

MAIN STREET LEGAL SERVICES, INC.

City University of New York School of Law
2 Court Square, Long Island City, New York 11101

February 23, 2015

VIA ECF

Catherine O'Hagan Wolfe, Clerk
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *Main Street Legal Services, Inc. v. National Security Council*, 13-3792 (2d Cir.)
(oral argument scheduled March 2, 2015)

Dear Ms. Wolfe:

We submit this Rule 28(j) letter to inform the Court of the partially declassified Senate Select Committee on Intelligence's *Study of the Central Intelligence Agency's Detention and Interrogation Program* ("SSCI Report").¹

The SSCI Report provides extensive, previously nonpublic evidence of the National Security Council ("NSC") exercising its significant authority independent of the President through NSC's control and direction of the Central Intelligence Agency's ("CIA") interrogation program. The SSCI Report found that NSC committees, on which the President does not sit, debated, authorized, and directed CIA to apply specific interrogation techniques to specific detainees. In 2004, for example, CIA "sought special approval from the National Security Council Principals Committee" to use "enhanced interrogation techniques" on detainee Janat Gul. Thereafter, NSC principals met and "agreed that '[g]iven the current threat and risk of delay, CIA was *authorized and directed* to utilize" the techniques on Mr. Gul. *Id.* at 344-45 (emphasis added); *see also id.* at 146 (citing planned 2005 NSC Principals Committee meeting to approve interrogation techniques for Abu Faraj al-Libi); *id.* at 158 (citing NSC principals debating approval of sleep deprivation for up to 180 hours).

The NSC's independence from the President in such decision-making is highlighted not only by the absence of the President from these meetings, but also by the SSCI's finding that CIA records indicate the President was not even briefed on "enhanced interrogation techniques" until April 2006. *Id.* at 40. When finally briefed, CIA records indicate the President "expressed discomfort with the 'image of a detainee, chained to the ceiling, clothed in a diaper, and forced to go to the bathroom on himself.'" *Id.*

¹ Available at <http://www.intelligence.senate.gov/study2014/executive-summary.pdf>.

The SSCI Report thus provides new, compelling evidence further illustrating that Defendant's conclusory assertions that "all of the actions of the NSC are taken under [the President's] direction" and that NSC "Committees do not have the power to take action," Def.'s Br. 20-21, are false.

The extensive functions and authorities exercised by the NSC extend far beyond simply "advising and assisting" the President, further demonstrating that the NSC is an agency under the Freedom of Information Act. Pl.'s Br. 17-37.

Respectfully submitted,

_____/s/_____
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cc: All Counsel of Record (via ECF)