

## MAIN STREET LEGAL SERVICES, INC.

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

March 27, 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.), Reply to Defendant's Response to Rule 28(j) Letter Notifying  
Court of SSCI's Report on CIA's Detention and Interrogation  
Program**

Dear Ms. Wolfe:

Defendant's response suggests that the references in our February 23 letter—illustrating that CIA repeatedly sought approval for “enhanced interrogation techniques” (“EITs”) from the NSC Principals Committee independent of the President—are inaccurate SSCI “characterizations” of unnecessary “discussions.” Yet Defendant still fails to explain *who* authorized the torture if not NSC, as CIA's *own records* describe, especially given that CIA did not brief the President until years later.

Defendant inexplicably asserts that CIA already had authority for EITs, yet CIA records indicate the only relevant *presidential* directive was the September 2001 Memorandum of Notification (“Memorandum”) governing CIA *detention* operations, which, the SSCI confirms, makes “no reference to interrogations or interrogation techniques.”<sup>1</sup> Even assuming *arguendo* that this Memorandum could have nonetheless encompassed interrogations in some way, it delegated approval authority for specific operations to the NSC Principals Committee, requiring that “*Approval of the Principals shall be sought*” for “such operations.”<sup>2</sup> That is not an SSCI characterization; it is a direct quote. The Memorandum is thus yet another

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<sup>1</sup> *SSCI Report*, at 11.

<sup>2</sup> *Minority Views, Vice Chairman Chambliss and Others*, 84-85 (emphasis added), <http://1.usa.gov/1Gk5Cc2>.

example of a nonpublic delegation of significant authority to NSC. And CIA seeking required *approval* from NSC for torture without the involvement or knowledge of the President is consistent with CIA records, the SSCI Report, the President's Memorandum, and Defendant's denial at oral argument that CIA's use of EITs was "a Presidential directive."

All available evidence points to a legal structure for authorizing action that excludes the President from such decision-making. Defendant cannot plausibly avoid the legal consequences of that structure by arguing that in approving torture NSC was nevertheless simply "assisting" the President.

Defendant's attempt to dismiss examples in our letter also ignores other significant evidence of independent NSC decision-making at several levels. *See, e.g., SSCI Report*, at 118-19, 135 (NSC "reaffirmations" of program); *Minority Views*, at 103 (NSC Policy Coordinating Committee authorizing CIA disclosure determinations). Even CIA's response to the SSCI stressed that NSC "established the parameters" for CIA engagement and that "NSC, not CIA, controlled access" to the program.<sup>3</sup>

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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<sup>3</sup> *CIA Response*, Conclusion 5, at 11-12, <http://1.usa.gov/12JxFDk>.

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cc: All Counsel of Record (via ECF)