

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, )  
et al., )  
Plaintiffs, )  
)  
v. ) No. 09 Civ. 8071 (BSJ)  
)  
U.S. DEPARTMENT OF DEFENSE, )  
et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

SUPPLEMENTAL DECLARATION OF WENDY M. HILTON  
INFORMATION REVIEW OFFICER  
CENTRAL INTELLIGENCE AGENCY

INTRODUCTION

I, Wendy M. Hilton, hereby declare and state:

1. I am the Information Review Officer ("IRO") for detainee-related matters in the Central Intelligence Agency ("CIA"). From March 2007 to November 2009, I was the Associate Information Review Officer in the National Clandestine Service ("NCS") responsible for detainee-related matters. Through the exercise of my official duties, I am familiar with this case and the underlying Freedom of Information Act ("FOIA") request.<sup>1</sup> I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

<sup>1</sup> See 5 U.S.C. § 552 (Freedom of Information Act).

2. I refer the Court to my declaration of 29 January 2010, which I incorporate by reference. That declaration, inter alia, provides a description of my authorities as an Information Review Officer. Upon information and belief, on 10 March 2010, Plaintiffs narrowed the scope of their FOIA request by withdrawing eight of the ten specific categories of information. I understand that a dispute remains as to Category Six and Category Ten of Plaintiffs' FOIA request only.

3. The purpose of this supplemental declaration is to reiterate the CIA's position that CIA can neither confirm nor deny the existence or non-existence of Category Six and Category Ten records without risking serious damage to the national security, and disclosing intelligence sources and methods, as set forth in detail in Paragraphs ¶¶ 11-48 of my 29 January 2010 declaration. I also confirm that no authorized United States Executive Branch official has officially acknowledged the CIA's association or lack thereof with the "rendition and/or transfer," detention and treatment of individuals held at Bagram. Lastly, I again confirm that the fact of the existence or non-existence of the requested records has not been classified for an impermissible purpose (e.g., to conceal violations of law).

I. CIA'S GLOMAR DETERMINATION

A. Category Six

4. The CIA can neither confirm nor deny that it has records "pertaining to the rendition and/or transfer of individuals captured outside Afghanistan to Bagram." Acknowledgment of the existence or non-existence of such records would reveal classified information concerning intelligence activities, intelligence sources and methods, foreign government information, and U.S. foreign relations. Such information is currently and properly classified because its disclosure reasonably could be expected to cause serious damage to the national security.

5. Although the U.S. Government's involvement in the transfer of specific individuals has been acknowledged by authorized Executive Branch officials, no authorized CIA or other Executive Branch official has disclosed the CIA's association with (or lack thereof) the transfer of individuals from outside Afghanistan to Bagram. Thus, acknowledging the existence or non-existence of Category Six records necessarily would disclose at minimum (i) whether or not the CIA was involved in the transfer of individuals from outside Afghanistan and (ii) the CIA's association with or intelligence interest in the Bagram detainees or lack thereof. Disclosure of whether the CIA

was involved or not in these specific intelligence activities would reveal information concerning the reach and limitations of the CIA's operations, particularly with respect to the capture and transfer of individuals detained at Bagram.

6. Moreover, confirming the existence or non-existence of records pertaining to the transfer of individuals across international borders would risk disclosure of the CIA's liaison relationships (or lack thereof) and/or relationships with foreign government(s) (or lack thereof). The disclosure of such relationships necessarily concerns foreign government information and U.S. foreign relations. I refer the Court to my 29 January 2010 declaration, which describes further the damages that reasonably could be expected to result from disclosing the existence or non-existence of information that concerns intelligence activities, sources and methods, foreign government, and liaison service relationships in the context of this litigation. See First Hilton Decl. ¶¶ 11-22, 31-48.

**B. Category Ten**

7. Similarly, CIA can neither confirm nor deny that it has "records . . . pertaining to the treatment of and conditions of confinement" (hereinafter "treatment") for individuals detained at Bagram without disclosing

information that concerns intelligence activities, sources and methods, foreign government information and U.S. foreign relations. To do so reasonably could be expected to cause serious damage to the national security. For example, as described in my 29 January 2010 declaration, if CIA confirms the existence of the requested records, then, at the very least, it becomes known that CIA has an intelligence interest in the Bagram detainees. See First Hilton Decl. ¶¶ 11-22, 31-33, 40-43. Conversely, if CIA denies that it has records within the scope of the request, then it acknowledges a possible intelligence gap. Id. In the past, foreign intelligence services and hostile groups, like al-Qaida, have identified public disclosures similar to the disclosures sought by Plaintiffs in this case, and have adjusted their tactics and/or operations accordingly.

8. Furthermore, it is not just the disclosure of intelligence sources and methods as a general matter that the CIA seeks to prevent, but also the use and/or application of those sources and methods as applied in particular circumstances. See id. ¶¶ 31-39. Only in this manner can the CIA keep hostile groups, like al-Qaida, guessing as to what intelligence sources and methods it employs in specific situations. The preservation of such ambiguity limits the ability of hostile groups to counter

the CIA's operations. I refer the Court to my 29 January 2010 declaration, which describes further the damages that reasonably could be expected to result from disclosing the existence or non-existence of information that concerns intelligence activities, sources and methods in the context of this litigation.<sup>2</sup> See First Hilton Decl. ¶¶ 11-22, 31-39, 44-48.

**C. Applicable FOIA Exemptions**

9. In sum, the information at issue in Category Six, the existence or non-existence of CIA records pertaining to the CIA's "rendition and/or transfer" of individuals from outside Afghanistan to Bagram, and Category Ten, the existence or non-existence of CIA records "pertaining to the treatment of and conditions of confinement" for individuals detained at Bagram, concerns intelligence activities, intelligence sources and methods, foreign government information, and U.S. foreign relations. Because the disclosure of such information reasonably could be expected to cause serious damage to national security, it is coextensively exempt from disclosure pursuant to FOIA

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<sup>2</sup> Disclosing the existence or non-existence of Category Ten records also would concern foreign government information and U.S. foreign relations, and, in this context, a disclosure reasonably could be expected to cause serious damage to the national security. See supra ¶ 6; see also First Hilton Decl. ¶¶ 11-22, 31-43.

exemptions (b)(1) (E.O. 12958) and (b)(3) (National Security Act of 1947<sup>3</sup> and CIA Act of 1949).

**II. THE ABSENCE OF AUTHORIZED OFFICIAL DISCLOSURES**

10. In their 10 March 2010 filing, Plaintiffs reference a number of statements of U.S. Government officials and other publicly available information to support their argument that the intelligence activities that are the subject of the FOIA request have been acknowledged. I have reviewed these materials and determined that they do not constitute an official acknowledgment by an authorized United States Executive Branch official as to the subject matter of this FOIA request. No authorized CIA or Executive Branch official has disclosed the existence or non-existence of the CIA's association with or intelligence interest in the individuals detained at Bagram, which the processing of Categories Six and Ten necessarily would disclose.

11. Although the U.S. Government has acknowledged certain information, like the CIA's intelligence interest in certain High Value Detainees, such acknowledgements are

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<sup>3</sup> As noted in my first declaration, pursuant to the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(i)(1), and consistent with Section 1.6(d) of E.O. 12333, 50 U.S.C.A. § 401 note at 25 (West Supp. 2009), as amended by E.O. 13470, 73 Fed. Reg. 45323 (30 July 2008), "the heads of elements of the Intelligence Community," including the CIA, "shall" protect "intelligence sources, methods, and activities from unauthorized disclosure." See First Hilton Decl. ¶ 45.

limited in scope and not applicable to the present FOIA litigation.<sup>4</sup> These disclosures do not constitute an official acknowledgment of the existence or non-existence of the specific information that Plaintiffs seek in Categories Six and Ten. For example, the declassified OLC memoranda, which Plaintiffs cite, are legal analysis by Department of Justice attorneys. Goodman Decl. ¶ 23-24. They discuss the legality of certain proposed intelligence activities, but do not address the existence or non-existence of CIA records pertaining to the CIA's involvement in the "rendition and/or transfer," detention or treatment of Bagram detainees.

12. Plaintiffs also reference multiple third agency documents for the proposition that the CIA has been involved in the "interrogation of suspected terrorists abroad, including at DoD facilities in Afghanistan." Goodman Decl. p. 23, ¶ 28. Yet, the statements contained in these third agency documents do not represent official

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<sup>4</sup> Plaintiffs assert that "CIA's claim that it can never acknowledge its interest in particular detainees is undercut by the fact that it has acknowledged its 'interest' in" particular "suspected terrorists." Pls. Opp. Br. at 26. However, this argument ignores the crucial distinction. While CIA has acknowledged an association with and/or intelligence interest in certain High Value Detainees detained at Guantanamo Bay, like Abu Zubaydah, it has not acknowledged an association or lack thereof with the detainees at Bagram. See First Hilton Decl. ¶ 11.



acknowledgments from CIA or other authorized Executive Branch officials as to CIA's involvement or not in the "rendition and/or transfer," detention or treatment of individuals at Bagram.

13. Similarly, Plaintiffs cite former President George W. Bush's 6 September 2006 acknowledgment of the existence of a CIA detention program for certain High Value Detainees. Goodman Decl. ¶¶ 12c, 23a. The CIA's detention of certain High Value Detainees is not at issue in the present FOIA litigation, which concerns "the detention and treatment of prisoners held" at Bagram. The former President's disclosure thus neither confirms nor denies the existence or non-existence of the Category Six and Category Ten records.

14. Furthermore, Plaintiffs cite numerous speeches, news articles, and NGO reports. I have reviewed these materials, and they do not contain official acknowledgments from authorized Executive Branch officials regarding the existence or non-existence of records for Categories Six and Ten. Rather, they consist of general comments by U.S. government officials or media speculation. Id. ¶ 12a (former Director Hayden's general comments about rendition), ¶ 34a (news article speculating on location of

CIA detention facility).<sup>5</sup> Lastly, I have also determined that the processing of other detainee related FOIA requests cited by Plaintiffs (Goodman Decl. ¶¶ 44-50), and any subsequent releases, have not disclosed whether or not the CIA maintains an association with or intelligence interest in the individuals detained at Bagram.

**CONCLUSION**

15. For the reasons described above, and consistent with my first declaration, I have determined that the only appropriate response is for CIA to neither confirm nor deny the existence of the requested records under FOIA Exemptions (b) (1) and (b) (3).

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

Executed this 8<sup>th</sup> day of April 2010.

  
Wendy M. Hilton  
Information Review Officer  
Central Intelligence Agency

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<sup>5</sup> Moreover, Plaintiffs cite a remark by former Director of National Intelligence ("DNI") J. Michael McConnell as evidence of an official acknowledgment of the existence of CIA records for Categories Six and Ten. Pls. Opp. Br. at 20-21. However, the former DNI's remark does not address the existence or nonexistence of CIA records pertaining to "renditions and/or transfer," detention or treatment of detainees at Bagram, and thus, does not constitute an official acknowledgment of the information at issue.