

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

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| AMERICAN CIVIL LIBERTIES UNION, | |) | |
| and AMERICAN CIVIL LIBERTIES | |) | |
| UNION FOUNDATION, | |) | |
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| Plaintiffs, | |) | Civil Action No. 1:13-cv-01870 (JEB) |
| | |) | |
| v. | |) | |
| | |) | |
| CENTRAL INTELLIGENCE AGENCY, et | |) | |
| al. | |) | |
| | |) | |
| Defendants. | |) | |
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DEFENDANTS’ SECOND MOTION FOR EXTENSION OF TIME

In this case, brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, plaintiffs seek 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 the updated version of the Senate Select Committee on Intelligence (“SSCI”) report concerning the CIA’s former rendition, detention and interrogation (“RDI”) program (“SSCI Report”). Plaintiffs also seek from the CIA two additional records: 1) the CIA’s Response to the SSCI Report (“CIA Response”); and 2) what plaintiffs refer to as the “Panetta Report,” an alleged report by the CIA concerning its former detention and interrogation program commissioned by former CIA Director Leon Panetta, which was referred to by Senator Mark Udall on December 17, 2013, during the confirmation hearing for CIA General Counsel nominee Caroline Diane Krass. Pursuant to Fed. R. Civ. P. (6)(b)(1), the government, by and through undersigned counsel, respectfully moves this Court for a one month enlargement of time, until September 29, 2014, to complete the ongoing discussions and allow for the subsequent release of the updated

version of the executive summary, findings, and conclusions of the SSCI Report by SSCI, as well as to complete processing of the CIA Response and what plaintiffs refer to as the “Panetta Report” for release of any non-exempt information.

On May 29, 2014, this Court granted the CIA’s motion for extension of time to process the CIA Response and what plaintiffs refer to as the “Panetta Report” until completion of the declassification review process for the updated version of the executive summary, findings, and conclusions of the SSCI report, which was submitted for declassification by SSCI on April 7, 2014. Based on the then-current status of the declassification process, as well as the Agency’s expectations as to the time for coordination with other agencies, implementation of security measures to ensure the safety of U.S. personnel and facilities overseas, and submission of the declassified version to SSCI, on June 20, 2014, the CIA submitted a status report proposing no later than August 29, 2014 for the completion date for the processing of the CIA Response and the so-called Panetta Report. The Executive Branch worked expeditiously to complete its internal declassification review process and submitted a redacted version of the executive summary, findings, and conclusions of the Report to SSCI on August 1, 2014. Because the discussions with SSCI over the redactions are still ongoing, however, and may not be completed by August 29, 2014, the government respectfully requests a further extension of one month, until September 29, 2014, to complete processing of the records at issue in this case. In compliance with LCvR 7(m), undersigned counsel has discussed the relief requested with counsel for plaintiffs, who will take a position on the proposed extension once they have reviewed the government’s motion.

ARGUMENT

SSCI and the Executive Branch are currently engaged in discussions over the declassification of the executive summary, findings, and conclusions of the SSCI Report. By letter dated August 12, 2014, Senator Dianne Feinstein, the Chairman of SSCI, wrote to Attorney General Eric Holder, requesting that “the Department of Justice not release documents through Freedom of Information Act (FOIA) litigation that relate to the Senate Select Committee on Intelligence (SSCI) Study of the CIA’s Detention and Interrogation Program until parts of the Study itself are declassified and publicly released by the Committee.” Aug. 12, 2014, letter from Senator Dianne Feinstein to The Honorable Eric H. Holder, Jr. (attached hereto as Exhibit 1). In her letter, Senator Feinstein specifically mentioned by name the three FOIA cases – including this one – that seek the executive summary, findings and conclusions of the SSCI Report, and the two sets of records at issue above. *See id.* (“Not only would it be inappropriate for the Department to release documents related to the Committee’s Study prior to the Committee’s own release, but the result of the ongoing negotiations will likely positively affect the redactions in the documents being sought in the FOIA process in *ACLU v. CIA et al.*, 13-cv-1870, *Leopold v. CIA*, 14-cv-48, and *Leopold v. CIA*, 13-cv-1324”). Senator Feinstein further requested that the Department of Justice seek an extension for completion of processing for these records, “given that the declassification process for the Executive Summary and Findings and Conclusions may still be ongoing on August 29, 2014.”

As Senator Feinstein notes, “the result of the ongoing negotiations will likely positively affect the redactions” for these documents. Consistent with Senator Feinstein’s letter and as previously explained by the government, much of the classified information in the CIA Response corresponds to information contained in the SSCI Report itself. Likewise, much of the classified

information in the so-called Panetta Report pertains to the same historical events that are addressed in the SSCI Report. Treatment of these documents will thus necessarily depend in part upon the results of the ongoing discussions between the SSCI and Executive Branch regarding declassification of the SSCI Report's executive summary, findings, and conclusions. Once the declassification process for the SSCI Report's executive summary, findings, and conclusions is complete, the CIA will need to conform the redactions in these related records to the newly-declassified information accordingly, separate and apart from the issue of whether any of these records can be withheld in full or on other non-classification grounds.

CONCLUSION

For the foregoing reasons, the government respectfully requests a one month extension, until September 29, 2014, to complete the ongoing discussions and allow for the subsequent release of the updated version of the executive summary, findings, and conclusions of the SSCI Report by SSCI, as well as to complete processing of the CIA Response and what plaintiffs refer to as the "Panetta Report" for release of any non-exempt information.

Dated: August 27, 2014

Respectfully submitted,

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