, can never be working law. It hardly needs to be said that this proposition is completely inconsistent with relevant precedent and with the express purpose of the FOIA. ACLU Br. 29–30; *cf. NLRB v. Sears, Roebuck, & Co.*, 421 U.S. 132, 153 (1975) (finding that affirmative provisions of the FOIA "represent[ ] a strong congressional aversion to secret agency law, … and represent[ ] an affirmative congressional purpose to require disclosure of documents which have the force and effect of law") (internal quotation marks, alterations and citations omitted); *Nat'l Council of La Raza v. Dep't of Justice*, 411 F.3d 350, 360 (2d. Cir. 2005) (holding that agency's assertion "that it may adopt a legal position while shielding from public view the analysis that yielded that position is offensive to FOIA") (citation omitted).

The government's reliance on *Brennan Center v. Dep't of Justice,* 697 F.3d 184 (2d. Cir. 2012), is misplaced. Although the Court in that case declined to hold

that the OLC memoranda at issue constituted working law, it did so only because the plaintiff failed to point to any evidence that the OLC's analysis was binding on the agency, and it concluded in any event that the agency would have to release one of the memoranda under the closely-related "adoption" doctrine. *Id.* at 203. The Court expressly stated that it would have reached a different conclusion concerning the "working law" argument if the plaintiff had been able to point to evidence that the agency regarded the OLC memoranda as "effectively binding on the agency." *Id.* at 203, 204 n.16.

Brennan Center perhaps makes clear that OLC memoranda are not *always* working law, but it cannot reasonably be read to mean that OLC memoranda can never be. Indeed, to hold that OLC memoranda can never be working law would be perverse. This is because "OLC's *central function* is to provide, pursuant to the Attorney General's delegation, controlling legal advice to Executive Branch officials . . . ." Memorandum from David Barron, Dep't of Justice, Office of Legal Counsel, Memorandum for Attorneys of the Office, Re: Best Practices for OLC Legal Advice and Written Opinions ("*Best Practices Memo*") 1 (July 16, 2010) (emphasis added).[3] The OLC's opinions are binding on the agency that requests them, and practically speaking the OLC's opinions are often the last word on the lawfulness of whatever action is being contemplated. *See, e.g.*, Frederick A. O.

[3] *Available at* http://www.justice.gov/sites/default/files/olc/legacy/2010/08/26/olc-legal-advice-opinions.pdf.

Schwartz & Aziz Z. Huq, *Unchecked And Unbalanced: Presidential Power In A Time Of Terror* 190 (2007) ("OLC issues legal rulings that are the *binding final word* for agencies within the federal government on contested issues of federal law.") (emphasis in original); *id.* ("OLC in effect often has the 'last word' in terms of what the Constitution or federal law demands."). OLC memoranda relating to national security policy are especially likely to be the "last word" because such policy is often immunized, by secrecy and jurisdictional doctrines, from judicial review. *See, e.g.*, *Clapper v. Amnesty Int'l*, 133 S. Ct. 1138, 1147–1155 (2013); *Al-Aulaqi v. Panetta*, 35 F. Supp. 3d 56, 78–80 (D.D.C. 2014); *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 14–35, 53 (D.D.C. 2010). Notably, the OLC, unlike agencies' offices of general counsel, operates with a presumption that its significant decisions will be made public. *See Best Practices Memo* at 5 ("[T]he Office operates from the presumption that it should make its significant opinions fully and promptly available to the public. This presumption furthers the interests of Executive Branch transparency, thereby contributing to accountability and effective government, and promoting public confidence in the legality of government action.").

The government's reliance on *Electronic Frontier Foundation v. Dep't of Justice* ("*EFF*"), 739 F.3d 1 (D.C. Cir. 2014), is also misplaced. In that case the D.C. Circuit concluded that an OLC opinion concerning the FBI's use of national

security letters did not constitute the agency's working law because "[e]ven if the OLC Opinion describes the legal parameters of what the FBI is permitted to do, it does not state or determine the FBI's policy." *Id.* at 10. The OLC opinion at issue, however, was prepared four years after the FBI discontinued the "flawed practice" to which the opinion related, *id.* at 5, and, perhaps more importantly, it had been *expressly disavowed* by the agency. *Id.* at 10 (noting that the FBI had expressly "declined . . . to rely on the authority discussed in the OLC Opinion").[4]

In this case, of course, the government has never suggested that the OLC memoranda have been disavowed. To the contrary, it has repeatedly invoked the memoranda to reassure the public of the targeted-killing program's lawfulness. *See* ACLU Br. 32–34; *see also* Press Release, Senator Dianne Feinstein, Statement on Intelligence Committee Oversight of Targeted Killings (Feb. 12, 2013) (stating that Senate Select Committee on Intelligence was seeking access to OLC memoranda "in order to fully evaluate the executive branch's legal reasoning" relating to the targeted-killing program).[5] By the government's own admission,

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[4] The language in *EFF* that suggests that OLC memoranda can never be working law is *dicta*, but to the extent that *EFF* can be understood to stand for this proposition, the case is inconsistent with both *Sears* and *Brennan Center*. Moreover, as noted above, to hold that legal analysis does not constitute working law unless it dictates a specific policy decision would be to hold that legal analysis, as such, can never constitute working law.

[5] *Available at* http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=5b8dbe0c-07b6-4714-b663-b01c7c9b99b8.

these OLC memoranda are "the law" that governs the targeted-killing program. Of course the memoranda do not dictate which strikes the government will carry out, any more than Title III of the Omnibus Crime Control and Safe Streets Act of 1968 dictates whose phone calls the government will wiretap—or any more than the memoranda in *Tax Analysts II* dictated "the final *programmatic* decisions of the [IRS] program officers who request them." *Tax Analysts II*, 294 F.3d at 81 (emphasis in original). The crucial point is that the memoranda state the government's "final *legal* position," relating to the circumstances in which the government may permissibly use lethal force against suspected terrorists. *See id.* (emphasis in original). To allow the government to withhold these memoranda would be to allow it to develop a body of secret operative law—precisely the result that the FOIA was intended to prevent.[6]

[6] Because government officials have repeatedly invoked the memoranda to reassure the public of the program's lawfulness, the memoranda must also be disclosed because they have been adopted and incorporated by reference. *Brennan*, 697 F.3d at 198-99, 201-02; *La Raza*, 411 F.3d at 357 n.5. Plaintiffs do not expand on this argument here only because in this context the argument relating to "adoption" largely overlaps with the "working law" argument, which Plaintiffs have set out at length.

III. The government cannot lawfully withhold the portions of the OLC memoranda that have been officially acknowledged.

Even if the memoranda would otherwise have been withholdable under Exemptions 1, 3, or 5, the memoranda must be released to the extent they include facts or analysis that the government has officially acknowledged.

A. The government continues to misunderstand the significance of its previous disclosures.

The government contends that the district court was correct to hold that "none of the legal advice provided in [the withheld] memoranda matches the legal analysis in the [July 2010 OLC Memo] or [November 2011] White Paper." Opp. 23. This argument is misguided for at least two reasons.

First, there is no justification for artificially limiting the universe of already-acknowledged information to information disclosed by the July 2010 OLC Memo and the November 2011 White Paper. As Plaintiffs have explained, the government has made official acknowledgments through many vehicles, including interviews with the media, speeches, and congressional testimony. *See* ACLU Br. 38–44 (Table of Official Acknowledgments); *see also* ACLU Br., Dkt. 35, at 10–25, *N. Y. Times v. Dep't of Justice*, No. 13-422 (2d. Cir. 2014); ACLU Br., Dkt. 35, at 14–23, *Am. Civil Liberties Union v. Dep't of Justice*, No. 12-cv-00794 (S.D.N.Y. 2013). The question for the district court was whether the still-withheld

OLC memoranda contained information that had been officially acknowledged in *any* of these sources. This is not the question the court appears to have asked.[7]

The government's discussion of the March 2002 OLC Memo—the memorandum relating to the assassination ban in Executive Order 12,333—highlights the significance of this error. The government states that the analysis in the March 2002 OLC Memo is different from and far more extensive than the analysis in the July 2010 OLC Memo and the November 2011 White Paper. It fails to address other sources, however, in which the government has discussed the assassination ban at more length. As Plaintiffs have explained, Harold Koh, who was then the Legal Advisor to the State Department, discussed the ban in a March 2010 speech. ACLU Br. 39; JA113, 125. Attorney General Eric Holder discussed it in a March 2012 speech. JA447, 449. The July 2010 OLC Memo itself identifies other official sources in which the government has discussed the assassination ban.[8] In asserting that the entirety of the March 2002 OLC Memo

[7] Due to the extensive redactions in the district court's remand opinion, Plaintiffs cannot be certain whether the district court examined other sources of official disclosures in the record. The redacted version of the district court's opinion contains no indication that the court considered any sources beyond the July 2010 OLC Memo and the November 2011 White Paper. SPA182, 189.

[8] July 2010 OLC Memo, at 27 n.36 (citing Nat'l Comm'n on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final report of the National Commission on Terrorist Attacks Upon the United States* 116-17 (2004) (noting Clinton administration position that if capture of Osama bin Laden was not feasible "under the law of armed conflict, killing a person who posed an imminent threat to the United States would be an act of self-defense, not an assassination")); *id.*

must remain secret, the government does not address any of these sources. Moreover, the government's brief seems to implicitly concede that the district court did not consider these sources either.[9]

The government also interprets the concept of "official acknowledgment" too narrowly. As Plaintiffs have explained, ACLU Br. 13–22, the relevant question is not whether the still-withheld information precisely matches information that has been officially acknowledged. The question is whether the still-withheld information is *materially* different from the information that has been officially acknowledged. Information is materially different if its disclosure would

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(citing W. Hays Parks, *Memorandum of Law: Executive Order 12333 and Assassination,* Army Lawyer 4, 8 (Dep't of Army Pamphlet 27–50–204) (1989) ("A decision by the President to employ clandestine, low visibility or overt military force would not constitute assassination if the U.S. military forces were employed against the combatant forces of another nation, a guerilla force, or a terrorist or other organization whose actions pose a threat to the security of the United States.")). *See also*, Elizabeth B. Bazan, Cong. Research Serv., RS21037, Assassination Ban and E.O. 12333: A Brief Summary (2002) (providing overview of U.S. assassination ban policy).

[9] The OLC invokes the presidential-communications privilege to justify its withholding of the March 2002 OLC Memo. Opp. 41 n.9. As far as Plaintiffs can tell, this is the first time the government has invoked this privilege in relation to this record, and certainly the government has never provided a factual foundation for the application of the privilege. *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1123 (D.C. Cir. 2004) (privilege applies only where document in question was "solicited and received by the President or his immediate advisers in the Office of the President") (internal quotations omitted). In any event, even if the privilege would otherwise have applied to the document, the privilege has been waived to the extent the government has disclosed its substance.

expose a classified fact that has not already been disclosed. But the mere fact that a passage in the still-withheld memoranda is "different" from passages that have already been disclosed is not sufficient to justify its continued withholding.

This is a common sense approach to the official acknowledgment doctrine, and, as Plaintiffs have observed, ACLU Br. 20, it is the approach that this Court has already taken in this case. Thus, the Court ordered the disclosure of a redacted version of the July 2010 OLC Memo even though no passage in that memorandum appeared verbatim in any document that had already been made public. And the Court specifically ordered the disclosure of a passage relating to 18 U.S.C. § 956(a), a statute criminalizing "conspiracy to kill . . . in a foreign country," even though the government had never publicly addressed the application of that statute to the targeted killing program at all. SPA120. In ordering the disclosure of that passage, the Court's reasoning was that the disclosure of the 18 U.S.C. § 956(a) analysis would not disclose any properly classified fact that had not already been disclosed. SPA133 (reasoning that the government had already disclosed the legal framework for the targeted-killing program and that "additional discussion of 18 U.S.C. § 956(a)" would "add[] nothing to the risk").

The same reasoning requires the release of at least some of the information in the still-withheld OLC memoranda. Lacking access to the memoranda, Plaintiffs are limited in their ability to guide the Court, but, to focus again on the

example cited above, the government identifies no reason why its March 2002 analysis of the assassination ban in Executive Order 12,333 should remain secret, beyond stating that the analysis is different and more extensive than the analysis in the November 2011 White Paper and the July 2010 OLC Memo. Opp. 40. Essentially the same arguments, however, could have been made about the government's analysis of 18 U.S.C. § 956(a), which the Court quite properly ordered the government to release. The relevant question is not whether the analysis of the assassination ban in the March 2002 Memo is different from or more extensive than the analysis in the November 2011 White Paper and the July 2010 OLC Memo, but whether, in light of everything the government has already released concerning its legal analysis generally and its analysis of the assassination ban in particular, the publication of the March 2002 Memo (or the publication of parts of it) would disclose any properly classified fact that has not already been disclosed—that is, whether it would "add [anything] to the risk." The government offers no reason to believe that it would.[10]

[10] The government adds that "the March 2002 [OLC Memo] addresses legal analysis in an earlier classified and privileged OLC opinion, references to which this Court redacted from the [July 2010 OLC Memo]." Opp. 41. It is not immediately clear to Plaintiffs why the reference to the earlier opinion should have been redacted from the public version of the July 2010 OLC Memo. But even if disclosing the citation to the earlier opinion would disclose a still-classified fact, it does not necessarily follow that a passage in the March 2002 OLC Memo that "addresses" legal analysis in the earlier opinion would also disclose still-classified facts.

B. The government overstates the scope of the Court's previous ruling with respect to the withholding of factual information.

The government contends that this Court has already held that "neither the DOJ White Paper nor public statements by government officials waived the protection of classified privileged facts concerning [al-] Aulaqi." Opp. 27. As Plaintiffs have explained, ACLU Br. 22–25, this overstates the scope of the Court's previous ruling. The previous appeal focused on only one memorandum—the only memorandum whose existence the government had conceded. Even as to that document, the Court focused almost exclusively on the question of whether the government had officially acknowledged legal analysis. While the Court held that the government had officially acknowledged two important facts—the country in which al-Aulaqi was killed, and the identity of the second agency involved in al-Aulaqi's killing—it did not conduct a comprehensive analysis of which facts had been disclosed and which had not, and it certainly did not conduct any such

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Similarly, the government is wrong to say that parts of the February 2010 OLC Memo must be withheld because they rely on "a privileged and undisclosed memorandum seeking legal advice." Opp. 25, 27. Even if the still-undisclosed memorandum (or the analysis in the still-undisclosed memorandum) would once have been withholdable under the FOIA, it is not withholdable if the government has already disclosed it elsewhere. SPA114 (citing *Brennan*, 697 F.3d at 208 ("[T]he attorney-client and deliberative process privileges, in the context of Exemption 5, may be lost by disclosure."). Whether existence of the memorandum or the analysis of the memorandum must be disclosed turns, in the present context, on whether the disclosure would reveal a classified fact that has not already been revealed.

analysis relating to the nine memoranda that the government had not yet presented to any court.

The government cites passages in which the Court stated that the government had not waived its right to withhold "operational details" and information pertaining to "intelligence gathering activities," Opp. 26, but this language does not signify what the government would have it signify. Plaintiffs have not asked the government to disclose "operational details"—for example, information about the kinds of weapons used to kill al-Aulaqi, the planning of the strike, or the personnel involved. ACLU Br. 25 n.12. Rather, Plaintiffs have asked the government to disclose the reasons why it decided that al-Aulaqi was a lawful target. They have asked, in other words, for the kind of information that the government would have had to disclose if it had charged al-Aulaqi with a crime and prosecuted him in an American court. Perhaps more to the point, they have asked for the kind of information the government has disclosed in many other contexts. ACLU Br. 43–44. There is no question that the official acknowledgment doctrine applies as forcefully to the disclosure of facts as to the disclosure of legal analysis. As this Court has already recognized, the government cannot disclose cherry-picked facts in public speeches and media interviews and then lawfully withhold the same facts under FOIA. SPA124–125 (discussing government's

disclosure of the identity of the country in which al-Aulaqi was killed), SPA126 (discussing government's disclosure of CIA's role in al-Aulaqi's killing).

Plaintiffs recognize that reviewing the OLC memoranda for factual information that has been officially acknowledged—and, specifically, for information relating to the government's reasons for concluding that al-Aulaqi was a lawful target—would require a not insignificant investment of judicial resources. This is particularly true because the memoranda undoubtedly contain many facts that the government still has a legitimate interest in withholding. It bears emphasis, however, that the public interest in the disclosure of the government's reasons for killing al-Aulaqi could hardly be more significant. *Cf.* SPA82 ("The issues assume added importance because the information sought concerns targeted killings of United States citizens carried out by drone aircraft."); SPA2 ("The FOIA requests here in issue implicate serious issues about the limits on the power of the Executive Branch under the Constitution and laws of the United States, and about whether we are indeed a nation of laws, not of men."). The twin evils that the FOIA was meant to address—overbroad secrecy and selective disclosure—are surely especially salient where the secrecy and disclosures in question concern the government's deliberate killing of an American who was deemed to present a threat to the country but who was never charged with any crime.

CONCLUSION

For the reasons discussed above, this Court should vacate the district court's judgment and review the withheld memoranda *in camera* to determine which portions the FOIA requires the government to release. In the alternative, the Court should review a subset of the records *in camera* to guide the district court's analysis of the remainder of the records.

Dated: April 16, 2015

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Dated: April 16, 2015

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