

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

AMERICAN CIVIL LIBERTIES UNION,  
and AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION,

Plaintiffs,

V.

CENTRAL INTELLIGENCE AGENCY, et  
al.

Defendants.

Civil Action No. 1:13-cv-01870 (JEB)

**GOVERNMENT’S MOTION TO DISMISS**

The government hereby moves to dismiss pursuant to Fed. R. Civ. P. 12(h)(3) or 12(b)(1). The reasons for this motion are set forth in the accompanying memorandum.

Dated: January 21, 2015

Respectfully submitted,

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*/s/ Vesper Mei*  


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Civil Action No. 1:13-cv-01870 (JEB)

**GOVERNMENT’S MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS**

**STATEMENT**

In this case, brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, plaintiffs seek the release of the full 6,963 page Senate Select Committee on Intelligence (“SSCI”) report concerning the CIA’s former detention and interrogation program (“SSCI Report” or “Full Report”).<sup>1</sup> Unlike the report’s Executive Summary and Findings and Conclusions (“Executive Summary”)—which the SSCI voted to submit to the Executive Branch for declassification review in April 2014, and publicly released on December 9, 2014—the SSCI has not voted to either seek to declassify or to release the Full Report. The Full Report therefore remains a congressional record subject to congressional control and is not an agency record within the meaning of FOIA. *See United We Stand America, Inc. v. I.R.S.*, 359 F.3d 595, 597 (D.C. Cir. 2004).

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<sup>1</sup> Plaintiffs seek the Full Report from four agency defendants: the Central Intelligence Agency (“CIA”), the Department of Defense (“DoD”), the Department of Justice (“DOJ”), and the Department of State (“DOS”).

Congress retains control over the Full Report for at least five reasons. First, the conditions under which the report was created reflect that SSCI as a whole asserted complete control over not only drafts, but also the final product. Second, throughout the years-long process of creating and finalizing the Report, both SSCI and the CIA handled the Report in accordance with SSCI's instructions and strict limitations on access. Third, SSCI voted, in accordance with Senate Rules, to seek declassification and release only of the Executive Summary, Findings and Conclusions – not the Full Report. The then-SSCI Chairman's decision to provide the Full Report to certain Executive Branch agencies for nonpublic use does not amount to a Committee decision to seek to declassify and release the Full Report. Fourth, the current Chairman of SSCI has reiterated SSCI's intent to retain control of the Full Report. Finally, the defendant agencies have treated the Full Report, received in December 2014, as a congressional record, sequestering it in secure storage space appropriate to its classification and carefully limiting its dissemination and use. Because the Full Report remains a congressional record as opposed to an agency record, this Court lacks jurisdiction over plaintiffs' FOIA claim seeking its release, and plaintiffs' claim should be dismissed under Rule 12(h)(3) or 12(b)(1).<sup>2</sup>

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<sup>2</sup> Plaintiffs initially sought the CIA's Response to the SSCI Report. It, along with the Executive Summary, findings, and conclusions of the SSCI Report (which plaintiffs did not separately seek), was released on December 9, 2014. By email dated December 11, 2014, plaintiffs notified the government that they do not intend to seek any further relief with respect to either the CIA Response or the SSCI Report Executive Summary. Plaintiffs also seek from the CIA in this case the release of what plaintiffs refer to as the "Panetta Report," *i.e.*, an alleged CIA report concerning its former detention and interrogation program, which Senator Mark Udall referred to on December 17, 2013, during the confirmation hearing for the CIA's General Counsel. The CIA is separately moving for summary judgment on that claim.



## **I. PLAINTIFFS' FOIA REQUESTS.**

By letter dated February 13, 2013, plaintiffs sent a FOIA request to the Central Intelligence Agency, seeking “disclosure of the recently adopted report of the Senate Select Committee on Intelligence relating to the CIA’s post-9/11 program of rendition, detention, and interrogation.” Declaration of Neal Higgins, Director, Office of Congressional Affairs, Central Intelligence Agency (“Higgins Decl.”) , ¶ 6; Exh. A to Decl. By letter dated February 22, 2013, the Agency advised plaintiffs that the requested Report was a “Congressionally generated and controlled document that is not subject to the FOIA’s access provisions” and, accordingly, the CIA could not accept the request. Higgins Decl. ¶ 7; Exh. B to Decl.

Plaintiffs filed this lawsuit on November 26, 2013, and filed an amended complaint on January 27, 2014. On May 6, 2014, plaintiffs submitted identical new FOIA requests to the CIA, the Department of Defense, the Department of Justice, and the Department of State, seeking “the updated version of the Senate Select Committee on Intelligence’s Report.” Higgins Decl. ¶ 9; Exh. C to Decl. *See also* Declaration of Julia E. Frifield, Assistant Secretary of the Bureau of Legislative Affairs, U.S. Department of State (“Frifield Decl.”) ¶ 5; Declaration of Mark H. Herrington, Associate Deputy General Counsel, Office of Litigation Counsel, U.S. Department of Defense (“Herrington Decl.”) ¶ 4; Declaration of Peter J. Kadzik, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice (“Kadzik Decl.”) ¶ 4.

On June 5, 2014, plaintiffs amended their complaint to seek the release of the “Updated SSCI Report” from not only the CIA, but also the Departments of Defense, Justice, and State. Second Amended Complaint, ¶¶ 44-52. The defendants have interpreted this to refer to the most current version of the Full Report – the version transmitted by the then-Chairman of SSCI to the

Executive Branch in December 2014.<sup>3</sup> Higgins Decl. ¶ 9; Frifield Decl. ¶ 7; Herrington Decl. ¶ 5; Kadzik Decl. ¶ 4.

## **II SSCI'S TREATMENT OF THE FULL REPORT.**

### **A. SSCI's Review of CIA Information and Early Drafting of the SSCI Report.**

The SSCI Report was authored by the then-Majority staff of the Senate Select Committee on Intelligence, and concerns the CIA's former detention and interrogation program. Higgins Decl. ¶ 10. The Report was drafted after extensive discussions with the CIA to reach an accommodation that respected both the President's constitutional authority to protect classified information, and Congress's constitutional authority to conduct oversight of the Executive. Higgins Decl. ¶ 11. Thus, SSCI and the CIA sought to protect from public disclosure both the highly sensitive and compartmented classified information at issue in the Report, information that necessarily came from the CIA, as well as the autonomy and control that SSCI maintained over the drafting, finalization, and dissemination of the Report itself. *Id.* ¶¶ 11-14. In order to best protect the highly sensitive and compartmented nature of the information at issue, the CIA established a secure electronic reading room on CIA premises, and created a segregated network shared drive, where designated SSCI personnel could review the highly classified materials and confidentially prepare and store their work product, including initial draft versions of the SSCI Report, in a secure environment. *Id.* ¶ 11.

From the outset of this process, SSCI insisted that any records created by SSCI personnel on the segregated shared drive would not become "agency records" even though the material was created and stored on a CIA computer system. *Id.* ¶ 12. Specifically, in a June 2, 2009 letter

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<sup>3</sup> In a status conference held on October 7, 2014, the parties agreed that the ACLU would not have to submit a new FOIA request or amend their complaint in order to seek to obtain the Full Report. Transcript of Status Conference (Exhibit 1) at 8.

from the SSCI Chairman and Vice Chairman to the CIA Director, the Committee expressly stated that any records it produced, including “draft and final recommendations, reports, or other materials generated by Committee staff or Members, are the property of the Committee” and “remain congressional records in their entirety.” *Id.*; Higgins Decl. Exh. D. SSCI further provided that “disposition and control over these records, even after the completion of the Committee’s review, lies exclusively with the Committee.” *Id.* As such, the Committee explicitly stated that “these records are not CIA records under the Freedom of Information Act or any other law” and that “[t]he CIA may not integrate these records into its records filing systems, and may not disseminate or copy them, or use them for any purpose without prior written authorization from the Committee.” *Id.* The SSCI also stated that in response to a FOIA request seeking these records, the CIA should “respond to the request or demand based upon the understanding that these documents are congressional, not CIA, records.” *Id.*

After reaching these accommodations, SSCI personnel used the segregated shared drive to draft the initial versions of its Report. *Id.* ¶ 13. Thereafter, and throughout the drafting process with the assistance of CIA information technology and security personnel, portions of the draft report were transferred from the segregated shared drive to secure SSCI facilities at the U.S. Capitol complex so that the Committee could complete the drafting process in its own workspaces. *Id.* Consequently, it is the CIA’s understanding that the version of the Full Report that was ultimately adopted by the Committee and subsequently provided to the Agency does not reside on the shared drive. *Id.* ¶ 14. Nonetheless, the restrictions governing the information on the shared drive have informed how the CIA has treated SSCI’s work product provided to the CIA. *Id.*

**B. Approval and Transmission of the Initial Draft.**

On December 13, 2012, SSCI decided in closed session to “approve” drafts of the Executive Summary and Full Report, and to transmit those drafts to the Executive Branch for review. *See* SSCI, Committee Study of the CIA’s Detention and Interrogation Program: Executive Summary, at 8 (Dec. 3, 2014); available at <http://www.intelligence.senate.gov/study2014/executive-summary.pdf>; *see also* 158 Cong. Rec. D1029 (daily ed. Dec. 12, 2012) (SSCI’s December 13, 2012, meeting was a “closed business meeting”). An e-mail from the SSCI Staff Director to the defendant agencies made it clear that the motion approved by the Committee imposed various limitations on the agencies’ use of the Executive Summary and Full Report. Among other things, the Committee’s motion limited dissemination of the drafts to specific individuals at specific agencies, who would be identified in advance to the SSCI Chairman. Higgins Decl. Exh. E. The Committee approved granting access to those individuals for the limited purpose of providing edits and comments in response to the 2012 draft Report. *Id.*

**C. SSCI’s April 2014 Decision to Send the Executive Summary to the President for Declassification.**

SSCI revised the Executive Summary and Full Report after considering the CIA’s comments. SSCI, Executive Summary, at 9. SSCI then met in closed session on April 3, 2014, to determine the proper disposition of those revised documents. *Id.*; *see also* 160 Cong. Rec. D359 (daily ed. Apr. 2, 2014) (SSCI’s April 3, 2014, meeting was for the purpose of holding “closed hearings to examine certain intelligence matters”). The Committee ultimately decided to approve the revised versions and to send the Executive Summary to the President to seek declassification and eventual public release. *Id.* SSCI, Executive Summary, at 9; Higgins Decl.

¶ 17. Although the exact text of the motion approved by the Committee is not publicly available, it is clear from the public statements of SSCI members that the Committee did not approve seeking declassification, and subsequent release, of the Full Report. *See, e.g.*, Sen. Dianne Feinstein, Press Release, Intelligence Committee Votes to Declassify Portions of CIA Study (Apr. 3, 2014) (“The full 6,200-page full report has been updated and will be held for declassification at a later time.”); Higgins Decl. ¶ 18; Higgins Decl. Exh. F.

#### **D. SSCI’s December 2014 Public Release of the Executive Summary.**

SSCI and the Executive Branch had many discussions after April 2014 regarding the Executive Summary, and SSCI continued to edit the document in light of those discussions. Higgins Decl. ¶ 19. SSCI also apparently made conforming changes to the Full Report as it updated the Executive Summary. *Id.* When SSCI and the Executive Branch concluded their discussions, the Director of National Intelligence declassified a partially redacted version of the Executive Summary. SSCI then publicly released the redacted Executive Summary, along with minority views and the additional views of various Committee members, redacted in the same manner, on December 9, 2014. Higgins Decl. ¶ 20. At that time, the SSCI did not choose to seek declassification of or publicly release the Full Report. SSCI Committee Study of the CIA’s Detention and Interrogation Program: Chairman’s Foreword, at 3 (Dec. 3, 2014) (“I chose not to seek declassification of the full Committee Study at this time.”)

### **III. ADDITIONAL CORRESPONDENCE FROM SSCI CHAIRMEN.**

The events described above constitute SSCI’s formal course of action with respect to the disposition of the Executive Summary and Full Report. The former Chairman and the current Chairman have also expressed additional views in letters to the President. In addition, the former

Chairman has transmitted at least two updated versions of the Full Report to the President—one in the summer of 2014 and another in December 2014. Higgins Decl. ¶ 21. The CIA received both updated versions of the Full Report; the other defendant agencies in this case received only the December 2014 version. Frifield Decl ¶ 7; Herrington Decl. ¶ 5; Kadzik Decl. ¶ 5.

In letters to the President dated April 7, 2014, and December 10, 2014, SSCI Chairman Dianne Feinstein expressed her desire for the Full Report to be made available to appropriate Executive Branch agencies. Her April 7 letter enclosed the Findings and Conclusions of the Executive Summary, which SSCI had voted to send for declassification, and stated that she would transmit separately copies of the Full Report, for which she “encourage[d] and approve[d] the dissemination . . . to all relevant Executive Branch agencies, especially those who were provided with access to the previous version.” She added: “This is the most comprehensive accounting of the CIA’s Detention and Interrogation Program, and I believe it should be viewed within the U.S. Government as the authoritative report on the CIA’s actions.” Exhibit 2 (April 7, 2014 letter from SSCI Chairman Dianne Feinstein to The Honorable Barack Obama).

In December 2014, SSCI Chairman Dianne Feinstein transmitted an updated, presumably final, version of the Full Report to the defendant agencies. Her December 10, 2014, cover letter to the President expressed a desire for the Full Report to be “made available within the CIA and other components of the Executive Branch for use as broadly as appropriate to help make sure that this experience is never repeated.” The letter continued: “To help achieve that result, I hope you will encourage use of the full report in the future development of CIA training programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit.”

Exhibit 3 (December 10, 2014 letter from SSCI Chairman Dianne Feinstein to The Honorable Barack Obama).

The Committee chairmanship passed from one party to the other when the current Congress opened on January 3, 2015. The new Chairman, Senator Richard Burr, recently sent a letter to the President indicating that he was not aware of the former Chairman's December 2014 letter transmitting the Full Report to the President before or at the time it was sent. He advised the President that he considers the Full Report to be "a highly classified and committee sensitive document" and was therefore requesting that "all copies of the full and final report in the possession of the Executive Branch be returned immediately to the Committee." The Chairman added: "If an Executive Branch agency would like to review the full and final report, please have them contact the Committee and we will attempt to arrive at a satisfactory accommodation for such a request." Exhibit 4 (January 14, 2015 letter from SSCI Chairman Richard Burr to The Honorable Barack Obama).

On January 16, 2015, now-SSCI Vice Chairman Feinstein responded to Chairman Burr's January 14, 2015, letter. In that letter, the Vice Chairman stated that she "did not support" the request that the Executive Branch return all copies of the Full Report to the Committee. She further reiterated the request from her December 10, 2014, letter, "and ask[ed] that you retain the full 6,963-page classified report within appropriate Executive branch systems of record, with access to appropriately cleared individuals with a need to know." Exhibit 5 (January 16, 2015 letter from SSCI Vice Chairman Dianne Feinstein to The Honorable Barack Obama).

## **ARGUMENT**

### **I. THE SSCI REPORT IS A CONGRESSIONAL RECORD, NOT SUBJECT TO FOIA.**

#### **A. Whether the Document is an “Agency Record” Presents a Jurisdictional Question.**

Under FOIA, an agency need only disclose “agency records.” 5 U.S.C. § 552(a)(4)(B). A court has jurisdiction to “enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B). The question of whether a document is an “agency record” is, therefore, jurisdictional. *See Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136-38, 150 (1980) (federal jurisdiction in a FOIA case is dependent upon a showing that an agency has (1) “improperly,” (2) “withheld,” (3) “agency records”). The SSCI Report at issue in this case is not an “agency record,” but a congressional document. Because FOIA does not cover congressional documents or records, this Court lacks subject matter jurisdiction over plaintiffs’ FOIA claims relating to the SSCI Report, and they should be dismissed. *See Bureau of Nat. Affairs, Inc. v. U.S. Dept. of Justice*, 742 F.2d 1484, 1488 (D.C. Cir. 1984) (“The requirement that materials sought by a private party be “agency records” is jurisdictional—only when an agency withholds an agency record does the district court have authority to compel disclosure.”).

Because subject matter jurisdiction focuses on a court’s power to hear the plaintiffs’ claim, a Rule 12(b)(1) motion imposes on the court an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority. *Grand Lodge of the Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13 (D.D.C. 2001). In deciding a Rule 12(b)(1) motion, a Court need not limit itself to the allegations of the Complaint. *See Hohri v. United States*, 782



F.2d 227, 241 (D.C. Cir. 1986), *vacated on other grounds*, 482 U.S. 64 (1987). Rather, it may “consider such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction in the case.” *Scolaro v. D.C. Bd. of Elections & Ethics*, 104 F. Supp. 2d 18, 22 (D.D.C. 2000) (citing *Herbert v. Nat’l Acad. of Sciences*, 974 F.2d 192, 197 (D.C.Cir.1992)).<sup>4</sup>

**B. An Analysis of the Relevant Factors Demonstrates that Congress Retains Control of the SSCI Report.**

In *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144 (1989), the Supreme Court concluded that two requirements must be met in order for materials to qualify as “agency records.” First, the agency must have either created or obtained the requested materials. *Id.* Second, “the agency must be in control of the requested materials at the time the FOIA request is made.” *Id.* at 145. While none of the defendant agencies created the SSCI Report, they do not

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<sup>4</sup> Courts in this Circuit have considered motions to dismiss for lack of subject matter jurisdiction to be brought under Rule 12(b)(1) even after the filing of a responsive pleading. *See, e.g., U.S. v. Philip Morris USA, Inc.*, 787 F.Supp.2d 68, 73 (D.D.C. 2011) (treating challenge to court’s subject matter jurisdiction in “Suggestion of Mootness and Motion for Partial Vacatur” of award of injunctive relief brought under Rule 12(h)(3) as challenge to subject matter jurisdiction under Rule 12(b)(1), stating that challenge to subject matter jurisdiction under Rule 12(b)(1) “may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment.”) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006)). To the extent the Court may determine that this motion should have been brought either under Rule 12(h)(3) or 12(c), rather than Rule 12(b)(1) because defendant has already filed an answer to plaintiff’s complaint, Rule 12(b)(1) continues to provide the proper standard of review. *See id.* (“When faced with what a party characterizes as a Rule 12(h)(3) motion, a court should treat the motion as a traditional Rule 12(b)(1) motion for lack of subject matter jurisdiction.”) (quoting *Harbury v. Hayden*, 444 F.Supp.2d 19, 26 (D.D.C.2006)). A Rule 12(c) motion to dismiss for lack of subject matter jurisdiction should also be decided under the 12(b)(1) standard. *See Newbrough v. Piedmont Reg’l Jail Auth.*, No. 3:10CV867–HEH, 2012 WL 169988, at \*2 (E.D. Va. 19 Jan. 19, 2012) (quoting 5A Wright & A. Miller, Fed. Practice and Procedure § 1367 (1990)) (“[I]f a party raises an issue of subject matter jurisdiction on his motion for judgment on the pleadings, the court will treat the motion as if it had been brought under Rule 12(b)(1).”).

dispute that it was delivered to them in December 2014. Because the SSCI Report is not under any of the agencies' control, however, it is not an agency record.

The D.C. Circuit generally analyzes four factors to determine whether an agency exercises sufficient control over requested documents to render them agency records:

- (1) the intent of the document's creator to retain or relinquish control over the records;
- (2) the ability of the agency to use and dispose of the record as it sees fit; (3) the extent to which agency personnel have read or relied upon the document; and (4) the degree to which the document was integrated into the agency's record system or files.

*United We Stand America, Inc.*, 359 F.3d at 599 (citing *Burka v. U.S. Dep't of Health & Human Servs.*, 87 F.3d 508, 515 (D.C. Cir. 1996) (other citations omitted)).

Because this case concerns documents obtained by the agencies from Congress, however, the four-part test does not apply. *See Judicial Watch, Inc. v. U.S. Secret Service*, 726 F.3d 208, 221 (D.C. Cir. 2013) ("the standard, four-factor control test does not apply to documents that an agency has . . . obtained from . . . a governmental entity not covered by FOIA: the United States Congress."). Rather, in such a case, "the first two factors of the standard test [are] effectively dispositive." *Id.* This is because "special policy considerations . . . counsel in favor of according due deference to Congress' affirmatively expressed intent to control its own documents." *Id.* (quoting *Paisley v. CIA*, 712 F.2d 686, 693 n. 30 (D.C. Cir. 1983) (*vacated in part on other grounds*, 724 F.2d 201 (D.C. Cir. 1984))). These "special policy considerations" include: "(1) Congress' clear intent to exempt congressional documents from disclosure under FOIA; (2) Congress' clear prerogative to prevent disclosure of its own confidential materials; and (3) the danger of inhibiting the legislative . . . branch[] from making [its] records available to the executive branch." *Goland v. CIA*, 607 F.2d 339, 348 n. 48 (D.C. Cir. 1979).

Four decisions of the D.C. Circuit illustrate application of these principles. In *Goland*, a FOIA requester sought a copy of a congressional hearing transcript in the possession of the CIA. *Goland*, 607 F.2d at 345. In holding that the transcript was not an agency record, the D.C. Circuit considered that the Committee had met in executive session, the stenographer and typist were sworn to secrecy, the transcript was marked “Secret,” and the CIA retained a copy of the transcript for internal reference purposes only, for use in conjunction with legislation concerning the CIA and its operations. *Id.* at 347.

In contrast, the D.C. Circuit has found that formerly congressional documents in the hands of agencies could be converted to agency records, but “only because Congress had not clearly expressed an intent to retain control over them.” *Judicial Watch*, 726 F.3d at 221 (citing *Paisley*, 712 F.2d at 696). Thus, in *Paisley*, the plaintiff sought two transcripts of testimony given before SSCI, and three letters from the SSCI chairman, two to a senator, and one to the Attorney General. *Paisley*, 712 F.2d at 694 n. 32. Because there were no special conditions of secrecy surrounding the congressional hearings for which transcripts of testimony were sought, and because the documents were not subsequently sent to the defendant agencies in such a way as to manifest intent by Congress to retain control, the *Paisley* court held that the documents at issue were not, in fact, congressional records. *Id.* at 694-95. Similarly, in *Holy Spirit Ass’n for the Unification of World Christianity v. CIA*, 636 F.2d 838, 840 (D.C. Cir. 1980), the court found that, “even if once excluded from the FOIA as congressional records,” documents that were generated by Congress and sent to the CIA had become agency records “because Congress failed to express with sufficient clarity its intent to retain control over the documents.” The *Holy Spirit* court did not, however, “direct Congress to act in a particular way in order to preserve its FOIA

exemption for transferred documents,” and “[did] not adopt appellant’s position that Congress must give contemporaneous instructions when forwarding congressional records to an agency.”

*Id.* Rather, what was required was “some clear assertion of congressional control.” *Id.* Because “nothing here either in the circumstances of the documents’ creation or in the conditions under which they were sent to the CIA indicate[d] Congress’ intent to retain control over the records or to preserve their secrecy,” the court concluded that the documents were agency records. *Id.* at 842.

Finally, in *United We Stand America*, the D.C. Circuit found that a letter sent to the IRS by a congressional committee was not an “agency record” because the document itself stated: “This document is a Congressional record and is entrusted to the Internal Revenue Service for your use only. This document may not be disclosed without the prior approval of the Joint Committee.” *United We Stand America*, 359 F.3d at 600–01. The court ultimately found that the agency’s response to the letter was an agency record, although portions were redacted so as not to disclose the nature of Congress’ request, in an effort to protect the contents of that congressional record. *Id.* at 602–03.

In *Holy Spirit* and *United We Stand America*, the courts echoed the *Paisley* court’s analysis. In *Paisley*, the court had stated that, “[w]hether a congressionally generated document has become an agency record . . . depends on whether under all the facts of the case the document has passed from the control of Congress and become property subject to the free disposition of the agency with which the document resides.” *Paisley*, 712 F.2d at 692. To that end, the *Paisley* court held: “Two factors are considered dispositive of Congress’ continuing intent to control a document: (1) the circumstances attending the document’s creation, and (2)

the conditions under which it was transferred to the agency.” *Id.* Indeed, these factors are the flip side of the second factor in the test set forth in *United We Stand America*: “if ‘Congress has manifested its own intent to retain control, then the agency – by definition – cannot lawfully ‘control’ the documents.” *United We Stand America*, 359 F.3d at 600 (quoting *Paisley*, 712 F.2d at 693).

In this case, which concerns a document created by Congress and delivered to certain Executive Branch agencies, both the circumstances attending the creation of the SSCI Report and the conditions under which it was transferred to the agencies support the conclusion that the Full Report remains under congressional control. These conditions also limit the ability of the agencies to use and dispose of the Full Report as they see fit. Accordingly, the first two factors of the four-factor test for agency control squarely support the conclusion that the Full Report remains a congressional record. Although the final two factors of the four-factor test (the extent to which agency personnel have read or relied upon the document, and the degree to which the document was integrated into the agency’s record system or files) are not relevant to congressionally-generated documents, those factors also support a finding that the Full Report is not an agency record.

**1. SSCI Intended to Retain Control Over the Full Report.**

**a. The circumstances surrounding the creation of the Report show that Congress intended to retain control.**

The circumstances surrounding the creation of the SSCI Report show that Congress intended to retain control over the Full Report. *Judicial Watch*, 726 F.3d at 221; *Paisley*, 712 F.2d at 692. Even before the drafting of the Full Report began, SSCI expressly stated that it intended for its records, including “any . . . draft and final recommendations, reports or other

materials generated by Committee staff or Members,” to remain congressional records not subject to FOIA. Higgins Decl. ¶ 12, Exh. D to Decl. The CIA was directed not to integrate the records from the segregated drive into its records filing system, or to disseminate, copy, or use them for any purpose without prior authorization from the Committee. *Id.* And SSCI requested that in response to a FOIA request seeking these records, the CIA should respond based on an understanding that the documents are congressional, not CIA, records. *Id.* These admonitions are analogous to the Joint Committee on Taxation’s confidentiality request in *United We Stand America*, which the D.C. Circuit found to be a sufficient indication of congressional intent to retain control over a letter requesting documents from the IRS. *See* 359 F.3d at 600-01, 605 (letter stated: “This document is a Congressional record and is entrusted to the Internal Revenue Service for your use only. This document may not be disclosed without the prior approval of the Joint Committee.”). Further, this direction regarding the handling of these records came from both the Chairman and Vice Chairman of SSCI, reflecting an indisputable consensus with respect to how the committee viewed not only drafts of the report, but also the final Full Report.

Additional facts similarly support the conclusion that Congress intended to maintain control over the Full Report. SSCI’s discussions and votes regarding the Full Report were all in closed session. *See, e.g.*, 160 Cong. Rec. D359 (daily ed. Apr. 2, 2014); 158 Cong. Rec. D1029 (daily ed. Dec. 12, 2012). All versions of the Full Report are marked TOP SECRET, with additional access restrictions noted based on the sensitive compartmented information contained in it. Higgins Decl. ¶ 22. As such, the Full Report could not have been widely disseminated. Indeed, the very subject-matter of the Full Report – intelligence operations, foreign relations, and other classified matters – suggests that it could not be broadly disseminated. *Id.* Thus, the Full

Report “was quite obviously meant to be secret,” *Holy Spirit v. CIA*, 636 F.2d 838, 841 (D.C. Cir. 1981), and the circumstances surrounding the Report’s creation closely mirror those of the transcript in *Goland* that was found not to be an agency record. *See Goland*, 607 F.2d at 347 (congressional committee met in executive session to conduct the hearing; stenographer and typist were sworn to secrecy; and the transcript was marked ‘Secret;’ additionally, record was known to contain “discussions of basic elements of intelligence methodology, both of this country and of friendly foreign governments, as well as detailed discussions of the CIA’s structure and disposition of functions.”).

Indeed, the applicable Senate rules also confirm that the Full Report is confidential, as the default rule for SSCI information is that it may not be publicly disclosed. *See, e.g.*, S. Res. 94-400, § 8(a) (“No member of the Select Committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.”) available at <http://www.intelligence.senate.gov/pdfs113th/sprt1137.pdf>; SSCI Rule 9.7 (“No member of the Committee or of the Committee staff shall disclose, in whole or in part or by way of summary, the contents of any classified or committee sensitive papers, materials, briefings, testimony, or other information in the possession of the Committee to any other person, except as specified in this rule. . . . Public disclosure of classified information in the possession of the Committee may only be authorized in accordance with Section 8 of S. Res. 400 of the 94th Congress.”) available at <http://www.intelligence.senate.gov/pdfs113th/sprt1137.pdf>; Senate Rule 29.5 (providing that disclosure of “secret or confidential business or proceedings of the Senate”

can lead to expulsion from the Senate (for a Senator), or dismissal from the service of the Senate, and punishment for contempt (for an officer or employee of the Senate)).

Perhaps most importantly, SSCI has voted to seek declassification review only of the Executive Summary, and to publicly release only the Executive Summary, rather than the Full Report, further evidencing the control that SSCI still retains over the Full Report. On April 3, 2014, when SSCI met to determine the proper disposition of the Executive Summary and Full Report, the Committee voted to approve the updated versions of both, but only to send the Executive Summary to the President to seek declassification for eventual public release. The Committee did not vote to seek declassification or for release of the Full Report. *See supra* at II.C. As in previous cases, Congress's disparate treatment of these two similar documents strongly indicates that the Committee did not intend to broadly disseminate the Full Report either inside or outside the Government. *See, e.g., Paisley*, 712 F.2d at 694 (noting the lack of external indicia of control over documents, where "SSCI knew quite well how to classify its documents as secret," was evidence of lack of congressional intent to maintain control); *Holy Spirit*, 636 F.2d at 842 (contrasting transfer of records from Congress with specific instructions, with documents that were forwarded without any such instructions). And the fact that the Committee still has not voted to submit the Full Report for declassification review indicates that the Committee as a whole continues not to intend to relinquish control over the Full Report.

**b. The conditions of transfer indicate Congress's intent to control.**

The instructions from SSCI at the time that the Full Report was delivered to the defendant agencies also provide strong evidence of the Committee's intent to retain full control over the distribution, dissemination, and ultimate disposition of the Report.



When SSCI first provided the approved draft Report to the agencies on December 14, 2012, it was for the specific and limited purpose of soliciting edits and comments for SSCI to consider in making changes to the Report before finalizing it. That SSCI intended to review the comments provided and use them to perhaps amend the Report makes it clear that, while SSCI wanted the Executive Branch's input, it did not intend to relinquish control over drafts of the Report or the final work product that would emerge after review and comment by the agencies.

SSCI also asserted control over who was allowed to review the Report within the agencies. The SSCI Staff Director detailed the explicit instructions of the Chairman that, as specified in a motion adopted by the Committee, SSCI would only provide copies of its Report to specific individuals identified in advance. *See Higgins Decl.* ¶ 15, Exh. E to Decl. (Email from Staff Director Grannis to CIA (Dec. 13, 2012) (stating, "by explicit instruction of the Chairman, and as specified in the motion, we will only provide copies of the report to specific individuals who are identified in advance to the Chairman (through me)"). These measures indicate a continued congressional intent to maintain control over the Full Report.

The December 10, 2014 letter sent to the President by Senator Feinstein is not evidence of a contrary intent. In December 2014, then-SSCI Chairman Feinstein transmitted to the President an updated version of the Full Report – this one presumably final. Her cover letter expressed a desire for the Full Report to be "made available within the CIA and other components of the Executive Branch for use as broadly as appropriate to help make sure that this experience is never repeated." Exh. 3. The letter continued: "To help achieve that result, I hope you will encourage use of the full report in the future development of CIA training programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit." *Id.*

Although the then-Chairman encouraged the President to disseminate the Full Report to appropriate individuals within the Executive Branch, the letter does not indicate an intent to more broadly disseminate the Full Report, or to send the Full Report to the Executive Branch for a formal declassification review. Her letter could not have been intended to accomplish either of those things, because the SSCI had expressly declined to send the Full Report for a declassification review and declined to make the Full Report public. Senator Feinstein's actions should be interpreted consistent with SSCI's earlier decision. The Senator's letter is appropriately viewed as expressing continued congressional control by suggesting limited uses for the Full Report. Specifically, Senator Feinstein indicated that the Full Report should be used only within the Executive Branch "to help make sure that this experience is never repeated."<sup>5</sup> This reservation of control, in conjunction with the SSCI's determination not to declassify and release the Full Report, reinforces congressional intent not to relinquish control over the document. The letter encourages dissemination of the Full Report to individuals within the Executive Branch; it does not authorize the President to publicly release the Full Report or use and dispose of the Full Report in whatever way he sees fit. *See Judicial Watch*, 726 F.3d at 223. At most, the defendant agencies have obtained copies of the Full Report "solely for internal reference purposes," just like the transcript in *Goland*. 607 F.2d at 347; *see also Tax Analysts v. U.S. Dep't of Justice*, 845 F.2d at 1069 & n.20 (noting that "public reference documents that may be found in agency libraries or offices, such as treatises, dictionaries and weekly news magazines," often will not be considered agency records), *aff'd*, 492 U.S. 136 (1989).

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<sup>5</sup> This view is further reinforced by the highly classified nature of Full Report. Due to its classification, the Full Report cannot be widely circulated or even viewed by most Executive Branch employees.

Moreover, only the committee can seek to declassify the Full Report. *See, e.g.*, S. Res. 94-400, § 8(a) (“The Select Committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination *by such committee* that the public interest would be served by such disclosure.”) (emphasis added) available at <http://www.intelligence.senate.gov/pdfs113th/sprt1137.pdf>; SSCI Rule 4.1 (“No measures or recommendations shall be reported, favorably or unfavorably, from the Committee unless a majority of the Committee is actually present and a majority concur.”) available at <http://www.intelligence.senate.gov/pdfs113th/sprt1137.pdf>. There is no dispute between the current and former Chairs that the committee has not sought declassification of the Full Report in this case.

The recent letters from the new SSCI Chairman and the former SSCI Chairman (now Vice Chairman) highlight the lack of any institutional intent to relinquish control of the Full Report. While former Chairman Feinstein’s December 10, 2014, letter “encourage[s]” the dissemination of the Full Report within the Executive Branch, it does not approve public dissemination of the report. Likewise, the current SSCI Chairman has unambiguously expressed an intention to retain congressional control over the final report, and has indicated that he considers the report to be a ‘committee sensitive’ document. *See* Exh. 4 (“I consider [the Full] report to be a highly classified and committee sensitive document. It should not be entered into any Executive Branch system of records. For that reason, I request that all copies of the full and final report in the possession of the Executive Branch be returned immediately to the Committee.”). Although both Senators agree that the Full Report is not to be made public, their conflicting views on a politically sensitive issue underscore the importance of looking to the

Committee's official actions as evidence of congressional intent. And the Committee's official actions, as forcefully articulated in its 2009 correspondence, make it clear that it has not relinquished control over the Full Report. Exh. D to Higgins Decl.

**2. The defendant agencies cannot use or dispose of the record as they see fit.**

Because under the facts of this case, SSCI amply manifested its intent to retain control over the Full Report, it necessarily follows that the agencies cannot use or dispose of the Full Report as they see fit. As the D.C. Circuit has explained, “[i]f, under the *Goland* standard, Congress has manifested its own intent to retain control, then the agency – by definition – cannot lawfully ‘control’ the documents.” *United We Stand*, 359 F.3d at 600, 603. Here, the first two factors in the standard four-factor test – Congress’s intent to control and the agency’s ability to control – thus “fit together” in this case and confirm the decisive point: the agencies do not have “exclusive control of the disputed documents.” *Id.* at 600.

**3. The final two factors also favor a finding that the Full Report is not an agency record.**

Although the D.C. Circuit instructs against applying the final two factors of the standard test in a case involving a congressionally-created document, these final two factors – the extent to which agency personnel have read or relied upon the document, and the degree to which the document was integrated into the agency’s record system or files – also weigh in favor of a finding that the SSCI Report is not an agency document. As set forth in the Higgins, Frifield, Herrington and Kadzik declarations, none of the defendant agencies have freely used the Full Report; they have kept it stored in a SCIF, with limited access. Neither DOJ nor DOS, moreover, has even opened the package with the disc containing the full Report. And CIA and DoD have carefully limited access to and made only very limited use of the Report. Each agency

has ensured that the envelope containing the disc is marked with the appropriate classification markings, stored in a secure location consistent with the disc's classification, and labeled as a "congressional record." Higgins Decl. ¶¶ 22-24; Frifield Decl. ¶¶ 8-9; Herrington Decl. ¶¶ 6-7; Kadzik Decl., ¶¶ 6-9.

Moreover, the current SSCI Chairman has stated that, not only are the agencies not to use the full Report without the specific permission of the Committee, but they should return the discs that were delivered on December 20, 2014. Exh. 4. Indeed, because the Full Report remains highly classified and compartmented, it cannot be widely disseminated or used within the Executive Branch. The limited use of the Full Report by individuals within the agencies weighs against a finding that the Full Report is an agency record. *See, e.g., Judicial Watch, Inc. v. United States Secret Service*, 726 F.3d 208, 218-19 (D.C. Cir. 2013) (concluding that Secret Service did not have ability to use records "as it sees fit" when the Service could use records for only two limited purposes: "to perform background checks to determine whether and under what conditions to authorize a visitor's temporary admittance to the White House Complex," and "to verify the visitor's admissibility at the time of the visit").

Thus, the circumstances under which SSCI prepared the Full Report and provided it to the defendant agencies demonstrate a clear intent to retain control over access to, and dissemination of, the SSCI Report, precluding the agencies' ability to use the document as they see fit. In consideration of this congressional intent, the defendant agencies have restricted their employees' use of and access to the Full Report, and the document has not been widely disseminated or relied upon in the course of agency business.

**C. Policy Considerations Unique to the Congressional Context Require a Determination that the SSCI Report is not an “Agency Record.”**

In *United We Stand America, Inc.*, the D.C. Circuit recognized “policy considerations unique to the congressional context” that inform where to draw the line between congressional documents and agency records. *United We Stand*, 359 F.3d at 599. As noted above, these special “policy considerations” include: “(1) Congress’ clear intent to exempt congressional documents from disclosure under FOIA; (2) Congress’ clear prerogative to prevent disclosure of its own confidential materials; and (3) the danger of inhibiting the legislative . . . branch[] from making [its] records available to the executive branch.” *Goland*, 607 F.2d at 348 n. 48. Along the same lines, in *Judicial Watch*, 726 F.3d at 224, the D.C. Circuit concluded that constitutional separation of powers concerns provided an important reason to find that the logs of visitors to the Office of the President were not “agency records” within the meaning of FOIA. In finding that the visitor logs were not “agency records,” the *Judicial Watch* court – in language equally applicable here – cautioned against allowing a plaintiff to use FOIA to require the disclosure of documents otherwise not subject to FOIA: “And where Congress has intentionally excluded a governmental entity from the Act, we have been unwilling to conclude that documents or information of that entity can be obtained indirectly, by filing a FOIA request with an entity that *is* covered under that statute.” *Id.* at 225 (emphasis in original).

In this case, plaintiffs are seeking to use FOIA to circumvent the political process by which SSCI made the determination to seek to declassify and publicly release the SSCI Report’s Executive Summary, but not the Full Report. To effect that circumvention, plaintiffs invite this Court to ignore the limits of its subject-matter jurisdiction and wade into a Committee debate that, based upon the letters most recently sent by the Committee Chairman and Vice Chairman,

appears to be ongoing. The result of a finding that the Full Report is an “agency record” in this case would be a declassification review and release of non-exempt portions of the Full Report, a result entirely at odds with the SSCI’s decision not to send the report for a declassification review, and contrary to the direction of the current SSCI Chairman. Such a result would allow the plaintiffs indirectly to obtain a document that would otherwise not be subject to FOIA, as well as to circumvent both the exemption of congressional documents from disclosure, and Congress’s clear prerogative to prevent disclosure of its own confidential materials. Because such a result is plainly unwarranted, the Court should conclude that the Full Report is not an agency record and dismiss this count of plaintiffs’ complaint.

### **CONCLUSION**

For the foregoing reasons, this Court should dismiss plaintiffs’ FOIA claim for release of the Full Report.

Dated: January 21, 2015

Respectfully submitted,

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Acting Assistant Attorney General

RONALD C. MACHEN, Jr.  
United States Attorney

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Deputy Branch Director  
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*Counsel for the Defendant*



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

ACLU and ACLU Foundation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 13-1870
	)	(JEB)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF NEAL HIGGINS  
DIRECTOR, OFFICE OF CONGRESSIONAL AFFAIRS  
CENTRAL INTELLIGENCE AGENCY**

I, NEAL HIGGINS, hereby declare and state:

1. I am the Director of the Office of Congressional Affairs at the Central Intelligence Agency ("CIA" or "Agency"). I joined the CIA in June 2013 after working for the Senate Select Committee on Intelligence ("SSCI" or "Committee"), where I served as a senior advisor to Senators Bill Nelson and Martin Heinrich, regional monitor for the Persian Gulf, and budget monitor for the Federal Bureau of Investigation. Prior to joining the SSCI staff, I served as Senator Nelson's legislative director. Earlier in my career I worked as a member of the trial team prosecuting Slobodan Milosevic and as an associate attorney at the law firm of Sullivan & Cromwell LLP.

2. As Director of the Office of Congressional Affairs, I am the principal advisor to the Director of the CIA on all matters concerning relations with the Congress. My responsibilities include ensuring that the Congress is kept fully and currently informed of the Agency's intelligence activities via timely briefings and notifications, responding in a timely and complete fashion to congressional taskings and inquiries, tracking and advising on legislation that could affect the Agency, and educating CIA personnel about their responsibility to keep the Congress fully and currently informed. One of the congressional oversight committees with which I regularly interact in this capacity is the SSCI, which authored the document described below.

3. Through the exercise of my official duties, I am familiar with this civil action and the underlying Freedom of Information Act ("FOIA") request. The purpose of this declaration is to explain my understanding of the creation and history of the document at issue in this litigation: the current version of the full 6,963-page report authored by the SSCI concerning the CIA's former detention and interrogation program (the "Full Report"). To provide context, this declaration also discusses the Executive Summary as well as the Findings and Conclusions of the SSCI's study (the "Executive Summary").

4. As I explain in more detail below, the SSCI "approved" drafts of the Executive Summary and Full Report (collectively, the "Study") in December 2012 and transmitted copies of both documents to the Executive Branch for comment. After the CIA submitted its comments, the SSCI made changes and decided in April 2014 to send an updated version of the Executive Summary -- but not the Full Report -- to the President for declassification. The SSCI made additional changes to the Executive Summary and Full Report during the declassification process and publicly released a redacted, declassified version of the Executive Summary in December 2014.

5. The statements in this declaration are based on my personal knowledge and information made available to me in my official capacity. Specifically, these assertions are drawn from my own interactions with the SSCI, consultations with other CIA officials, a review of the relevant documentary record, and other information made available to me in my official capacity.

#### **I. Plaintiffs' FOIA Request**

6. By letter dated February 13, 2013, plaintiffs requested "disclosure of the recently adopted report of the Senate Select Committee on Intelligence relating to the CIA's post-9/11 program of rendition, detention, and interrogation." A true and correct copy of this letter is attached hereto as Exhibit A.

7. The Agency responded by letter dated February 22, 2013, and advised plaintiffs that the requested report was a "Congressionally generated and controlled document that is not subject to the FOIA's access provisions" and, accordingly, the CIA informed plaintiffs that it could not accept the request. A true and correct copy of this letter is attached hereto as Exhibit B. This lawsuit followed.

8. The SSCI continued to make changes to the Full Report during the pendency of this lawsuit. The Agency now has at least three different versions of the Full Report in its possession: a December 2012 version, a Summer 2014 version, and the final December 2014 version.

9. Plaintiffs submitted a new FOIA request on May 6, 2014 seeking "the updated version of the Senate Select Committee on Intelligence's Report." A true and correct copy of this letter is attached hereto as Exhibit C. The Agency has not issued a substantive response to that request. The plaintiffs amended their complaint on June 5, 2014, to seek the release of the "Updated SSCI Report." The Agency has interpreted this to refer to the most current and final version of the Full Report -- the December 2014 version. I understand that the plaintiffs are no longer seeking the Executive Summary.

## **II. Initial Drafting of SSCI Work Product**

10. In its congressional oversight role, the SSCI advised the CIA in March 2009 that it planned to conduct a review of the CIA's former detention and interrogation program. At the outset, the SSCI requested access to broad categories of CIA documents related to how the program was created, operated, and maintained, which would form the basis of SSCI's review. Due to the volume and the highly sensitive and compartmented nature of the classified information at issue, the CIA determined that in order to properly safeguard classified equities, the SSCI's review of Agency records would need to take place at CIA facilities.

11. Following discussions with the Committee, the CIA and SSCI reached an inter-branch accommodation that respected both the President's constitutional authorities over classified information and the Congress's constitutional authority to conduct oversight of the Executive Branch. Under this accommodation, the CIA established a secure electronic reading room at an Agency facility where designated SSCI personnel could review these highly classified materials. In addition, the CIA created a segregated network share drive at this facility that allowed members of the Committee and staffers to prepare and store their work product, including draft versions of the Full Report, in a secure environment.

12. One key principle necessary to this inter-branch accommodation, and a condition upon which SSCI insisted, was that the materials created by SSCI personnel on this segregated shared drive would not become "agency records" even if those documents were stored on a CIA computer system or at a CIA facility. Specifically, in a June 2, 2009, letter from the SSCI Chairman and Vice Chairman to the Director of the CIA, the Committee expressly stated that the SSCI's work product, including "draft and final recommendations, reports or other materials generated by Committee staff or Members," are "the property of the Committee" and "remain congressional records in their entirety." The SSCI further explained that the "disposition and control over these records, even after the completion of the Committee's review, lies exclusively with the Committee." As such, the Committee stated that "these records are not CIA records under the Freedom of Information Act or any other law" and that the CIA "may not integrate these records into its records filing systems, and may not disseminate or copy them, or use them for any purpose without prior written authorization from the Committee." Finally, the SSCI requested that in response to a FOIA request seeking these records, the CIA should "respond to the request or demand based upon the understanding that these are congressional, not CIA, records." The full passage reads as follows:

Any documents generated on the [segregated shared drive], as well as any other notes, documents, draft and final recommendations, reports or other materials generated by Committee staff or Members, are the property of the Committee and will be kept at the Reading Room [at an Agency facility] solely for secure safekeeping and ease of reference. These documents remain congressional records in their entirety and disposition and control over these records, even after the Committee's review, lies exclusively with the Committee. As such, these records are not CIA records under the Freedom of Information Act or any other law. The CIA may not integrate these records into its records filing systems, and may not disseminate or copy them, or use them for any purpose without authorization of the Committee. The CIA will return the records to the Committee immediately upon request in a manner consistent with [security procedures outlined elsewhere]. If the CIA receives any request or demand for access to these records from outside the CIA under the Freedom of Information Act or any other authority, the CIA will immediately notify the Committee and will respond to the request or demand based upon the understanding that these are congressional, not CIA, records.

A true and correct copy of this letter is attached hereto as Exhibit D.

13. Based on this inter-branch accommodation, SSCI personnel used the segregated shared drive to draft the document that is the subject of this litigation. As sections of their work product reached a certain stage, the SSCI worked with the CIA information technology and security personnel to transfer these drafts from the segregated shared drive to the SSCI's secure facilities at the U.S. Capitol complex so that the SSCI could complete the drafting process in its own workspace.

14. CIA understands that the SSCI made changes to its work product following the transfers. Thus, it is the Agency's understanding that the draft versions of the Full Report and Executive Summary that SSCI approved in December 2012 do not reside in the CIA facility described in the preceding paragraph. Nonetheless, the restrictions governing the SSCI's initial work product have informed how the CIA has treated versions of the SSCI's work product in the Agency's possession.

### **III. SSCI's Treatment of the Full Report**

#### **A. December 2012: Approval and Transmission of the Initial Draft**

15. On December 13, 2012, the SSCI decided in closed session to "approve" a draft of the Study -- both the Executive Summary and the Full Report -- and transmit it to the Executive Branch for review. The SSCI Staff Director notified the CIA and other federal agencies of the decision by e-mail that evening. He indicated that his staff would transmit a "limited number of hard copies" of the Study to the White House, the Office of the Director of National Intelligence, the CIA, and the Department of Justice for review. He also noted that his staff would provide copies of the Study only to specific individuals identified in advance to the Chairman. The Staff Director's e-mail indicates that these limitations on dissemination and access were imposed pursuant to "the motion adopted by the



Committee." A true and correct copy of this e-mail (with appropriate redactions) is attached hereto as Exhibit E.

16. Soon thereafter, the CIA provided the Committee with a list of Agency officers who would review the Executive Summary and Full Report on behalf of the CIA. The Committee approved access for these individuals for the limited purpose of providing comments in response to the Study. The CIA subsequently conducted a thorough review of the Study and drafted a lengthy response, a process that necessitated increasing the number of officers who had access to the Full Report or portions of the Full Report. However, access to that version of the document remained confined to authorized CIA personnel with the requisite security clearances and a need-to-know, and for the limited purpose of assisting the Agency in its interactions with the SSCI with respect to the Study and the Agency's response.<sup>1</sup>

**B. April 2014: SSCI's Decision to Send the Executive Summary to the President for Declassification**

17. The SSCI revised the Executive Summary and Full Report after considering the CIA's comments. The SSCI then met in closed session on April 3, 2014, to determine the proper disposition of those documents. The Committee ultimately

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<sup>1</sup> In addition, a small number of Agency personnel have reviewed portions of the Full Report for the limited purpose of assessing the proper classification of its contents or responding to FOIA requests.

decided to approve the updated versions and to send the Executive Summary to the President for declassification and eventual public release. My understanding is that the Committee did not approve declassification or release of the Full Report.

18. Because the April 3, 2014, decision was made in closed session, the exact text of the motion approved by the Committee is not publicly available. But it is clear from the public statements of SSCI members that the Committee did not decide to declassify or release the Full Report. For example, the SSCI Chairman noted in a press release announcing the April 3 decision that the Full Report would be "held for declassification at a later time." A true and correct copy of the press release is attached hereto as Exhibit F. The Chairman later explained in her foreword to the Executive Summary that she "chose not to seek declassification of the full Committee Study at this time" because "declassification of the more than six thousand page report would have significantly delayed the release of the Executive Summary."<sup>2</sup>

**C. December 2014: SSCI's Release of the Executive Summary**

19. The SSCI and the Executive Branch had many discussions after April 2014 regarding the Executive Summary, and the SSCI continued to edit the document in light of those discussions.

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<sup>2</sup> A copy of the Chairman's foreword is available on the SSCI website: [www.intelligence.senate.gov/study2014.html](http://www.intelligence.senate.gov/study2014.html).

It is my understanding that the SSCI also made conforming changes to the Full Report as it updated the Executive Summary.

20. When the SSCI and the Executive Branch concluded their discussions, the Director of National Intelligence declassified a partially redacted version of the Executive Summary. The SSCI then publicly released the Executive Summary, along with minority views and the additional views of various Committee members, on December 9, 2014. To the best of my knowledge, that was the last official action of the full Committee in connection with its study of the CIA's detention and interrogation program.

#### **IV. The CIA's Treatment of the Full Report**

21. In addition to the December 2012 draft, the SSCI Chairman transmitted at least two updated versions of the Full Report to the President and other agencies. The CIA received an updated version in the summer of 2014 and another updated version in December 2014. The December 2014 version is considered the final version of the Full Report.

22. All three versions of the Full Report are marked TOP SECRET, with additional access restrictions noted based on the sensitive compartmented information contained in them. The Full Report discusses intelligence operations, foreign relations, and other classified matters at length and in great detail.

23. The Agency has used the Full Report only for limited reference purposes. When the SSCI provided the CIA with a copy

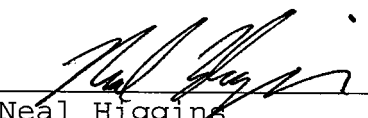
of the Full Report in December 2012, it did so for the sole purpose of allowing the Agency to review the document and provide comments. Indeed, the Committee placed express restrictions on dissemination of the Full Report. The CIA accordingly gave only a limited number of officers access to the December 2012 version of the Full Report for the limited purpose permitted by the SSCI: as a reference used when preparing the CIA's response.

24. Access to the subsequent versions transmitted in the summer of 2014 and December 2014 has been even more tightly controlled by CIA, and their use by CIA has been limited to reference purposes.

\* \* \*

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

Executed this 21st day of January 2015.

  
\_\_\_\_\_  
Neal Higgins  
Director, Office of Congressional  
Affairs  
Central Intelligence Agency

# Exhibit A

NATIONAL SECURITY  
PROJECT



F-2013-00829

February 14, 2013

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505  
Fax: 703.613.3007

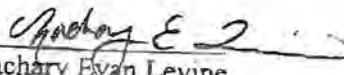
To the Information and Privacy Coordinator:

The accompanying FOIA Request was submitted in hard-copy format as an overnight parcel via USPS on February 13, 2013. At 11:07 this morning, I received an electronic notice from the USPS that a delivery had been attempted but failed at the above mailing address. A representative at the CIA's FOIA hotline informed me that a member of your team will soon pick up the parcel from the post office holding it. In the meantime, please accept this Fax version of the Request as a substitute, and begin processing immediately.

AMERICAN CIVIL LIBERTIES  
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FEB 14 2013

NATIONAL SECURITY  
PROJECT



February 13, 2013

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
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Washington, DC 20301-1155

Office of Information Programs and Services, A/GIS/IPS/RL  
U.S. Department of State  
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OFFICERS AND DIRECTORS  
S. GAN N. HELMAN  
PRESIDENT

ANTHONY J. DOMERIO  
EXECUTIVE DIRECTOR

Re: Request Under Freedom of Information Act /  
Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and various relevant implementing regulations, *see* 32 C.F.R. § 1900 (Central Intelligence Agency); 28 C.F.R. § 16.1 (Department of Justice); 32 C.F.R. § 286 (Department of Defense); and 22 C.F.R. § 171.10 *et seq.* (Department of State). The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU" or the "Requesters").<sup>1</sup>

<sup>1</sup> The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C.

Requesters seek the disclosure of the recently adopted report of the Senate Select Committee on Intelligence relating to the CIA's post-9/11 program of rendition, detention, and interrogation (the "Report").

\* \* \*

The Senate Select Committee on Intelligence ("SSCI") voted on Thursday, December 13, 2012, to approve a report detailing the findings of its three-year investigation of the CIA's rendition, detention, and interrogation program in the years after 9/11. According to the SSCI chairperson, the Report—which totals nearly 6,000 pages—is "the most definitive review" to be conducted of the CIA's program, including the Agency's use of so-called "enhanced interrogation techniques." See, e.g., Benjamin Wittes, *Senate Intelligence Committee Interrogation Report Approved—But Not Released*, Lawfare, Dec. 14, 2012, <http://bit.ly/Vwltwtf>; Natasha Lennard, *Senate-Approved CIA Torture Report Kept Under Wraps*, Salon, Dec. 14, 2012, <http://bit.ly/SWHsgh>; Scott Shane, *Senate Panel Approves Findings Critical of Detainee Interrogations*, N.Y. Times, Dec. 13, 2012, <http://nyti.ms/VwdORk>; Carrie Johnson, *Report On CIA Interrogation Tactics Revives Torture Debate*, NPR, Dec. 13, 2012, <http://n.pr/VDKwm0>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>.

In the course of its investigation, which began in 2009, the SSCI reviewed millions of pages of records documenting the day-to-day operations of the CIA's interrogation program. The Commission's intent was to produce "a detailed, factual description of how interrogation techniques were used, the conditions under which detainees were held, and the intelligence that was—or wasn't—gained from the program." Joint Statement from Senator Dianne Feinstein, Chairman, Senate Intelligence Committee, and Senator Carl Levin, Chairman, Senate Armed Services Committee, Apr. 27, 2012, <http://1.usa.gov/IKjkq0>.

The Report is of clear and enormous public importance. The American public has a right to know the full truth, based on a comprehensive government investigation, about the torture and other abusive treatment of detainees authorized by officials at the highest levels of our government.

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§ 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby their legislators.

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According to SSCI members, the Report puts to rest claims that the use of torture led to the capture of Osama bin Laden, a topic that continues to generate public debate. The Committee chairperson, Senator Feinstein, has said—based on her familiarity with the Committee's investigation—that “none of [the evidence that led to bin Laden] came as a result of harsh interrogation practices.” Scott Shane and Charlie Savage, *Bin Laden Raid Revives Debate on Value of Torture*, N.Y. Times, May 3, 2011, <http://nyti.ms/jDg9Ob>; Mark Hosenball, *Exclusive: Senate Probe Finds Little Evidence of Effective “Torture,”* Reuters, Apr. 7, 2012, <http://reut.rs/ltLmpH>.

Release of the Report is therefore critical to ensure timely public access to a congressional investigative report of historic significance. Other official investigative reports have been made available to the public: for example, the Senate Armed Services Committee Report, which concerned the Department of Defense's involvement in detainee abuses, was released in full in April 2009. The SSCI's Report likewise ought to be released.

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### I. Record Requested

Requesters seek disclosure of the SSCI's recently adopted report on the CIA's rendition, detention, and interrogation program in the years following 9/11.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that the Report be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession.

### II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); and 22 C.F.R. § 171.12(b). There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). In addition, the records sought relate to a “breaking news story of general public interest.” 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when “the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity”); *see also* 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2)(i).

- A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" (internal citation omitted)); *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is "to serve as the site of record for relevant and up-to-the-minute civil rights news and information" and to "disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws"—to be "primarily engaged in the dissemination of information").

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU's regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.<sup>2</sup> ACLU attorneys are interviewed frequently for news stories about

<sup>2</sup> *See, e.g.*, Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using "Mosque Outreach" for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of "Community Outreach"*, Dec. 1, 2011, <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American Civil Liberties Union, *FOIA Documents from FBI Show Unconstitutional Racial Profiling*, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem*, Oct. 19,

documents released through ACLU FOIA requests.<sup>3</sup>

The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.<sup>4</sup> For example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>5</sup> The ACLU also maintains a "Torture FOIA" webpage containing commentary about the ACLU's FOIA request, press releases, and analysis of the FOIA documents.<sup>6</sup> (That webpage also notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA. See Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007)). Similarly, the ACLU's webpage about the Office of Legal Counsel ("OLC") torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU's information gathering, research, and analysis; and ACLU videos about the memos.<sup>7</sup> In

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2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU*, June 24, 2009, <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

<sup>3</sup> See, e.g., Carrie Johnson, *Delay in Releasing CIA Report Is Sought; Justice Dep't Wants More Time to Review IG's Findings on Detainee Treatment*, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on 'High-Value' Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A., N.Y. Times*, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warrick, *Like FBI, CIA Has Used Secret 'Letters'*, Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

<sup>4</sup> See, e.g., <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/torturefoia>; <http://www.aclu.org/olcmemos>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/natsec/foia/search.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; and <http://www.aclu.org/exclusion>.

<sup>5</sup> <http://www.torturedatabase.org>.

<sup>6</sup> <http://www.aclu.org/torturefoia>.

<sup>7</sup> [http://www.aclu.org/safefree/genral/olc\\_memos.html](http://www.aclu.org/safefree/genral/olc_memos.html).

addition to websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.<sup>8</sup>

B. *The record sought is urgently needed to inform the public about actual or alleged government activity.*

The SSCI Report is urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest, specifically, the CIA's rendition, detention and interrogation program and its authorization of abusive techniques between 2002 and 2009. See 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2).

We make this Request to further the public's understanding of the CIA's program and the role of senior officials in conceiving of and authorizing the use of abusive interrogation techniques in the wake of September 11, 2001. The public has and continues to manifest an abiding interest in the conduct of the CIA and other executive agencies with respect to individuals seized, detained, and interrogated for counterterrorism purposes. While U.S. intelligence officials have acknowledged that the CIA used harsh and coercive interrogation techniques, Congress's investigation sets forth the most comprehensive account to date of what happened and why, and it is imperative that its findings be made public.

Over the past year, national news stories have highlighted the significance of the SSCI investigation for the public record. In the run-up to the committee vote last December, a host of articles and editorials were published emphasizing how important it is for the Report to be made public. See, e.g., Ed Pilkington, *Senate Under Pressure to Release Mammoth Report on CIA Interrogation*, The Guardian (U.K.), Dec. 13, 2012, <http://bit.ly/VECh2J>; *US Senate Panel to Vote on CIA Interrogations Report*, AFP, Dec. 11, 2012, <http://bit.ly/Z0ah1A>; Carolyn

<sup>8</sup> In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.



Lochhead, *Dianne Feinstein Torture Report May Conflict with Bin Laden Movie*, SFGate Blog, Dec. 11, 2012, <http://bit.ly/USwxpl>; Matt Bewig, *Senate Report on CIA Torture Techniques May Remain Secret*, AllGov, Dec. 10, 2012, <http://bit.ly/VLaXWE>; Jim Kouri, *Senate Democrats Urge Probe of CIA Interrogations During Bush Years*, Examiner, Dec. 7, 2012, <http://exm.nr/TZTQuk>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>; Editorial, *Our View: Snowe, Committee Should Release Torture Report*, Portland Press Herald, Nov. 23, 2012, <http://bit.ly/RYPVnf>. For the past several weeks, nationwide media outlets have continued to call for the Report's public release, emphasizing its critical importance. See, e.g., Mark Hosenball, *CIA Nominee Had Detailed Knowledge of "Enhanced Interrogation Techniques"*, Reuters, Jan. 30, 2013, <http://reut.rs/XgF44v>; Matt Sledge, *John Brennan Nomination Seen As Opening to Push for CIA Torture Report Release*, Huffington Post, Jan. 8, 2013, <http://huff.to/VD00SR>; Conor Friedersdorf, *Does it Matter if John Brennan was Complicit in Illegal Torture?*, The Atlantic, Jan. 8, 2013, <http://bit.ly/Wqxu5u>; Adam Serwer, *Obama's CIA Pick to Face Questions on Torture*, Mother Jones, Jan. 8, 2013, <http://bit.ly/VNAfiw>.

The contents of the Report will inform urgent and ongoing debate about the CIA interrogation program. The SSCI Report provides "the public with a comprehensive narrative of how torture insinuated itself into U.S. policy," a narrative that "is of more than historical interest" as the nation's lawmakers move forward. Editorial, *Free the Torture Report*, L.A. Times, Apr. 27, 2012, <http://lat.ms/lmBMZ9>. See also Scott Shane, *No Charges Filed on Harsh Tactics Used by the C.I.A.*, N.Y. Times, Aug. 30, 2012, <http://nyti.ms/RuZNRX>; Mark Hosenball, *Exclusive: Senate Probe Finds Little Evidence of Effective "Torture"*, Reuters, Apr. 27, 2012, <http://reut.rs/ltLmpH>; Marcy Wheeler, *Right on Cue, the Counter-Argument to the Torture Apology Comes Out*, Empty Wheel, Apr. 27, 2012, <http://bit.ly/Thha6s>.

Expedited processing should be granted.

### III. Application for Waiver or Limitation of Fees

#### *A. Release of the record is in the public interest.*

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested record is in the public interest because it is likely to contribute significantly to the public understanding of the United States government's operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); and 22 C.F.R. § 171.17.

The SSCI Report will significantly contribute to public understanding of the government's operations or activities. Moreover, disclosure is not in the ACLU's commercial interest. Any information obtained by the ACLU as a result of this FOIA request will be available to the public at no cost. See 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17.

Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

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*B. The ACLU qualifies as a representative of the news media.*

A waiver of search and review fees is warranted because the ACLU qualifies as a "representative of the news media" and the SSCI Report is not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); see also 32 C.F.R. § 1900.02(h)(3); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17. Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication."

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience," 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information." See *Elec. Privacy Info. Cir. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes).<sup>9</sup> Indeed, the ACLU recently was held

<sup>9</sup> On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT

to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at \*3 (D. Conn. May 14, 2012). See also *Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

\* \* \*

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 28 C.F.R. § 16.5(d)(4); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish the applicable records to:

Mitra Ebadolahi  
American Civil Liberties Union  
125 Broad Street

Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

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18th Floor  
New York, NY 10004

Thank you for your prompt attention to this matter.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).



Mitra Ebadolahi  
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# Exhibit B

Central Intelligence Agency



Washington, D.C. 20505

22 February 2013

Ms. Mitra Ebadolahi  
American Civil Liberties Union Foundation  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004

Reference: F-2013-00829

Dear Ms. Ebadolahi:

This is a final response to your 13 February 2013 Freedom of Information Act (FOIA) request, submitted on behalf of the American Civil Liberties Union Foundation. Your request was received in the office of the Information and Privacy Coordinator on 14 February 2013, and sought "the disclosure of the recently adopted report of the Senate Select Committee on Intelligence relating to the CIA's post-9/11 program of rendition, detention, and interrogation (the 'Report')."

You have requested a Congressionally generated and controlled document that is not subject to the FOIA's access provisions. Therefore, the Agency cannot accept your request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks  
Information and Privacy Coordinator

# Exhibit C

LEGAL DEPARTMENT



F-2014-01530

May 6, 2014

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

Office of Information Programs and Services, A/GIS/TPS/RL  
U.S. Department of State  
Washington, D.C. 20522-8100

Carmen L. Mallon, Chief of Staff  
Office of Information Policy  
U.S. Department of Justice  
1425 New York Avenue, N.W., Suite 11050  
Washington, D.C. 20530-0001

Re: Request Under Freedom of Information Act /  
Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and various relevant implementing regulations, *see* 32 C.F.R. § 1900 (Central Intelligence Agency); 28 C.F.R. § 16.1 (Department of Justice); 32 C.F.R. § 286 (Department of Defense); and 22 C.F.R. § 171.10 *et seq.* (Department of State). The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU" or the "Requesters").<sup>1</sup>

<sup>1</sup> The American Civil Liberties Union is a non-profit membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C.

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OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY J. ROMERO  
EXECUTIVE DIRECTOR

RICHARD ZACKS  
TREASURER

Requesters seek the disclosure of the updated version of the Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program* (the "Revised Report"). See Letter from Sen. Dianne Feinstein to President Barack Obama (Apr. 7, 2014), <http://bit.ly/OKXyvw> (describing the Revised Report).

\* \* \*

In March 2009, the Senate Select Committee on Intelligence ("SSCI" or "Committee") began an investigation into the CIA's post-9/11 program of rendition, secret detention, torture, and other cruel, inhuman, and degrading treatment of detainees. In the course of its investigation, the SSCI reviewed six million pages of government records documenting the treatment of detainees in CIA custody. The SSCI's intent was to produce "a detailed, factual description of how interrogation techniques were used, the conditions under which detainees were held, and the intelligence that was—or wasn't—gained from the program." Joint Statement from Senator Dianne Feinstein, Chairman, Senate Intelligence Committee, and Senator Carl Levin, Chairman, Senate Armed Services Committee (Apr. 27, 2012), <http://1.usa.gov/IKjkq0>.

At the end of 2012, the SSCI completed its *Study of the CIA's Detention and Interrogation Program*, which spans more than 6,000 pages, includes 35,000 footnotes, and cost \$40 million to produce (the "Initial Report"). On December 13, 2012, the SSCI formally adopted the Initial Report. See S. Rep. No. 113-7, at 13 (Mar. 22, 2013). The SSCI subsequently disseminated the Initial Report to Executive Branch agencies. After reviewing comments by the CIA and minority views of Committee Republicans, the SSCI made changes to the Initial Report, which led to the SSCI's adoption of the Revised Report.

On April 3, 2014, the SSCI voted to send the "Findings and Conclusions" and "Executive Summary" of the Revised Report to the Executive Branch for declassification review. See Press Release, Sen. Feinstein, Intelligence Committee Votes to Declassify Portions of CIA Study (Apr. 3, 2014), <http://1.usa.gov/1h1Y0kt>. In her transmittal letter to President Obama, SSCI Chairman Senator Feinstein stated that the Revised Report should be viewed as "the authoritative report on the CIA's actions," and that she would be transmitting the Revised Report to appropriate Executive Branch agencies. See Letter from Sen. Feinstein to President Obama, <http://bit.ly/OKXyvw>.

§ 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, and provides analyses of pending and proposed legislation.

The Revised Report is of clear and enormous public importance. The American public has a right to know the full truth, based on a comprehensive government investigation, about the torture and other abusive treatment of detainees authorized by officials at the highest levels of our government. The Revised Report is a crucial part of the historical record on the United States' abusive interrogation practices, as well as current and future public discussion about the CIA's treatment of detainees during the administration of President George W. Bush. Indeed, President Obama urged the Committee to complete the Revised Report and send it to the Executive Branch for declassification, "so that the American people can understand what happened in the past, and that can help guide us as we move forward." Jennifer Epstein, *Barack Obama Weighs in on Senate-CIA Flap*, Politico, Mar. 12, 2014, <http://politi.co/1eproSL>.

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According to Senator Feinstein, the Revised Report "exposes brutality that stands in stark contrast to our values as a nation. It chronicles a stain on our history that must never again be allowed to happen." Press Release, Sen. Feinstein, Intelligence Committee Votes to Declassify Portions of CIA Study, <http://1.usa.gov/1hlYOk1>. In addition to chronicling the CIA's detention and torture of detainees, the Revised Report "raises serious concerns about the CIA's management" of its detention and torture program. Press Release, Sens. Susan Collins and Angus King, Collins, King Announce Support for Declassification of Intelligence Committee Report on CIA Detention & Interrogation Program (Apr. 2, 2014), <http://1.usa.gov/1kws9v1>. Specifically, the Revised Report "concludes that the spy agency repeatedly misled Congress, the White House, and the public about the benefits" of the CIA's torture program. David S. Joachim, *Senate Panel Votes to Reveal Report on C.I.A. Interrogations*, N.Y. Times, Apr. 3, 2014, <http://nyti.ms/1eejlaR>; see also Letter from Sen. Mark Udall to President Barack Obama, Mar. 4, 2014, <http://bit.ly/1hwpU9p> (noting that "much of what has been declassified and released about the operation, management and effectiveness of the CIA's Detention and Interrogation Program is simply wrong. These inaccuracies are detailed in the 6,300 page Committee Study[.]").

Release of the Revised Report is therefore critical to ensure timely public access to a congressional investigative report of historic significance. For much of the last decade, the legality and wisdom of the CIA's practices, as well as the resulting harm to individuals' human rights, our nation's values, and our national security, have been matters of intense and ongoing public debate. A fair public debate of these issues must be informed by the Revised Report. Other official investigative reports have been made available to the public: for example, the Senate Armed Services Committee Report, which concerned the Department of

Defense's involvement in detainee abuses, was released in full in April 2009. The SSCI's Revised Report likewise ought to be released.

### I. Record Requested

Requesters seek disclosure of the SSCI's recently revised report on the CIA's rendition, detention, and interrogation program in the years following 9/11.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that the Revised Report be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession.

### II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); and 22 C.F.R. § 171.12(b). There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). In addition, the records sought relate to a "breaking news story of general public interest." 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when "the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity"); *see also* 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2)(i); 28 C.F.R. § 16.5(d)(1)(iv).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" (internal citation omitted)); *see also Leadership Conference on Civil Rights v. Gonzalez*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership

Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU's regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.<sup>2</sup> ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>3</sup>

<sup>2</sup> See, e.g., Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach”*, Dec. 1, 2011, <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American Civil Liberties Union, *FOIA Documents from FBI Show Unconstitutional Racial Profiling*, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem*, Oct. 19, 2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU*, June 24, 2009, <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

<sup>3</sup> See, e.g., Carrie Johnson, *Delay in Releasing CIA Report Is Sought; Justice Dep’t Wants More Time to Review IG’s Findings on Detainee Treatment*, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on ‘High-Value’ Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warlick, *Like FBI, CIA Has Used Secret ‘Letters.’* Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).



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The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.<sup>4</sup> For example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>5</sup> Another example is the ACLU's "Mapping the FBI" portal, which analyzes, compiles, and makes available to the public records obtained through the ACLU's FOIA requests for information about the FBI's racial and ethnic "mapping" of American communities. From the Mapping the FBI portal, users can search the FOIA documents by state and subject matter in addition to accessing detailed commentary and analysis about the records and government activities. Beyond websites, the ACLU has produced an in-depth television series on civil liberties, which has included analyses and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.<sup>6</sup>

*B. The record sought is urgently needed to inform the public about actual or alleged government activity.*

The Revised Report is urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest, specifically, the CIA's rendition, detention and interrogation program and its authorization of abusive techniques after September 11, 2001. See 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2).

<sup>4</sup> See, e.g., <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>; and <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>.

<sup>5</sup> <http://www.torturedatabase.org>.

<sup>6</sup> In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.

We make this Request to further the public's understanding of the CIA's program and the role of senior officials in conceiving of and authorizing the use of abusive interrogation techniques in the wake of September 11, 2001. The public has and continues to manifest an abiding interest in the conduct of the CIA and other executive agencies with respect to individuals seized, detained, and interrogated for counterterrorism purposes. While U.S. intelligence officials have acknowledged that the CIA used harsh and coercive interrogation techniques, Congress's investigation sets forth the most comprehensive account to date of what happened and why, and it is imperative that its findings be made public.

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Over the past eighteen months, national news stories have highlighted the significance of the SSCI investigation for the public record. In the run-up to the Committee vote on the Initial Report in December 2012, a host of articles and editorials were published emphasizing how important it is for the results of the SSCI's investigation to be made public. See, e.g., Ed Pilkington, *Senate Under Pressure to Release Mammoth Report on CIA Interrogation*, The Guardian (U.K.), Dec. 13, 2012, <http://bit.ly/VECh2J>; Carolyn Lochhead, *Dianne Feinstein Torture Report May Conflict with Bin Laden Movie*, SFGate Blog, Dec. 11, 2012, <http://bit.ly/USwxpl>; Matt Bewig, *Senate Report on CIA Torture Techniques May Remain Secret*, AllGov, Dec. 10, 2012, <http://bit.ly/VLaXWE>; Jim Kouri, *Senate Democrats Urge Probe of CIA Interrogations During Bush Years*, Examiner, Dec. 7, 2012, <http://exm.nr/TZTQuk>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>; Editorial, *Our View: Snowe, Committee Should Release Torture Report*, Portland Press Herald, Nov. 23, 2012, <http://bit.ly/RYPVnf>.

Similarly, during the weeks leading up to and following the Committee's declassification vote, nationwide media outlets have continued to emphasize the critical importance of the Revised Report. See, e.g., Bradley Klapper, *Feinstein Asks White House to Edit Torture Report*, Associated Press, Apr. 8, 2014, <http://bit.ly/1kwLrB1>; David S. Joachim, *Senate Panel Votes to Reveal Report on C.I.A. Interrogations*, N.Y. Times, Apr. 3, 2014, <http://nyti.ms/1ccjlaR>; Ali Watkins, Marisa Taylor, & David Lightman, *Senate Panel Finds CIA Illegally Interrogated Terror Suspects After 9-11*, McClatchy, Apr. 3, 2014, <http://bit.ly/1qzYEXj>; David Ignatius, *A Tortured Debate Between Congress and the CIA*, Wash. Post, Apr. 1, 2014, <http://wapo.st/1hEjEg>; Marisa Taylor & David Lightman, *CIA's Harsh Interrogation Tactics More Widespread Than Thought, Senate Investigators Found*, McClatchy, Apr. 1, 2014, <http://bit.ly/1hmoXPY>; Greg Miller, Adam Goldman, & Ellen Nakashima, *CIA Misled on Interrogation Program, Senate Report*

*Says, Wash. Post, Mar. 31, 2014, <http://wapo.st/1ccujNM>; Bradley Klapper, *Senate Report: Torture Didn't Lead to Bin Laden*, Associated Press, Mar. 31, 2014, <http://bit.ly/1i5ZD0t>; Mark Mazzetti, *Senate Asks C.I.A. to Share Its Report on Interrogations*, N.Y. Times, Dec. 17, 2013, <http://nyti.ms/1ccXqk>.*

The contents of the Revised Report will inform urgent and ongoing debate about the CIA interrogation program. The Revised Report provides "the public with a comprehensive narrative of how torture insinuated itself into U.S. policy," a narrative that "is of more than historical interest" as the nation's lawmakers move forward. Editorial, *Free the Torture Report*, L.A. Times, Apr. 27, 2012, <http://lat.ms/1mlBMZ9>.

Expedited processing should be granted.

### III. Application for Waiver or Limitation of Fees

#### A. *Release of the record is in the public interest.*

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested record is in the public interest because it is likely to contribute significantly to the public understanding of the United States government's operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); and 22 C.F.R. § 171.17.

The Revised Report will significantly contribute to public understanding of the government's operations or activities. Moreover, disclosure is not in the ACLU's commercial interest. Any information obtained by the ACLU as a result of this FOIA request will be available to the public at no cost. See 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17.

Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

*B. The ACLU qualifies as a representative of the news media.*

A waiver of search and review fees is warranted because the ACLU qualifies as a "representative of the news media" and the Revised Report is not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); see also 32 C.F.R. § 1900.02(h)(3); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17. Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication."

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information." See *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes).<sup>7</sup> Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at \*3 (D. Conn. May 14, 2012); see also *Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09-0642RSI, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

\* \* \*

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 28

<sup>7</sup> On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in October 2013, the State Department granted a fee waiver to the ACLU with respect to a request for documents concerning the United States' targeting killing program. In June 2013, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to standards governing intelligence collection and the Division's interpretation of an executive order. Since at least 2002, government agencies ranging from the Department of the Navy to the Department of Commerce have granted the ACLU fee waivers in connection with its FOIA requests.

C.F.R. § 16.5(d)(4); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish the applicable records to:

Ashley Gorski  
American Civil Liberties Union  
125 Broad Street  
18th Floor  
New York, NY 10004

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Thank you for your prompt attention to this matter.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).



Ashley Gorski  
American Civil Liberties Union  
Foundation  
125 Broad Street  
18th Floor  
New York, NY 10004  
Tel: 212.284.7305  
Fax: 212.549.2654  
Email: agorski@aclu.org

# Exhibit D

APPROVED FOR  
RELEASE DATE:  
14-Jan-2015

DAVID REARSEN, CALIFORNIA, CHAIRMAN  
CHRISTOPHER E. BOND, MISSOURI, VICE-CHAIRMAN  
JOHN A. ROCKWELLER, WEST VIRGINIA  
RON WYDEN, OREGON  
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BARBARA A. MICHELLE, MARYLAND  
ROBERT D. FERGUSON, WISCONSIN  
DILLON NELSON, FLORIDA  
MELISSA WORTHINGTON, RHODE ISLAND  
DENNY BACH, UTAH  
ELI SHAH, J. SHAW, MAINE  
SCOTT CAMPBELL, GEORGIA  
MICHAEL BURE, NORTH CAROLINA  
JOHN CORCORAN, DELAWARE  
JAMES E. BUCH, IDAHO

~~SECRET~~

United States Senate

SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, DC 20510-6475

MAURICE HILL, VIRGINIA, EX OFFICIO  
MITCH MANCINI, NEW YORK, EX OFFICIO  
CARL LEVIN, MICHIGAN, EX OFFICIO  
JOHN MCCAIN, ARIZONA, EX OFFICIO

DAVID GRAMER, STAFF DIRECTOR  
LOUIS E. TUCKER, MINORITY STAFF DIRECTOR  
KATHLEEN P. MICHEL, CHIEF CLERK

June 2, 2009

The Honorable Leon Panetta  
Director  
Central Intelligence Agency  
Washington, D.C. 20505

Dear Director Panetta:

In a letter dated March 26, 2009, the Senate Select Committee on Intelligence (the Committee) informed the Central Intelligence Agency (CIA) of its intention to conduct a thorough review of the CIA's detention and interrogation program. The letter included terms of reference approved by the Committee, as well as a document request.

To conduct our work in a comprehensive and timely matter, the Committee requires access to unredacted materials that will include the names of non-supervisory CIA officers, liaison partners, black-site locations, or contain cryptonyms or pseudonyms. We appreciate the CIA's concern over the sensitivity of this information. Our staff has had numerous discussions with Agency officials to identify appropriate procedures by which we can obtain the information needed for the study in a way that meets your security requirements. We agree that the Committee, including its staff, will conduct the study of CIA's detention and interrogation program under the following procedures and understandings:

1. Pursuant to discussions between the Committee and CIA about anticipated staffing requirements, the CIA will provide all Members of the Committee and up to 15 Committee staff (in addition to our staff directors, deputy staff directors, and counsel) with access to unredacted responsive information. In addition, additional cleared staff may be given access to small portions of the unredacted information for the purpose of reviewing specific documents or conducting reviews of individual detainees. These Committee staff have or will have signed standard Sensitive Compartmented Information non-disclosure agreements for classified information in the [redacted] compartment.

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The Honorable Leon Panetta

June 2, 2009

Page Two

2. CIA will make unredacted responsive operational files, as that term is defined in Section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)), available at a secure Agency electronic Reading Room facility (Reading Room) which will permit Committee staff electronic search, sort, filing, and print capability.
3. If responsive documents other than those contained in operational files identify the names of non-supervisory CIA officers, liaison partners, or black-site locations, or contain cryptonyms or pseudonyms, CIA will provide unredacted copies of those documents at the Reading Room.
4. Responsive documents other than those contained in operational files that do not identify the names of non-supervisory CIA officers, liaison partners, or black-site locations, or contain cryptonyms or pseudonyms will be made available to the Committee in the Committee's Sensitive Compartmented Information Facility (SCIF), unless other arrangements are made.
5. CIA will provide a stand-alone computer system in the Reading Room with a network drive for Committee staff and Members. This network drive will be segregated from CIA networks to allow access only to Committee staff and Members. The only CIA employees or contractors with access to this computer system will be CIA information technology personnel who will not be permitted to copy or otherwise share information from the system with other personnel, except as otherwise authorized by the Committee.
6. Any documents generated on the network drive referenced in paragraph 5, as well as any other notes, documents, draft and final recommendations, reports or other materials generated by Committee staff or Members, are the property of the Committee and will be kept at the Reading Room solely for secure safekeeping and ease of reference. These documents remain congressional records in their entirety and disposition and control over these records, even after the completion of the Committee's review, lies exclusively with the Committee. As such, these records are not CIA records under the Freedom of Information Act or any other law. The CIA may not

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The Honorable Leon Panetta  
June 2, 2009  
Page Three

integrate these records into its records filing systems, and may not disseminate or copy them, or use them for any purpose without the prior written authorization of the Committee. The CIA will return the records to the Committee immediately upon request in a manner consistent with paragraph 9. If the CIA receives any request or demand for access to these records from outside the CIA under the Freedom of Information Act or any other authority, the CIA will immediately notify the Committee and will respond to the request or demand based upon the understanding that these are congressional, not CIA, records.

7. CIA will provide the Committee with lockable cabinets and safes, as required, in the Reading Room.
8. If Committee staff identifies CIA-generated documents or materials made available in the Reading Room that staff would like to have available in the Committee SCIF, the Committee will request redacted versions of those documents or materials in writing. Committee staff will not remove such CIA-generated documents or materials from the electronic Reading Room facility without the agreement of CIA.
9. To the extent Committee staff seeks to remove from the Reading Room any notes, documents, draft and final recommendations, reports or other materials generated by Committee Members or staff, Committee staff will ensure that those notes, documents, draft and final recommendations, reports or other materials do not identify the names of non-supervisory CIA officers, liaison partners, or black-site locations, or contain cryptonyms or pseudonyms. If those documents contain such information, Committee staff will request that CIA conduct a classification review to redact the above-referenced categories of information from the materials or replace such information with alternative code names as determined jointly by the Committee and the CIA.

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The Honorable Leon Panetta  
June 2, 2009  
Page Four

Any document or other material removed from the reading room pursuant to paragraphs 8, 9, or 10 will be stored in the Committee SCIF or transferred and stored on Committee TS//SCI systems, under Committee security procedures.

10. Any notes, documents, draft and final recommendations, reports or other materials prepared by Committee Members or Staff based on information accessed in the Reading Room will be prepared and stored on TS//SCI systems. Such materials will carry the highest classification of any of the underlying source materials. If the Committee seeks to produce a document that carries a different classification than the underlying source material, the Committee will submit that document to CIA, or if appropriate to the DNI, for classification review and, if necessary, redaction.
11. The Reading Room will be available from 0700 to 1900 hours, official government business days, Monday through Friday. If Committee staff requires additional time or weekend work is required, Committee staff will make arrangements with CIA personnel with as much advance notice as possible.
12. The Committee will memorialize any requests for documents or information in writing and CIA will respond to those requests in writing.
13. All Committee staff granted access to the Reading Room shall receive and acknowledge receipt of a CIA security briefing prior to reviewing CIA documents at the Reading Room.

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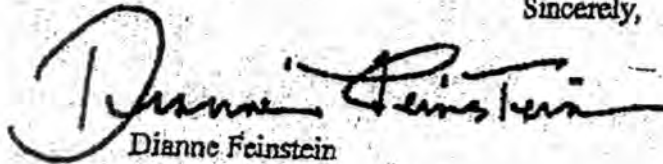
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The Honorable Leon Panetta  
June 2, 2009  
Page Five

We anticipate that agreement to these conditions will address your concerns about Committee access to unredacted materials responsive to the Committee's document request. We look forward to immediate staff access to those materials.

In addition, we expect that the discussions and agreements over access to the study information are a matter restricted to the Congress and the Executive branch. As such, neither this letter nor derivative documents may be provided or presented to CIA's liaison partners.

Sincerely,

  
Dianne Feinstein  
Chairman

  
Christopher S. Bond  
Vice Chairman

~~SECRET~~

# Exhibit E

UNCLASSIFIED

Director of Office of  
Congressional Affairs



From: Grannis, D (Intelligence) Subject: [redacted] SSCI report, reading

Date: 12/13/2012 05:18 PM

To:

Mark David Agrast

Cc:

Please respond to "Grannis, D  
(Intelligence)"

["\*\*\*\* Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. \*\*\*\*"]

CLASSIFICATION: UNCLASSIFIED

The SSCI approved today its report on CIA Detention and Interrogation.  
Per the motion adopted by the Committee, we will be transmitting to the White House, the ODNI, the CIA, and the Department of Justice a limited number of hard copies of the report for review.  
We will send an official transmittal letter tomorrow.  
However, by explicit instruction of the Chairman, and as specified in the motion, we will only provide copies of the report to specific individuals who are identified in advance to the Chairman (through me).

Regards,

David

David Grannis

Staff Director

Senate Select Committee on Intelligence



UNCLASSIFIED

# Exhibit F

# United States Senator Dianne Feinstein

**Apr 03 2014**

## Intelligence Committee Votes to Declassify Portions of CIA Study

*Washington*—Senate Intelligence Committee Chairman Dianne Feinstein (D-Calif.) released the following statement after the committee voted to declassify the executive summary and conclusions of its landmark report on the CIA's Detention and Interrogation Program:

**“The Senate Intelligence Committee this afternoon voted to declassify the 480-page executive summary as well as 20 findings and conclusions of the majority’s five-year study of the CIA Detention and Interrogation Program, which involved more than 100 detainees.**

**“The purpose of this review was to uncover the facts behind this secret program, and the results were shocking. The report exposes brutality that stands in stark contrast to our values as a nation. It chronicles a stain on our history that must never again be allowed to happen.**

**“This is not what Americans do.**

**“The report also points to major problems with CIA’s management of this program and its interactions with the White House, other parts of the executive branch and Congress. This is also deeply troubling and shows why oversight of intelligence agencies in a democratic nation is so important.**

**“The release of this summary and conclusions in the near future shows that this nation admits its errors, as painful as they may be, and seeks to learn from them. It is now abundantly clear that, in an effort to prevent further terrorist attacks after 9/11 and bring those responsible to justice, the CIA made serious mistakes that haunt us to this day. We are acknowledging those mistakes, and we have a continuing responsibility to make sure nothing like this ever occurs again.**

**“The full 6,200-page full report has been updated and will be held for declassification at a later time.**

**“I want to recognize the tireless and dedicated work of the staff who produced this report over the past five years, under trying circumstances. They have made an enormous contribution. I also thank**



**the senators who have supported this review from its beginning and have ensured that we reached this point.”**

### **Background**

The report describes the CIA’s Detention and Interrogation Program between September 2001 and January 2009. It reviewed operations at overseas CIA clandestine detention facilities, the use of CIA’s so-called “enhanced interrogation techniques” and the conditions of the more than 100 individuals detained by CIA during that period.

The executive summary, findings, and conclusions—which total more than 500 pages—will be sent to the president for declassification review and subsequent public release. President Obama has indicated his support of declassification of these parts of the report and CIA Director Brennan has said this will happen expeditiously. Until the declassification process is complete and that portion of the report is released, it will remain classified.

The Senate Intelligence Committee initiated the study of CIA’s Detention and Interrogation Program in March 2009. Committee staff received more than 6 million pages of materials, the overwhelming majority of which came from the CIA, but also included documents from the Departments of State, Justice and Defense. Committee staff reviewed CIA operational cables, memoranda, internal communications, photographs, financial documents, intelligence analysis, transcripts and summaries of interviews conducted by the CIA inspector general while the program was ongoing and other records for the study.

In December 2012, the committee approved the report with a bipartisan vote of 9-6 and sent it to the executive branch for comment. For the past several months, the committee staff has reviewed all comments by the CIA as well as minority views by committee Republicans and made changes to the report as necessary to ensure factual accuracy and clarity.

###

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Permalink: <http://www.feinstein.senate.gov/public/index.cfm/2014/4/senate-intelligence-committee-votes-to-declassify-portions-of-cia-detention-interrogation-study>



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

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AMERICAN CIVIL LIBERTIES UNION,  
and AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et  
al.

Defendants.

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) Civil Action No. 1:13-cv-01870 (JEB)  
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**DECLARATION OF JULIA E. FRIFIELD**

Pursuant to 28 U.S.C. § 1746, I, Julia E. Frifield, declare and state as follows:

1. I am the Assistant Secretary of the Bureau of Legislative Affairs (“H”) of the U.S. Department of State (“Department”). In this capacity, I am responsible for advising the Secretary of State on legislative matters, and directing the staff of H. Prior to holding this position, I served as Chief of Staff to U.S. Senator Barbara Mikulski.

2. H coordinates legislative activity for the Department and advises the Secretary, the Deputy Secretaries, and other Department principals on legislative strategy. H facilitates effective communication between Department officials and the Members of Congress and their staffs. H works closely with authorizing, appropriations, and oversight committees of the House

and Senate, as well as with individual Members that have an interest in Department or foreign policy issues.

3. Through the exercise of my official duties, I am familiar with this civil action and the underlying Freedom of Information Act ("FOIA") request at issue. The purpose of this declaration is to explain the Department's receipt, treatment, and handling of the record sought, the full revised Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program* ("SSCI Report"). Additionally, this declaration details the instructions the Department has received from Congress regarding treatment of the report.

4. This declaration is based on my personal knowledge and information acquired in my official capacity in the performance of my official functions.

#### **PLAINTIFF'S FOIA REQUEST**

5. I have been informed that, by letter dated May 6, 2014, the American Civil Liberties Union and the American Civil Liberties Union Foundation ("Plaintiffs") submitted a FOIA request to the Department, excerpted in relevant part below:

"Requesters seek the disclosure of the updated version of the Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program* (the "Revised Report"). See Letter from Sen. Dianne Feinstein to President Barack Obama (Apr. 7, 2014), <http://bit.ly/OKXyvw> (describing the Revised Report)."

6. Plaintiffs filed a second amended complaint in this lawsuit to compel the Department's production of the report on June 5, 2014.

**THE DEPARTMENT'S RECEIPT AND TREATMENT OF THE SSCI REPORT**

7. By cover letter dated December 10, 2014, Senator Dianne Feinstein, then Chairman of the Senate Select Committee on Intelligence, transmitted to President Barack Obama the “full and final” version of the SSCI Report. Numerous Executive Branch officials were copied on the letter, including Secretary of State John F. Kerry. Prior to the issuance of this letter, the Department had never received the full updated version of the SSCI Report. In the letter, Senator Feinstein requested that the report be made available to Executive Branch agencies “as appropriate to help make sure this experience is never repeated.”

8. On December 12, 2014, the Feinstein letter and a compact disc (“CD”) were hand-delivered by an official from SSCI to a Department official within H’s Office of Senate Affairs. The CD was classified at the Top Secret level and marked as containing Sensitive Compartmented Information (“SCI”), as labeled on the inner envelope holding the CD. SCI refers to a method of handling certain types of classified information related to specific national security topics, particularly intelligence sources, analysis, and methods. The inner envelope containing the CD was never opened, and the CD was immediately placed into a secure storage facility. It was later transferred to a secured location within the Bureau of Intelligence and Research (“INR”), which is the focal point for receiving and storing sensitive compartmented classified information. The inner envelope containing the CD remains sealed and the Department has marked the outer envelope “Congressional Record – Do Not Open, Do Not Access.”

9. Since receiving the CD in the Department, the contents of the disc have never been opened, accessed, or read, as indicated by the fact that the inner envelope remains sealed. Neither the CD nor its contents have been integrated into the Department’s files or records




systems. To the extent certain individuals have handled the CD, it has been for the sole purpose of ensuring it is properly and securely stored.

10. By letter dated January 14, 2015, the current Chairman of the Senate Select Committee on Intelligence, Senator Richard Burr, sent a letter to President Obama, cc'ing Secretary of State John F. Kerry, among others. In this letter, Chairman Burr made it clear that he considers the report "to be a highly classified and committee sensitive report," and that "[i]t should not be entered into any Executive Branch systems of records." Accordingly, he requested that the SSCI Report be returned to the Committee and that, should Executive Branch officials wish to view the report, the Committee would attempt to make other accommodations available.

\*\*\*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 21 day of January 2015, Washington, D.C.

  
\_\_\_\_\_  
Julia E. Frifield

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

AMERICAN CIVIL LIBERTIES UNION,  
and AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION,

Plaintiffs,

V.

CENTRAL INTELLIGENCE AGENCY, et  
al.

Defendants.

Civil Action No. 1:13-cv-01870 (JEB)

## DECLARATION OF MARK H. HERRINGTON

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of General Counsel (“OGC”) (Office of Litigation Counsel) of the United States Department of Defense (“DoD”). OGC provides legal advice to the Secretary of Defense and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act (“FOIA”) litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency.

2. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. Specifically, I am the OGC counsel assigned to this case.

**Purpose of this Declaration**

3. I submit this declaration to provide information regarding DoD's handling of the record that is the subject of this litigation.

**Plaintiff's Request**

4. On May 6, 2014, Plaintiffs requested "the updated version of the Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program*." ("SSCI Report")

**Status**

5. At the time of Plaintiffs' request, DoD did not have a complete version of the SSCI Report. DoD had previously received a copy of the SSCI Report executive summary during the classification review conducted by the Executive Branch prior to the release of the declassified version of that executive summary. DoD first received a copy of the full version in December 2014 after the SSCI publically released the declassified Executive Summary of the SSCI Report. The SSCI report was transmitted with a letter dated December 10, 2014, from Senator Dianne Feinstein, who was then SSCI Chairman.

6. DoD has treated the SSCI Report as a congressional record and continues to do so. The Report has not been placed within a DoD system of records, it is stored in secure locations, access to it is limited to an small number of persons with proper clearance and a need to know, and access is strictly controlled by the Under Secretary of Defense for Intelligence.

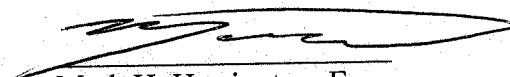
7. Through inter-agency discussions within the Executive Branch, DoD was aware that the SSCI had been adamant that the draft version of the Report could not be integrated with agency record filing systems, and that disposition and control over the records, even after the completion of the Committee's review, lay exclusively with the Committee. With those

admonishments in mind, DoD has treated the classified executive summary and this full version similarly. DoD has two copies of the full SSCI Report and both are kept in sensitive compartmented information facilities ("SCIF"s). One is kept in a safe in the SCIF office of the Under Secretary of Defense for Intelligence. The other copy is on a stand-alone, TOP SECRET laptop in the SCIF office of the Under Secretary's principal legal adviser, the DoD Deputy General Counsel (Intelligence), so that she may address/advise on litigation and other legal related matters, as necessary. Only the Deputy General Counsel has access to that copy. Further, given the highly classified nature of the report, broad dissemination throughout DoD is not possible.

8. DoD's treatment of the full SSCI Report is consistent with all previous indications from Congress about the use of the Report. DOD interpreted the December 10, 2014, letter from Senator Feinstein as consistent with these caveats, and has continued to treat the Report consistent with the understanding that the Report remains a congressional record.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 21st day of January, 2015, in Arlington, VA.



Mark H. Herrington, Esq.

1. I have served as the Assistant Attorney General for Legislative Affairs at the Department of Justice (DOJ or Department) since I was confirmed by the Senate in June 2014. In the year prior to that, I was a Deputy Assistant Attorney General and then the Principal Deputy Assistant Attorney General for Legislative Affairs. Prior to joining DOJ, I was in private practice at Dickstein Shapiro LLP. Earlier in my career, I served as an Assistant United States Attorney in the District of Columbia. As Assistant Attorney General for Legislative Affairs, I head the DOJ's Office of Legislative Affairs (OLA), which is responsible for managing the Department's relationship with Congress. OLA represents the Department in communications to Congress and articulates congressional interests and priorities to Department leadership. This involves communications about legislative, oversight, and other matters of interest to Members



of Congress. In particular, I interact regularly with Members and staff of the Senate Select Committee on Intelligence (SSCI) about legislative and oversight matters.

2. Through the exercise of my official duties, I am familiar with this civil action and the underlying Freedom of Information Act (“FOIA”) request. The purpose of this declaration is to explain DOJ’s receipt and treatment of the document at issue in this litigation – the current version of the full report authored by SSCI concerning the CIA’s former detention and interrogation program (the “Full Report”).

3. The statements in this declaration are based on my personal knowledge and information made available to me in my official capacity.

#### **PLAINTIFF’S FOIA REQUEST**

4. By letter dated May 6, 2014, the plaintiffs in this case submitted a FOIA request to DOJ, seeking “the updated version of the Senate Select Committee on Intelligence’s Report.” A true and correct copy of this letter is attached hereto as Exhibit A. On May 22, 2014, Vanessa Brinkmann, Senior Counsel in the Office of Information Policy, responded on behalf of OLA that, “the Central Intelligence Agency (CIA) is the agency best suited to respond to your request. I understand that you have already submitted your request to the CIA. That agency will respond to you directly if it has not done so already.” A true and correct copy of this letter is attached hereto as Exhibit B. On June 5, 2014, the plaintiffs amended their prior complaint in this lawsuit to seek the release of the “Updated SSCI Report,” and added DOJ as a defendant on that claim. DOJ has interpreted this to refer to the most current version of the Full Report – the December 2014 version, which is the only updated version of the Full Report that DOJ has received since DOJ was added as a defendant in this lawsuit.

**DOJ'S RECEIPT AND TREATMENT OF THE FULL REPORT**

5. I am informed that on December 12, 2014, a former member of my staff received two copies of the Full Report by hand delivery from a SSCI Security Officer. One copy was for DOJ; the other copy was for the Federal Bureau of Investigation (FBI). Each copy was accompanied by a December 10, 2014 letter from SSCI Chairman Dianne Feinstein to the President. The package is classified as "Top Secret/Sensitive Compartmented Information ("TS/SCI") with additional classification markings for the applicable codeword. SCI is classified information concerning, or derived from, intelligence sources, methods, or analytical processes requiring handling within formal access control systems. SCI is sometimes referred to as "codeword" information, and its sensitivity requires that it be protected in a much more controlled environment than other classified information.

6. The two copies of the Full Report were delivered in a single package containing two discs. The same former staff member, who was the only member of the OLA staff other than I who – because of the classification level of the Full Report – had the clearances required to handle that document, signed for the copies for both DOJ and the FBI, and took the package to the OLA Sensitive Compartmented Information Facility ("SCIF") where he opened it and retrieved the DOJ copy of the Full Report with the accompanying letter. He rewrapped the copy for the FBI in the original wrapping, the interior of which was marked TS/SCI with the applicable codeword, placed the DOJ copy in another envelope, marked it with the same classification markings, as well as "Senate Intel RDI Report," and immediately placed both copies into OLA's SCIF. The CDs themselves were also marked TS/SCI, with the applicable codeword marking.

7. The copies of the Full Report that OLA received were not distributed further, and I am advised that the member of OLA's staff who signed for the documents and placed them in the SCIF did not open either of the CD cases, and has not reviewed the documents.

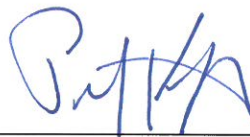
8. I have not reviewed the Full Report, and the FBI has neither retrieved nor reviewed its copy of the Full Report, which remains in the OLA SCIF. The DOJ copy of the Full Report also remains unopened in the OLA SCIF, and has exterior markings that state: "Senate Intel RDI Report," "Congressional Record," and is marked "TS/SCI" with the applicable codeword marking.

9. The disc itself has not been integrated into any agency records system, although the cover letter that accompanied it, a copy of a letter from Senator Feinstein to the President, was separated from the disc and assigned an agency tracking number. The disc itself is referenced as a classified attachment to the letter.

\* \* \*

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

Executed this 21<sup>st</sup> day of January 2015.



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PETER J. KADZIK  
Assistant Attorney General  
Office of Legislative Affairs  
U.S. Department of Justice

## Exhibit A

05-07-2014 12:17pm From:ACLU  
LEGAL DEPARTMENT

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T-936 P.002/011 F-614



RECEIVED

MAY 12 2014

Office of Information Policy

May 6, 2014

14-F-0803  
OLA  
FOIA  
SBT  
DRH Reviewer

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

Office of Information Programs and Services, A/GIS/IPS/RL  
U.S. Department of State  
Washington, D.C. 20522-8100

Carmen L. Mallon, Chief of Staff  
Office of Information Policy  
U.S. Department of Justice  
1425 New York Avenue, N.W., Suite 11050  
Washington, D.C. 20530-0001

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
LEGAL DEPARTMENT  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
7/212 549.2500  
F/212 549 2051  
WWW.ACLU.ORG

OFFICERS AND DIRECTORS  
SUSAN N. BERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

RICHARD ZACKS  
TREASURER

Re: Request Under Freedom of Information Act /  
Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and various relevant implementing regulations, *see* 32 C.F.R. § 1900 (Central Intelligence Agency); 28 C.F.R. § 16.1 (Department of Justice); 32 C.F.R. § 286 (Department of Defense); and 22 C.F.R. § 171.10 *et seq.* (Department of State). The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU" or the "Requesters").<sup>1</sup>

<sup>1</sup> The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C.

Requesters seek the disclosure of the updated version of the Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program* (the "Revised Report"). See Letter from Sen. Dianne Feinstein to President Barack Obama (Apr. 7, 2014), <http://bit.ly/OKXyvw> (describing the Revised Report).

\* \* \*

In March 2009, the Senate Select Committee on Intelligence ("SSCI" or "Committee") began an investigation into the CIA's post-9/11 program of rendition, secret detention, torture, and other cruel, inhuman, and degrading treatment of detainees. In the course of its investigation, the SSCI reviewed six million pages of government records documenting the treatment of detainees in CIA custody. The SSCI's intent was to produce "a detailed, factual description of how interrogation techniques were used, the conditions under which detainees were held, and the intelligence that was—or wasn't—gained from the program." Joint Statement from Senator Dianne Feinstein, Chairman, Senate Intelligence Committee, and Senator Carl Levin, Chairman, Senate Armed Services Committee (Apr. 27, 2012), <http://1.usa.gov/IKjkq0>.

At the end of 2012, the SSCI completed its *Study of the CIA's Detention and Interrogation Program*, which spans more than 6,000 pages, includes 35,000 footnotes, and cost \$40 million to produce (the "Initial Report"). On December 13, 2012, the SSCI formally adopted the Initial Report. See S. Rep. No. 113-7, at 13 (Mar. 22, 2013). The SSCI subsequently disseminated the Initial Report to Executive Branch agencies. After reviewing comments by the CIA and minority views of Committee Republicans, the SSCI made changes to the Initial Report, which led to the SSCI's adoption of the Revised Report.

On April 3, 2014, the SSCI voted to send the "Findings and Conclusions" and "Executive Summary" of the Revised Report to the Executive Branch for declassification review. See Press Release, Sen. Feinstein, Intelligence Committee Votes to Declassify Portions of CIA Study (Apr. 3, 2014), <http://1.usa.gov/1hlYOk>. In her transmittal letter to President Obama, SSCI Chairman Senator Feinstein stated that the Revised Report should be viewed as "the authoritative report on the CIA's actions," and that she would be transmitting the Revised Report to appropriate Executive Branch agencies. See Letter from Sen. Feinstein to President Obama, <http://bit.ly/OKXyvw>.

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§ 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, and provides analyses of pending and proposed legislation.



The Revised Report is of clear and enormous public importance. The American public has a right to know the full truth, based on a comprehensive government investigation, about the torture and other abusive treatment of detainees authorized by officials at the highest levels of our government. The Revised Report is a crucial part of the historical record on the United States' abusive interrogation practices, as well as current and future public discussion about the CIA's treatment of detainees during the administration of President George W. Bush. Indeed, President Obama urged the Committee to complete the Revised Report and send it to the Executive Branch for declassification, "so that the American people can understand what happened in the past, and that can help guide us as we move forward." Jennifer Epstein, *Barack Obama Weighs in on Senate-CIA Flap*, Politico, Mar. 12, 2014, <http://politi.co/1eproSL>.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

According to Senator Feinstein, the Revised Report "exposes brutality that stands in stark contrast to our values as a nation. It chronicles a stain on our history that must never again be allowed to happen." Press Release, Sen. Feinstein, Intelligence Committee Votes to Declassify Portions of CIA Study, <http://1.usa.gov/1hlYOKt>. In addition to chronicling the CIA's detention and torture of detainees, the Revised Report "raises serious concerns about the CIA's management" of its detention and torture program. Press Release, Sens. Susan Collins and Angus King, Collins, King Announce Support for Declassification of Intelligence Committee Report on CIA Detention & Interrogation Program (Apr. 2, 2014), <http://1.usa.gov/1kws9vI>. Specifically, the Revised Report "concludes that the spy agency repeatedly misled Congress, the White House, and the public about the benefits" of the CIA's torture program. David S. Joachim, *Senate Panel Votes to Reveal Report on C.I.A. Interrogations*, N.Y. Times, Apr. 3, 2014, <http://nyti.ms/1eejlaR>; see also Letter from Sen. Mark Udall to President Barack Obama, Mar. 4, 2014, <http://bit.ly/1hwpU9p> (noting that "much of what has been declassified and released about the operation, management and effectiveness of the CIA's Detention and Interrogation Program is simply wrong. These inaccuracies are detailed in the 6,300 page Committee Study[.]").

Release of the Revised Report is therefore critical to ensure timely public access to a congressional investigative report of historic significance. For much of the last decade, the legality and wisdom of the CIA's practices, as well as the resulting harm to individuals' human rights, our nation's values, and our national security, have been matters of intense and ongoing public debate. A fair public debate of these issues must be informed by the Revised Report. Other official investigative reports have been made available to the public; for example, the Senate Armed Services Committee Report, which concerned the Department of

Defense's involvement in detainee abuses, was released in full in April 2009. The SSCI's Revised Report likewise ought to be released.

### **I. Record Requested**

Requesters seek disclosure of the SSCI's recently revised report on the CIA's rendition, detention, and interrogation program in the years following 9/11.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that the Revised Report be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession.

### **II. Application for Expedited Processing**

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); and 22 C.F.R. § 171.12(b). There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). In addition, the records sought relate to a "breaking news story of general public interest." 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when "the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity"); *see also* 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2)(i); 28 C.F.R. § 16.5(d)(1)(iv).

*A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" (internal citation omitted)); *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership



Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.<sup>2</sup> ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>3</sup>

<sup>2</sup> See, e.g., Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach,”* Dec. 1, 2011, <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American Civil Liberties Union, *FOIA Documents from FBI Show Unconstitutional Racial Profiling*, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem*, Oct. 19, 2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison. Says ACLU*, June 24, 2009, <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

<sup>3</sup> See, e.g., Carrie Johnson, *Delay in Releasing CIA Report Is Sought; Justice Dep’t Wants More Time to Review IG’s Findings on Detainee Treatment*, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on ‘High-Value’ Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warrick, *Like FBI, CIA Has Used Secret ‘Letters,’* Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

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The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.<sup>4</sup> For example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>5</sup> Another example is the ACLU's "Mapping the FBI" portal, which analyzes, compiles, and makes available to the public records obtained through the ACLU's FOIA requests for information about the FBI's racial and ethnic "mapping" of American communities. From the Mapping the FBI portal, users can search the FOIA documents by state and subject matter in addition to accessing detailed commentary and analysis about the records and government activities. Beyond websites, the ACLU has produced an in-depth television series on civil liberties, which has included analyses and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.<sup>6</sup>

*B. The record sought is urgently needed to inform the public about actual or alleged government activity.*

The Revised Report is urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest, specifically, the CIA's rendition, detention and interrogation program and its authorization of abusive techniques after September 11, 2001. *See* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2).

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<sup>4</sup> *See, e.g.*, <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>; and <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>.

<sup>5</sup> <http://www.torturedatabase.org>.

<sup>6</sup> In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.

We make this Request to further the public's understanding of the CIA's program and the role of senior officials in conceiving of and authorizing the use of abusive interrogation techniques in the wake of September 11, 2001. The public has and continues to manifest an abiding interest in the conduct of the CIA and other executive agencies with respect to individuals seized, detained, and interrogated for counterterrorism purposes. While U.S. intelligence officials have acknowledged that the CIA used harsh and coercive interrogation techniques, Congress's investigation sets forth the most comprehensive account to date of what happened and why, and it is imperative that its findings be made public.

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Over the past eighteen months, national news stories have highlighted the significance of the SSCI investigation for the public record. In the run-up to the Committee vote on the Initial Report in December 2012, a host of articles and editorials were published emphasizing how important it is for the results of the SSCI's investigation to be made public. See, e.g., Ed Pilkington, *Senate Under Pressure to Release Mammoth Report on CIA Interrogation*, The Guardian (U.K.), Dec. 13, 2012, <http://bit.ly/VECh2J>; Carolyn Lochhead, *Dianne Feinstein Torture Report May Conflict with Bin Laden Movie*, SFGate Blog, Dec. 11, 2012, <http://bit.ly/USwxpI>; Matt Bewig, *Senate Report on CIA Torture Techniques May Remain Secret*, AllGov, Dec. 10, 2012, <http://bit.ly/VLaXWE>; Jim Kouri, *Senate Democrats Urge Probe of CIA Interrogations During Bush Years*, Examiner, Dec. 7, 2012, <http://exm.nr/TZTQuk>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>; Editorial, *Our View: Snowe, Committee Should Release Torture Report*, Portland Press Herald, Nov. 23, 2012, <http://bit.ly/RYPVnf>.

Similarly, during the weeks leading up to and following the Committee's declassification vote, nationwide media outlets have continued to emphasize the critical importance of the Revised Report. See, e.g., Bradley Klapper, *Feinstein Asks White House to Edit Torture Report*, Associated Press, Apr. 8, 2014, <http://bit.ly/1kwLrB1>; David S. Joachim, *Senate Panel Votes to Reveal Report on C.I.A. Interrogations*, N.Y. Times, Apr. 3, 2014, <http://nyti.ms/1eejlaR>; Ali Watkins, Marisa Taylor, & David Lightman, *Senate Panel Finds CIA Illegally Interrogated Terror Suspects After 9-11*, McClatchy, Apr. 3, 2014, <http://bit.ly/1qzYEXj>; David Ignatius, *A Tortured Debate Between Congress and the CIA*, Wash. Post, Apr. 1, 2014, <http://wapo.st/1hEjtEg>; Marisa Taylor & David Lightman, *CIA's Harsh Interrogation Tactics More Widespread Than Thought, Senate Investigators Found*, McClatchy, Apr. 1, 2014, <http://bit.ly/1hmoXPY>; Greg Miller, Adam Goldman, & Ellen Nakashima, *CIA Misled on Interrogation Program, Senate Report*

*Says*, Wash. Post, Mar. 31, 2014, <http://wapo.st/1eeujNM>; Bradley Klapper, *Senate Report: Torture Didn't Lead to Bin Laden*, Associated Press, Mar. 31, 2014, <http://bit.ly/1i5ZD0t>; Mark Mazzetti, *Senate Asks C.I.A. to Share Its Report on Interrogations*, N.Y. Times, Dec. 17, 2013, <http://nyti.ms/1eetXqk>.

The contents of the Revised Report will inform urgent and ongoing debate about the CIA interrogation program. The Revised Report provides "the public with a comprehensive narrative of how torture insinuated itself into U.S. policy," a narrative that "is of more than historical interest" as the nation's lawmakers move forward. Editorial, *Free the Torture Report*, L.A. Times, Apr. 27, 2012, <http://lat.ms/1mBMZ9>.

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Expedited processing should be granted.

### **III. Application for Waiver or Limitation of Fees**

#### ***A. Release of the record is in the public interest.***

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested record is in the public interest because it is likely to contribute significantly to the public understanding of the United States government's operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); and 22 C.F.R. § 171.17.

The Revised Report will significantly contribute to public understanding of the government's operations or activities. Moreover, disclosure is not in the ACLU's commercial interest. Any information obtained by the ACLU as a result of this FOIA request will be available to the public at no cost. *See* 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17.

Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters," (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).



B. *The ACLU qualifies as a representative of the news media.*

A waiver of search and review fees is warranted because the ACLU qualifies as a "representative of the news media" and the Revised Report is not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 32 C.F.R. § 1900.02(h)(3); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17. Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication."

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information." *See Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes).<sup>7</sup> Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at \*3 (D. Conn. May 14, 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

\* \* \*

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d); 28

<sup>7</sup> On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in October 2013, the State Department granted a fee waiver to the ACLU with respect to a request for documents concerning the United States' targeting killing program. In June 2013, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to standards governing intelligence collection and the Division's interpretation of an executive order. Since at least 2002, government agencies ranging from the Department of the Navy to the Department of Commerce have granted the ACLU fee waivers in connection with its FOIA requests.

C.F.R. § 16.5(d)(4); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish the applicable records to:

Ashley Gorski  
American Civil Liberties Union  
125 Broad Street  
18th Floor  
New York, NY 10004

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Thank you for your prompt attention to this matter.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).



Ashley Gorski  
American Civil Liberties Union  
Foundation  
125 Broad Street  
18th Floor  
New York, NY 10004  
Tel: 212.284.7305  
Fax: 212.549.2654  
Email: agorski@aclu.org

## Exhibit B



**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

May 22, 2014

Ms. Ashley Gorski  
American Civil Liberties Union Foundation  
18th Floor  
125 Broad Street  
New York, NY 10004  
[agorski@aclu.org](mailto:agorski@aclu.org)

Re: OLA/14-02816 (F)  
VRB:DRH:SBT

Dear Ms. Gorski:

This responds to your Freedom of Information Act request dated May 6, 2014, and received in this Office on May 12, 2014, seeking the updated version of the Senate Select Committee on Intelligence's report *Study of the Central Intelligence Agency's Detention and Interrogation Program* cited in an April 7, 2014 letter from Committee Chair Dianne Feinstein to President Barack Obama. This response is made on behalf of the Office of Legislative Affairs.

I have determined that the Central Intelligence Agency (CIA) is the agency best suited to respond to your request. I understand that you have already submitted your request to the CIA. That agency will respond to you directly if it has not done so already.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through this Office's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, appearing to read "V-R-B", followed by a horizontal line.

Vanessa R. Brinkmann  
Senior Counsel



# Exhibit 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----X

JASON LEOPOLD

Plaintiff

Civil Action Nos.:

13-1324 and 14-048

v.

CENTRAL INTELLIGENCE AGENCY,  
DEPT. OF JUSTICE, et al.,

Defendants

-----X

AMERICAN CIVIL LIBERTIES UNION, et al.,

Plaintiffs,

v.

Civil Action No. 13-1870

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants

-----X

Washington, D.C.

Tuesday, October 7, 2014  
9:35 A.M.

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE JAMES E. BOASBERG  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff Leopold: Jeffrey Louis Light, Esq.

LAW OFFICES OF JEFFREY LIGHT  
1712 Eye Street, NW, Suite 915  
Washington, DC 20006  
(202) 277-6213

For Plaintiff ACLU: Hina Shamsi, Esq.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 18th floor  
New York, NY 10004  
(212) 284-7321

1 APPEARANCES: (Cont'd.)

2  
3 For the Defendants: Vesper Mei, Esq.  
4 Elizabeth J. Shapiro, Esq.  
5 U.S. DEPARTMENT OF JUSTICE  
6 Federal Programs Branch, Civil Division  
7 P.O. Box 883  
8 Washington, DC 20044  
9 (202) 514-4686  
10  
11  
12  
13  
14  
15

16 Court Reporter: Lisa Walker Griffith, RPR  
17 U.S. District Courthouse  
18 Room 6507  
19 Washington, D.C. 20001  
20 (202) 354-3247  
21  
22  
23  
24  
25

**P R O C E E D I N G S**

THE DEPUTY CLERK: Your Honor, calling Civil Action Number 13-1324, Jason Leopold versus the Department of Justice, et al.; Case Number 13-1870, the American Civil Liberties Union, et al., v. The Central Intelligence Agency, et al.; Case Number 14-48, Jason Leopold versus the Central Intelligence Agency; and 14-1056, Jason Leopold, et al. v. the Central Intelligence Agency.

Counsel, will you please approach the podium and identify yourselves for the record.

MR. LIGHT: Good morning, Your Honor, Jeffrey Light on behalf of the plaintiff, Jason Leopold.

THE COURT: Good morning.

MS. SHAMSI: Good morning, Your Honor. Hina Shamsi and Arthur Spitzer on behalf of the American Civil Liberties Union.

THE COURT: Okay. Good morning to you folks.

MS. MEI: Good morning, Your Honor. Vesper Mei and Elizabeth Shapiro from the Department of Justice on behalf of all of the defendants.

THE COURT: Okay. Good morning to you ladies.

All right. So, I know there's been a motion to extend the time. And, Ms. Mei, why don't you elaborate on that.

MS. MEI: Your Honor, as you are aware, we

1 originally requested a one month extension until September  
2 29th, which we did move for. The committee then requested an  
3 additional extension and didn't provide a date by which we  
4 should move until. So, therefore, we did move until October  
5 29th to give ourselves an extra month.

6 We can't predict exactly when the discussions of  
7 declassification will be completed. Obviously, that's not  
8 completely in our control, but we have learned, and we don't  
9 anticipate further extensions beyond October 29th. So we are  
10 actually at this time prepared to set a briefing schedule,  
11 assuming that everything will be released by the 29th.

12 THE COURT: Okay.

13 Ms. Shamsi, your position on that?

14 MS. SHAMSI: Your Honor, we had agreed to a one week  
15 extension, and I felt we couldn't agree to more without  
16 additional information about the status of negotiations, when  
17 processing would be completed, and we weren't able to get  
18 that information.

19 We also have a concern, as I had expressed to you  
20 during the last status conference, Your Honor, about whether  
21 or not the agencies did, in fact, possess the full updated  
22 SSCI report which is the subject of one of our FOIA requests  
23 and the second amended complaint. And we had asked the  
24 Department of Justice to let us know whether, in fact,  
25 agencies did possess those reports. We asked in June of this

1 summer and were told that, although it wasn't definitive, it  
2 wasn't definitive whether, in fact, the agencies possessed  
3 any updated version.

4 We asked again in July, August and then in  
5 September. And in July, August and September, were told  
6 that, in fact, no agencies possessed a full report and that  
7 was based on agency's representations to the Department of  
8 Justice. That representation was in addition, Your Honor,  
9 made to you on September 4th.

10 We, as I had mentioned to you when we last met, Your  
11 Honor, I just didn't think that that was plausible given  
12 Senator Feinstein's letter to the executive branch in April,  
13 intending the executive branch to -- intending for the  
14 dissemination of the full report and for lessons to be  
15 learned from that report.

16 We also didn't think it was plausible because the  
17 full report is 6,000 pages long, and as a matter of common  
18 sense, Your Honor, it just seems that CIA and other agencies  
19 who are weighing in on the redaction of the summary would  
20 want to have the full report.

21 And we then also came to learn through our  
22 Washington legislative office that subsequent to the  
23 September 4th hearing before this Court, and the  
24 representations that were made, Senate staff directly urged  
25 DOJ to, in fact, research two things: Whether the agencies

1 did have the full updated report; and two, what remaining  
2 time was needed to complete the negotiations and release the  
3 executive summary.

4 Just this morning, Your Honor, I understand from the  
5 Department of Justice that the Central Intelligence Agency  
6 does have the full report. I'll obviously let them speak for  
7 themselves, but there's no explanation about when it received  
8 the full report and why over the course of the summer we, and  
9 then you, were told that it didn't have it.

10 We think this is fairly serious, Your Honor, because  
11 in order for FOIA to function, the litigants and the courts  
12 have to have faith that everyone is acting in good faith.

13 So therefore, Your Honor, I would ask for a couple  
14 of things. One, renew my request for a declaration from the  
15 agencies, including the CIA, about when they received the  
16 full updated report. And when representations were made to  
17 the Department of Justice to us and to the Court about  
18 agencies not having it and why those representations were  
19 made.

20 We think that's important because, Your Honor,  
21 depending on the timing, obviously there's an issue of the  
22 representations that were made, but also we could have been  
23 moving forward in this case. A matter that is of tremendous  
24 public significance about a Congressional investigation of  
25 historic importance.

1           And then, Your Honor, at a minimum, we would ask you  
2           to exercise your discretion and ensure that regardless of  
3           when the agency received the full report, we are not required  
4           to file an additional FOIA request, an additional amended  
5           complaint so that we can proceed expeditiously on the actual  
6           substantive issues that should be before the Court.

7           THE COURT: Okay. Thank you.

8           Ms. Mei, do you want to respond?

9           MS. MEI: Your Honor, I just want to correct one  
10          thing, which is that none of the other defendant agencies  
11          have yet received the full updated report. The CIA has. And  
12          after the last status conference, we asked that CIA check for  
13          the full report again, and they discovered that they did have  
14          it. And there was a miscommunication apparently within the  
15          agency as to what they were looking for. In fact, we have  
16          learned that the report was conveyed on disk, which may  
17          explain some of how 6,000 pages may have -- they didn't  
18          realize that they had it.

19          With respect to the declaration from the agencies,  
20          we don't think it's necessary. There was a miscommunication,  
21          and for the merits of the case and for the agency record  
22          issue, it doesn't matter when the report was found.

23          THE COURT: All right. And how about the second  
24          issue about filing an additional amended complaint or an  
25          additional FOIA request?



1 MS. MEI: I think we're prepared to move forward on  
2 a briefing schedule and on the agency record issue without  
3 requiring them to file a new FOIA request.

4 THE COURT: Okay. All right. So, what do you --  
5 all right. So, Mr. Light, do you want to be heard on any of  
6 these issues?

7 MR. LIGHT: Yes, Your Honor. I would echo the  
8 ACLU's request as far as asking for a status update as to  
9 where the negotiations are. And the most recent request for  
10 extension of time, unlike the previous one, the Government  
11 did not attach the letter from Senator Feinstein, which may  
12 perhaps shed a little bit more detail on where we are.

13 FOIA doesn't include a provision that the Court  
14 needs to wait on Senator Feinstein in order to be ready for  
15 us to proceed forward. So we'd ask for a briefing schedule  
16 to be set right away. And that any further request for  
17 extension of time be looked upon with disfavor.

18 THE COURT: Okay. Well, what I'm going to do, I'm  
19 not going to require a declaration. I think that, Ms.  
20 Shamsi, that the representations you've now heard on the  
21 record as opposed to just in private conversations with you  
22 are sufficient to give the Government's account. And given  
23 that I will also hold them to their agreement that you do not  
24 need to file an additional amended complaint or an additional  
25 FOIA request.

1           So let's set -- let's set briefing schedules then  
2       based off of the October 29th date. So, Ms. Mei, do you have  
3       a proposed schedule?

4           MS. MEI: We do, Your Honor. We could file a  
5       motion -- or opening briefs on summary judgment by December  
6       12th.

7           THE COURT: Okay. And -- all right. Then  
8       Ms. Shamsi? I'm sorry, one second. So are you anticipating  
9       filing separate ones in the three cases or one brief in the  
10      consolidated? And again, they're different, somewhat  
11      different requests.

12          MS. MEI: I think we will file separate briefs in  
13      the three cases.

14          THE COURT: Okay. All right.

15          So, Ms. Shamsi.

16          MS. SHAMSI: Your Honor, if I may, just on the  
17      question about the declaration if you -- just a couple of  
18      points very briefly, which is that, DOJ was providing  
19      representations from the agency. We don't know whether  
20      those -- whether that was a miscommunication or a  
21      misrepresentation. And, Your Honor, I don't think you have,  
22      frankly, the record from the agency. And I'm not saying  
23      anything with respect to DOJ. I am expressing concerns about  
24      representations made to us and to the Court by the agencies  
25      through the DOJ and whether there was a miscommunication or

1 not. And that is solely the issue when we're talking about a  
2 6,000 page report, whether on CD or not, that has gripped the  
3 nation's newspapers and public debate. I do think it is very  
4 serious, Your Honor, and I would very much ask you to  
5 reconsider your decision not to require a declaration, so  
6 that the record is clear so that we know whether it was a  
7 miscommunication or something else so that we may respond to  
8 that, and you may decide whether any further action needs to  
9 be taken, Your Honor.

10 THE COURT: But how would that affect the merits of  
11 the case, since -- well, we've been holding it pending  
12 declassification. So, if they had had it or not, if they'd  
13 seen it or not seen it, how would that affect the merits?

14 MS. SHAMSI: Well, it would affect the posture and  
15 the stance of the case, Your Honor, in this way, which is  
16 that we've been seeking these reports since last year, since  
17 2013. We've sought to move forward and to obtain  
18 representations about the possession of the full report since  
19 June of this year. And there is a fundamental importance in  
20 FOIA that the public needs to have faith in the agencies  
21 fulfilling their statutory obligations and doing so in good  
22 faith themselves.

23 It would be important for us and the Court to know  
24 whether or not each of the representations made on a monthly  
25 basis over the course of the summer, that the full report was

1 not in the possession of the agencies, that meant that we did  
2 not move forward on briefing expeditiously the matter of  
3 whether this is an agency record or not. And, therefore, the  
4 public release of that record, that is significant. It was  
5 not just a day, it was multiple months over --

6 THE COURT: Well, but isn't that all -- and I  
7 understand your point, but isn't it all mooted by the  
8 declassification review?

9 MS. SHAMSI: No, Your Honor. Declassification  
10 review are two separate things because under FOIA, there is  
11 an independent obligation that this Court has to adjudicate  
12 the merits of any basis for withholding, whether that's  
13 agency record or exemptions themselves. The fact that we  
14 have not been able to brief to you that you have not been  
15 able to exercise your independent judgment, which is separate  
16 from the declassification issue with respect to the executive  
17 summary is, I think, significant.

18 THE COURT: Okay.

19 Ms. Mei, do you want to respond to that?

20 MS. MEI: Your Honor, I would just point out that  
21 there is no pending FOIA request for the full updated SSCI  
22 report at this time. We filed an answer saying that none of  
23 the agencies had received the full updated version, and  
24 there was an agreement by counsel that we would do our best  
25 to check and see when the agencies received that full report.

1           So, we were doing this not because of some legal  
2           obligation. We were doing this because we had agreed  
3           informally with counsel to do this. And the agreement was  
4           that, you know, I would -- we would check with the agency  
5           contacts and they would see what they had. And obviously  
6           there was a miscommunication. But again, that doesn't affect  
7           the merits of the case.

8           THE COURT: Okay.

9           Ms. Shamsi, do you want to respond?

10          MS. SHAMSI: One final word, Your Honor. And that's  
11          exactly the issue here, which is that we had asked for  
12          certainty about whether or not that report had been provided  
13          to the executive branch. We were told on a monthly basis  
14          that it had not been received. And again, this is a case  
15          that should not come as any surprise to any of the agencies  
16          that we were seeking the full report.

17          We've been seeking the full report since last year.  
18          If it turned out that the CIA had that report in July or  
19          August or September when representations were made that the  
20          CIA didn't have the report, then we do think that that is a  
21          significant issue because it relates to the good faith of the  
22          agency in compliance with statutory obligations.

23          THE COURT: All right. Just a second.

24          (There was a pause in the proceedings.)

25          THE COURT: Okay. Your request is certainly not an

1 unreasonable one, but I think it's not required in this case  
2 given the Government's representations. And so I am going to  
3 move forward and set a briefing schedule on the documents as  
4 they are. So, they say they want to file December 12th. How  
5 long do you need?

6 MS. SHAMSI: We think that they should file in  
7 November, Your Honor, because this is a motion, again,  
8 there's now been in our view, we don't know how much delay  
9 there's been as a result of when the agency received the  
10 record or not. This is not an issue that is new to the  
11 agency. They've previously briefed the issue of agency  
12 record. We don't think --

13 THE COURT: Well, I think that this would be more  
14 than that. I mean, Ms. Mei, this is your summary judgment  
15 briefing, which will relate to your search and exemptions and  
16 everything, I trust. This isn't just a jurisdictional  
17 question; right?

18 MS. MEI: Your Honor, for the full SSCI report, I  
19 think it would be a jurisdictional question. For the other  
20 parts of it, there would be obviously other arguments. But  
21 yes, for the exemptions and the withholdings of the other  
22 records.

23 MS. SHAMSI: So, Your Honor, we would urge a  
24 November date. And as you've correctly pointed out, there is  
25 a search issue here. And we might seek to renew the search

1 issue with respect to the CIA as briefing goes forward.

2 THE COURT: All right. I'm going to say December  
3 5th. But the problem is if I do 30 days, that's  
4 Thanksgiving, and I think that's not terribly appropriate.

5 So, Ms. Shamsi, I'll give you whatever time you  
6 want. I know you want to move things along, so if you want  
7 your opposition to be more quickly filed, fine. I know we've  
8 got the holidays, so whatever you want, I'll accept.

9 Mr. Light, while she's checking her calendar, what's  
10 your position for a date?

11 MR. LIGHT: First, Your Honor, you said December 5th  
12 for the Government; correct?

13 THE COURT: Right, yes, uh-huh.

14 MR. LIGHT: We would actually ask that they have  
15 until December 8. December 5th is a Friday. And our concern  
16 is that if their due date is on a Friday, they're going to  
17 release it in the evening when the public is not going to be  
18 paying attention to it. Let's give them until the 8th. I  
19 think they'll be happy to take until that date.

20 THE COURT: For their brief?

21 MR. LIGHT: For their summary judgment brief, I'll  
22 give them an extra three days.

23 THE COURT: Okay. The 5th is fine. So what would  
24 you like for yours?

25 MR. LIGHT: From the 5th, we could have our

1 opposition ready December 18th.

2 THE COURT: Ms. Shamsi, what -- again, I'll give you  
3 what you want, depending on -- meaning your schedule and the  
4 holidays, I'm happy to work with.

5 MS. SHAMSI: Yes, Your Honor, and thank you.  
6 Because it's not just the holidays, we actually have two  
7 other major briefs due during that time. I think we would  
8 appreciate getting until January 9th, if the Government files  
9 on the 5th, or January 12th, if the Government files on the  
10 8th.

11 THE COURT: Okay. January 9th is fine.

12 And, Mr. Light, you can file early if you want, but  
13 I'll give you until the same date.

14 And then are you expecting to file an opposition and  
15 a cross-motion or just an opposition, Ms. Shamsi, if you  
16 know?

17 MS. SHAMSI: Your Honor, I expect to file an  
18 opposition and a cross-motion.

19 THE COURT: Okay. All right. So the Government's  
20 reply and opposition, so then how is January 30th for your  
21 reply and opposition?

22 MS. MEI: That will work.

23 THE COURT: All right. Then is February 14th good  
24 for the plaintiffs for their rely, Mr. Light?

25 MR. LIGHT: I think February 14th is a Saturday.



1 THE COURT: I'm sorry, you're right. The 13th is  
2 what I meant.

3 MR. LIGHT: That's fine.

4 THE COURT: Is that okay?

5 MR. LIGHT: Yes.

6 THE COURT: Great.

7 Ms. Shamsi, does that work for you?

8 MS. SHAMSI: It does, Your Honor.

9 THE COURT: Okay, good. So I'll memorialize these.  
10 And I'll also memorialize the order that the ACLU is not  
11 required to file an additional amended complaint or the usual  
12 FOIA request.

13 All right. Any other issues then on these three  
14 cases, Ms. Shamsi?

15 MS. SHAMSI: No, Your Honor.

16 THE COURT: Mr. Light?

17 MR. LIGHT: I wasn't clear. The dates that we were  
18 just talking about, were those for all three cases or just  
19 the SSCI report and the Panetta report?

20 THE COURT: I have expected they were for all three  
21 cases, is what I understood.

22 MR. LIGHT: Okay.

23 THE COURT: Do you agree with that, Ms. Mei?

24 MS. MEI: Yes, Your Honor.

25 MR. LIGHT: Okay. The third case that relates to

1 the alleged CIA spying on the Senate computers doesn't  
2 involve the same kind of factual interconnection --

3 THE COURT: Are you talking about the 1056 case?

4 MR. LIGHT: Right.

5 THE COURT: We will do that afterwards.

6 MR. LIGHT: Oh, okay.

7 THE COURT: Yeah, I'm sorry. The ones I was talking  
8 about today, this hearing is just your two 13-24, 1870 and  
9 48.

10 MR. LIGHT: Oh, those three. I thought you meant my  
11 three.

12 THE COURT: No.

13 MR. LIGHT: All right. I understand that.

14 THE COURT: Okay. Thank you.

15 Ms. Mei, anything else?

16 MS. MEI: No, Your Honor.

17 THE COURT: All right. Thank you, folks. I  
18 appreciate your patience and your diligence on this. We'll  
19 look for the briefing.

20 Okay. Now let's call the 14-1056 case. So ACLU  
21 counsel are excused, thank you.

22 MS. SHAMSI: Thank you.

23 THE COURT: I'll issue an order today memorializing  
24 the schedule.

25 MS. SHAMSI: Thank you.

1 (Court adjourned in the above-entitled matter  
2 at 10:00 a.m.)

3 - o -  
4  
5

6 CERTIFICATE OF REPORTER

7 I, Lisa Walker Griffith, certify that the foregoing  
8 is a correct transcript from the record of proceedings in the  
9 above-entitled matter.  
10  
11  
12  
13

14 \_\_\_\_\_  
15 Lisa Walker Griffith, RPR  
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Date

# Exhibit 2

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United States Senate

SELECT COMMITTEE ON INTELLIGENCE  
WASHINGTON, DC 20540-6425

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DESIREE THOMPSON SAYLE, CHIEF CLERK

April 7, 2014

The Honorable Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President,

I am pleased to inform you that the Senate Select Committee on Intelligence has voted to send for declassification the Findings and Conclusions and Executive Summary of an updated version of the Committee's Study of the CIA's Detention and Interrogation Program. Both are enclosed. I request that you declassify these documents, and that you do so quickly and with minimal redactions. If Committee members write additional or minority views that they wish to have declassified and released as well, I will transmit those separately.

As this report covers a covert action program under the authority of the President and National Security Council, I respectfully request that the White House take the lead in the declassification process. I very much appreciate your past statements – and those of your Administration – in support of declassification of the Executive Summary and Findings and Conclusions with only redactions as necessary for remaining national security concerns. I also strongly share your Administration's goal to "ensure that such a program will not be contemplated by a future administration," as your White House Counsel wrote in a February 10, 2014, letter.

In addition to the Findings and Conclusions and Executive Summary, I will transmit separately copies of the full, updated classified report to you and to appropriate Executive Branch agencies. This report is divided into three volumes, exceeds 6,600 pages, and includes over 37,000 footnotes, and updates the version of the report I provided in December 2012. This full report should be considered as the final and official report from the Committee. I encourage and approve the

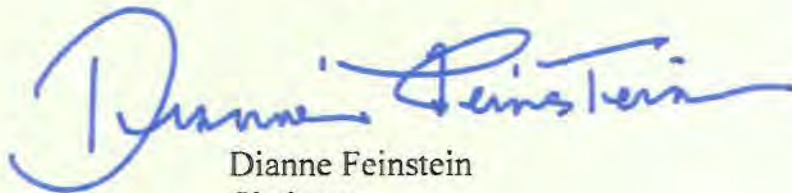


dissemination of the updated report to all relevant Executive Branch agencies, especially those who were provided with access to the previous version. This is the most comprehensive accounting of the CIA's Detention and Interrogation Program, and I believe it should be viewed within the U.S. Government as the authoritative report on the CIA's actions.

As I stated in my letter to you on December 14, 2012, the Committee's report contradicts information previously disclosed about the CIA Detention and Interrogation Program, and it raises a number of issues relating to how the CIA interacts with the White House, other parts of the Executive Branch, and Congress. I ask that your Administration declassify the Findings and Conclusions and Executive Summary of this updated report as soon as possible. I also look forward to working with you and your Administration in discussing recommendations that should be drawn from this report.

Thank you very much for your continued attention to this issue.

Sincerely yours,

A handwritten signature in blue ink, reading "Dianne Feinstein". The signature is fluid and cursive, with the first name "Dianne" written in a large, stylized loop and the last name "Feinstein" written in a more standard cursive script.

Dianne Feinstein  
Chairman

Enclosures: as stated

cc: The Honorable James Clapper, Director of National Intelligence  
The Honorable John Brennan, Director, Central Intelligence Agency  
The Honorable Eric Holder, Attorney General  
The Honorable Chuck Hagel, Secretary of Defense  
The Honorable John F. Kerry, Secretary of State

# Exhibit 3



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## United States Senate

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SELECT COMMITTEE ON INTELLIGENCE  
WASHINGTON, DC 20510-6475

SSCI# 2014-3514

December 10, 2014

The Honorable Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President,

Yesterday the Senate Select Committee on Intelligence formally filed the full version of its Study of the Central Intelligence Agency's Detention and Interrogation Program with the Senate and publicly released the declassified Executive Summary and Findings and Conclusions, as well as the declassified additional and minority views.

The full and final report is enclosed with this letter. It is divided into three volumes, exceeds 6,700 pages, and includes over 37,700 footnotes.

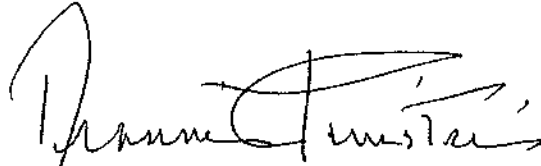
As you said publicly on August 1, 2014, the CIA's coercive interrogation techniques were techniques that "any fair-minded person would believe were torture," and "we have to, as a country, take responsibility for that so that, hopefully, we don't do it again in the future."

I strongly share your goal to ensure that such a program will not be contemplated by the United States ever again and look forward to working with you to strengthen our resolve against torture. Therefore, the full report should be made available within the CIA and other components of the Executive Branch for use as broadly as appropriate to help make sure that this experience is never repeated. To help achieve that result, I hope you will encourage use of the full report in the future development of CIA training programs, as well as future guidelines and procedures for all Executive Branch employees, as you see fit.



Thank you very much for your continued attention to this issue.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dianne Feinstein". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dianne Feinstein  
Chairman

cc: The Honorable James Clapper, Director of National Intelligence  
The Honorable John Brennan, Director, Central Intelligence Agency  
The Honorable Eric Holder, Attorney General  
The Honorable Chuck Hagel, Secretary of Defense  
The Honorable John F. Kerry, Secretary of State  
The Honorable James B. Comey, Director, Federal Bureau of Investigation  
The Honorable David Buckley, CIA Inspector General

# Exhibit 4

# United States Senate

SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, DC 20510-6475

January 14, 2015

The Honorable Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

It has recently come to my attention that on December 10, 2014, Senator Feinstein, in her capacity as the Chairman of the U.S. Senate Select Committee on Intelligence, provided a digital copy of the full and final report of the Committee's Study of the Central Intelligence Agency's Detention and Interrogation program (divided into three volumes and exceeding 6,700 pages) to you, the Director of National Intelligence, the Director of the Central Intelligence Agency (CIA), the Attorney General, the Secretary of Defense, the Secretary of State, the Director of the Federal Bureau of Investigation, and the CIA Inspector General. You may recall that Senator Chambliss, the Vice Chairman of the Committee at that time, was not copied on that letter. As the Chairman of the Committee, I consider that report to be a highly classified and committee sensitive document. It should not be entered into any Executive Branch system of records. For that reason, I request that all copies of the full and final report in the possession of the Executive Branch be returned immediately to the Committee. If an Executive Branch agency would like to review the full and final report, please have them contact the Committee and we will attempt to arrive at a satisfactory accommodation for such a request.

Thank you for your continued attention to this issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Burr', with a stylized, flowing script.

Richard Burr  
Chairman  
Senate Select Committee on Intelligence

Cc: The Honorable Dianne Feinstein, Vice Chairman, Senate Select Committee on Intelligence  
The Honorable James Clapper, Director of National Intelligence  
The Honorable John Brennan, Director, Central Intelligence Agency  
The Honorable Eric Holder, Attorney General  
The Honorable Chuck Hagel, Secretary of Defense  
The Honorable John F. Kerry, Secretary of State  
The Honorable James B. Comey, Director, Federal Bureau of Investigation  
The Honorable David Buckley, CIA Inspector General

# Exhibit 5

## United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

January 16, 2015

SSCI# 2015-0374

The President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President,

I write in response to Chairman Richard Burr's letter to you dated January 14, 2015, in which he requested that the Executive Branch return all copies of the Committee's Study of the Central Intelligence Agency's Detention and Interrogation Program. I do not support this request and believe it is important for appropriately cleared individuals in the Executive Branch to have access to the Committee's full, classified report.

The full, 6,963-page classified report transmitted on December 10, 2014, is an official Senate report (S. Rep. 113-288). The report has the same legal status of any other official Senate report from this Committee or any other Senate committee. At the December 2012 vote to approve the report and the April 2014 vote to send parts of the report for declassification, among other times, it was clear that the final, updated classified version of the report was the official version of the Study and that it would be transmitted to appropriate Executive Branch agencies. There was never any objection to providing the full, official report to the Executive Branch, consistent with appropriate limitations due to classification. I therefore disagree with Chairman Burr's analysis that the report should be considered "Committee Sensitive" as that term is defined in the SSCI's Rules of Procedure.<sup>1</sup>

As you and I have discussed and strongly agree, the purpose of the Committee's report is to ensure that nothing like the CIA's detention and interrogation program from 2002 to 2008 can ever happen again. The realization of that goal depends in part on future Executive Branch decisionmakers having and utilizing a comprehensive record of this program, in far more detail than what we were able to provide in the now declassified and released Executive Summary. In this regard, I appreciate the CIA's proposed

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<sup>1</sup> See Rule 9.3, Rules of Procedure, available at <http://www.intelligence.senate.gov/pdfs/11214.pdf>.



reforms, first described in the CIA's response to the Committee's report in June 2013 and recently repeated by Director John Brennan in his post-release press conference.

Finally, I do want to respond to the inference in Senator Burr's letter that I somehow did not inform former Vice Chairman Saxby Chambliss or other Members of my December 10, 2014, letter. In fact, all Members of the Senate Intelligence Committee – including Senators Chambliss and Burr – received access to my December 10, 2014, transmittal letter (along with access to the full report) on the day it was sent. It is standard Committee practice to make such correspondence available to all Members and appropriately cleared staff through the Committee's internal document system. Any implication that Senator Chambliss or any other Committee Member did not have access to the December 10, 2014, letter is simply false.

Therefore, I reiterate the request from my December 10, 2014, letter and ask that you retain the full 6,963-page classified report within appropriate Executive branch systems of record, with access to appropriately cleared individuals with a need to know, so as to ensure the history of the CIA Detention and Interrogation Program is available and appropriate lessons can be learned from it.

Thank you very much for your continued attention to this issue.

Sincerely yours,



Dianne Feinstein  
Vice Chairman

cc: Members, Senate Select Committee on Intelligence  
The Honorable James Clapper, Director of National Intelligence  
The Honorable John Brennan, Director, Central Intelligence Agency  
The Honorable Eric Holder, Attorney General  
The Honorable Chuck Hagel, Secretary of Defense  
The Honorable John F. Kerry, Secretary of State  
The Honorable James B. Comey, Director, Federal Bureau of Investigation  
The Honorable David Buckley, CIA Inspector General