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March 16, 2015

VIA CM/ECF

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

RE: Response to Plaintiffs' Rule 28(j) Letter Notifying the Court of
Senate Select Committee on Intelligence's *Study of the Central Intelligence
Agency's Detention and Interrogation Program* in *Main Street Legal
Services v. National Security Council*, No. 13-3792 (2d Cir.)

Dear Ms. Wolfe:

Plaintiff submitted a letter referring to the redacted and declassified Findings, Conclusions, and Executive Summary of the Senate Select Committee on Intelligence's Study of the CIA's former Detention and Interrogation Program. The SSCI Executive Summary is a 500-page summary of a nearly 7000-page classified report of a Congressional study of the CIA's former program. *Executive Summary* at 8. The Executive Summary is not an Executive Branch document – it reflects a study conducted by SSCI staff; the characterizations and conclusions are those of the Senate Select Committee on Intelligence rather than the Executive Branch.

The Executive Summary references selected by plaintiff underscore the conclusion that the National Security Council ("NSC") is not an agency. These historical references describe decisions of the then-CIA Director, some of which were discussed with high-level officials through committees of the Council, a body chaired by the President. Two citations reference meetings (or proposed meetings)

with the NSC Principals Committee to “discuss” certain planned CIA activity. *Executive Summary* at 146 (referencing a message indicating that a Principals Committee meeting “would be necessary to discuss” activity planned by CIA); *id.* at 158 (“Discussions with the [NSC] principals also resulted in a March 2006 CIA proposal . . .”). Another cites a CIA official’s notes indicating that the Principals Committee “agreed” that CIA was “authorized and directed” to engage in certain activity, confirming the CIA had such authority, and that the then-Attorney General approved the resulting action. *See id.* at 345. These references confirm that the NSC functions in accordance with the advice and assistance role assigned to it by statute and by the President (currently in Presidential Policy Directive-1) as an interagency forum for coordination and exercises no independent decisional authority. The authority for the underlying decisions rested with the relevant heads of departments and agencies or the President himself.

Congress expressly created the NSC to advise and assist the President in the exercise of his core constitutional national security functions, and its structure reflects that. Any functions delegated to the NSC consist of assisting the President in coordinating the activities of various agencies.

Sincerely,

s/ Jaynie Lilley
JAYNIE LILLEY
U.S. Department of Justice
Appellate Staff, Civil Division

cc (via CM/ECF): Counsel of Record