IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMNESTY INTERNATIONAL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 07 Civ. 5435 (LAP)
	)	
CENTRAL INTELLIGENCE AGENCY, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

DECLARATION OF WENDY M. HILTON
ASSOCIATE INFORMATION REVIEW OFFICER
NATIONAL CLANDESTINE SERVICE
CENTRAL INTELLIGENCE AGENCY

I, WENDY M. HILTON, hereby declare and say:

1. I am an Associate Information Review Officer ("AIRO") for the National Clandestine Service ("NCS") of the Central Intelligence Agency ("CIA"). I was appointed to this position in March 2007. I have held a variety of positions in the CIA since I became a staff officer in 1983.

2. Through the exercise of my official duties, I am familiar with this civil action. This declaration is based on my personal knowledge, information, and belief, and on information disclosed to me in my official capacity.

3. The NCS is the organization within the CIA responsible for conducting the CIA's foreign intelligence and

counterintelligence activities; conducting special activities, including covert action; conducting liaison with foreign intelligence and security services; serving as the repository for foreign counterintelligence information; supporting clandestine technical collection; and coordinating CIA support to the Department of Defense. Specifically, the NCS is responsible for the conduct of foreign intelligence collection activities through the clandestine use of human sources.

4. As AIRO for the NCS, I am responsible for the final review of documents containing information originated by offices organized under the NCS or otherwise implicating NCS equities which are the objects of requests for public disclosure. I also task and coordinate records searches concerning files or documents reasonably likely to be maintained by the NCS.

5. The CIA's Director of Information Management Services, under authority delegated to him by the Associate Deputy Director of the CIA, has appointed me Records Validation Officer ("RVO") for the purpose of this litigation. As RVO, I am authorized to have access to all CIA records on any subject relevant to this litigation, and am authorized to sign declarations on behalf of the CIA regarding searches of CIA records systems and the contents of records, including those located in, or containing information under the cognizance of, the NCS and CIA directorates other than the NCS. For records

containing information that does not originate in, or come under the cognizance of the NCS I make the following statements based on representations made to me in my capacity as Records Validation Officer for the purpose of this litigation.

6. The purpose of this declaration is to describe, to the greatest extent possible on the public record, the CIA's search for documents responsive to Plaintiffs' FOIA requests, the documents located, and the FOIA Exemptions upon which the CIA relied to redact and withhold documents and information responsive to portions of Plaintiffs' FOIA requests.

7. Attached as Exhibit A to this declaration, and incorporated by reference herein, is a Vaughn index which contains a detailed description of approximately 350 records that were selected as a representative sample of the overall body of responsive records.[1] The index describes, to the extent possible in an unclassified manner, the withheld information and states the applicable FOIA Exemptions for those documents. If the Court determines that it needs additional information about the withheld classified information in this litigation, I can provide a more detailed declaration. However, that declaration would contain classified information and would have to be filed ex parte and under seal.

[1] Pursuant to two separate stipulations with the Plaintiffs, described in detail below, the CIA agreed to create a sample set of approximately 350 out of the more than 9,000 responsive records that were withheld in full or in part for its Vaughn index.

8. For the Court's convenience, I have divided this declaration into six parts: (a) Plaintiffs' FOIA requests and subsequent proceedings; (b) CIA's records systems and search for documents responsive to all items listed in Plaintiffs' FOIA requests; (c) the process for selection of the sample set included on the attached Vaughn; (d) CIA's processing of records; (e) applicable FOIA Exemptions; and (f) the CIA's Glomar response to certain categories of information.

I. Plaintiffs' FOIA Requests and Subsequent Proceedings

A. Plaintiffs' Four FOIA Requests

9. By letter dated 21 December 2004, Plaintiff Center for Constitutional Rights ("CCR") submitted a FOIA request to the CIA with seventeen subparts, each of which seeks records pertaining to "unregistered," "CIA," or "Ghost" detainees (the "CCR FOIA Request"). A true and correct copy of the CCR FOIA Request is attached as Exhibit B.

10. By letter dated 2 February 2005, the CIA acknowledged receipt of the CCR FOIA request, and denied the CCR requests for a fee waiver and expedited processing. That letter also informed CCR that, to the extent its 21 December 2004 request was duplicative of prior CCR FOIA requests, the CIA would not search for records that were part of CCR's prior requests. A true and correct copy of the 2 February 2005 letter is attached as Exhibit C. CCR had submitted two prior FOIA requests for

similar information, one dated 7 October 2003, and one dated 25 May 2004.[2] A true and correct copy of CCR's 7 October 2003 and 25 May 2004 FOIA requests are attached as Exhibits D and E. Although the CIA informed CCR of its administrative appeal rights in the 2 February 2005 letter, the CCR did not appeal the denial of its request for a fee waiver to the Agency Release Panel, pursuant to 32 C.F.R. § 1900.42.

11. By letters dated 25 April 2006, Plaintiffs Amnesty International and Washington Square Legal Services submitted two additional FOIA requests to the CIA. The first of these requests, entitled "Request Submitted Under the Freedom of Information Act for Records Concerning Detainees, Including 'Ghost Detainees/Prisoners,' 'Unregistered Detainees/Prisoners,' and 'CIA Detainees/Prisoners'" (the "First Amnesty Request"), sought records "reflecting, discussing, or referring to the policy and/or practice concerning (1) the apprehension, detention, transfer, or interrogation of persons within the Scope of Request . . . (2) current and former places of

[2] CCR's 7 October 2003 request sought (1) "Records concerning the treatment of Detainees in United States custody," (2) "Records concerning the death of Detainees in United States custody," and (3) "Records related to the rendition of Detainees and other Individuals." CCR's 25 May 2004 request sought "a) records concerning the treatment of Detainees in United States custody; b) records concerning the deaths of detainees in United States custody; and c) records related to the rendition of Detainees and other individuals to foreign powers known to employ torture or illegal interrogation techniques." Those requests are currently the subject of litigation before Judge Alvin K. Hellerstein in the United States District Court for the Southern District of New York. See American Civil Liberties Union v. Dep't of Defense, No. 04 Civ. 4151 (S.D.N.Y.) (AKH).

detention where individuals within the Scope of the Request have been or are currently held, . . . [and] (3) the names and identities of detainees who fall within the scope of this request." The First Amnesty Request defined the "Scope of Request" as "individuals who were, have been, or continue to be deprived of their liberty by or with the involvement of the United States and about whom the United States has not provided public information." The First Amnesty Request indicated that individuals falling within the Scope of the Request have been referred to as "ghost detainees/prisoners," "unregistered detainees/prisoners," "CIA detainees/prisoners," "other Government Agency Detainees," or "OGA Detainees." A true and correct copy of the First Amnesty Request is attached as Exhibit F.

12. The second of these requests, entitled "Request under the Freedom of Information Act for Records Concerning Ghost Detainee Memoranda, Department of Defense Detainee Reporting, Reports to Certain U.N. Committees, and the Draft Convention on Enforced Disappearance" (the "Second Amnesty Request"), sought records relating to, among other things, "any memorandum of understanding, or other record reflecting an agreement or proposed agreement between agencies . . . concerning the handling of ghost or unregistered detainees," as well as records reflecting communications regarding the United States' Second

Periodic Report to the United Nations Committee Against Torture, the United States' Third Periodic Report to the U.N. Human Rights Committee, and the negotiation or drafting of a draft Convention on the Protection of all Persons from Enforced Disappearance, and records generated in connection with the Department of Defense's reporting requirements under Section 1093(c) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. A true and correct copy of the Second Amnesty Request is attached as Exhibit G.

13. By letter dated 5 May 2006, the CIA acknowledged receipt of the First Amnesty Request and the Second Amnesty Request, and denied Amnesty International and Washington Square Legal Services' request for expedited processing. Amnesty International and Washington Square Legal Services filed an administrative appeal from the denial of their request for expedited processing by letter dated 3 July 2006.

14. Plaintiffs jointly submitted a fourth FOIA request to the CIA on December 28, 2007 (the "Specific FOIA Request"). The Specific FOIA request sought 17 categories of documents and specific documents. A true and correct copy is attached hereto as Exhibit H.

15. On or about July 30, 2008, the CIA notified the Plaintiffs and the Court by letter that it had determined that it was required to issue a Glomar response, indicating that it

cannot confirm or deny the existence of responsive records, for Categories 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, and 17 of the Specific FOIA Request.

16. The Court issued a Memorandum and Order dated September 24, 2008, staying the CIA's search for, and processing of, records responsive to categories 11 and 13 of the Specific FOIA Request until December 31, 2009. The Court later extended the stay until February 28, 2009. Upon the termination of the stay, the CIA proceeded to process categories 11 and 13.

B. Stipulations Governing Searches for, and Processing of, Responsive Records

17. On or about April 21, 2008, the Parties entered into a Stipulation and Order between Plaintiffs and the Central Intelligence Agency Regarding Procedures for Adjudicating Summary Judgment Motions (the "First Stipulation"). A true and correct copy of the First Stipulation is attached to this declaration as Exhibit I. The First Stipulation set forth a schedule for litigating the CIA's summary judgment motion with respect to the CIA's response to the CCR FOIA Request, the First Amnesty FOIA Request, and the Second Amnesty FOIA Request, as well as the procedures that would govern that summary judgment motion. Specifically, the First Stipulation established that the CIA's Vaughn index in support of its motion for summary judgment would describe, inter alia, a representative sample set

of 250 records from the Responsive Records, and established the procedures by which the representative sample was selected.

18. Pursuant to the First Stipulation, the CIA filed a motion for summary judgment with respect to the CCR FOIA Request, the First Amnesty FOIA Request, and the Second Amnesty FOIA Request on April 21, 2008 ("First CIA Summary Judgment Motion"). The CIA filed a second motion for summary judgment with respect to the Specific FOIA Request on November 14, 2008 ("Second CIA Summary Judgment Motion"). The Plaintiffs filed cross-motions for summary judgment with respect to the First CIA Summary Judgment Motion and the Second CIA Summary Judgment Motion.

19. On January 22, 2009, President Barack Obama issued an executive order number 13491, entitled "Ensuring Lawful Interrogations." Exec. Order No. 13,491, 74 Fed. Reg. 4893 (Jan. 27, 2009). That order suspended all interrogation techniques other than those found in the United States Army Field Manual 2-22.3 ("Army Field Manual"), and created a panel composed of various government officials to study whether the Army Field Manual provided "an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies." The order also required CIA to close any detention facilities that it was currently operating.

20. On or about April 16, 2009, the Government released to Plaintiffs significant portions of three memoranda from the Office of Legal Counsel of the Department of Justice (the "Released OLC Memos"), which had been previously been withheld in full, after having determined, inter alia, that certain information contained in those documents that had previously been classified could now be publicly released. True and correct copies of these three records in redacted form are attached as Exhibit J.

21. On or about June 5, 2009, the CIA withdrew the First CIA Summary Judgment Motion and the Second CIA Summary Judgment Motion, and Plaintiffs withdrew their corresponding cross-motions.

22. On or about September 18, 2009, the Parties entered into a Second Stipulation and Order between Plaintiffs and the Central Intelligence Agency Regarding Procedures for Adjudicating Summary Judgment Motions (the "Second Stipulation"). A true and correct copy of the Second Stipulation is attached as Exhibit K.

23. The Second Stipulation sets forth, inter alia, the agreement of the Parties that the CIA would reprocess certain records described in paragraph 6 of the Second Stipulation; the schedule for briefing the CIA's summary judgment motion; the procedures the CIA would use to select the records that would be

included on the CIA's Vaughn index in support of its motion for summary judgment; the agreement of the Parties that the CIA will not reprocess any records, other than those identified on its Vaughn index, until such time as the Court renders a decision on the CIA's summary judgment motion that addresses the validity of the CIA's withholding of information; and the agreement of the Parties that the CIA will withhold from its current sample set certain documents potentially containing congressional equities, pending the CIA's consultation with Congress, and that the CIA will, by December 18, 2009, provide a Vaughn index reflecting those documents and certain other similar documents.

II. The CIA's Records Systems and Search for Records Responsive to Plaintiffs' Four FOIA Requests

A. CIA Records Systems

24. The CIA's records systems are decentralized and compartmented due to the unique security risks that the CIA faces. An inherent drawback to this practice is that it creates inefficiencies in the records search and retrieval processes. These inefficiencies affect the process for responding to FOIA requests.

25. All FOIA requests come to the Information and Privacy Coordinator, Information Management Services ("IMS"), located within the Office of the Chief Information Officer ("OCIO"). Once a FOIA request is received, and under the direction and

supervision of the CIA Information and Privacy Coordinator, experienced IMS information management professionals analyze the request and determine which CIA components reasonably might be expected to possess responsive records. IMS then transmits a copy of the request to each relevant component. When a request is broad, it is quite common for IMS to transmit the request to many components. Because CIA's records are decentralized and compartmented, each component must then devise its own search strategy, which includes identifying which of its records systems to search as well as what search tools, indices, and terms to employ.

26. All CIA components are contained within one of five directorates or office clusters: the National Clandestine Service (NCS), the Directorate of Intelligence ("DI"), the Directorate of Science and Technology ("DS&T"), the Directorate of Support ("DS"), and the Director of CIA Area ("DIR Area").

27. The NCS is the organization within the CIA responsible for the clandestine collection of foreign intelligence from human sources. The NCS's records system contains information on persons who are of foreign intelligence or counterintelligence interest to CIA and other U.S. Government agencies. Appropriately trained personnel conduct FOIA and Privacy Act searches of the NCS records system as part of their normal responsibilities. NCS operational files are exempted from FOIA

search and review pursuant to the CIA Information Act, 50 U.S.C. § 431.

28. The DI is the CIA component that analyzes, interprets, and forecasts foreign intelligence issues and world events of importance to the United States. The DI is also responsible for the production of finished intelligence reports for dissemination to policymakers in the U.S. Government. Appropriately trained personnel regularly conduct FOIA and Privacy Act searches of the DI records system as part of their normal responsibilities.

29. The DS&T is the CIA component responsible for creating and applying technology to fulfill intelligence requirements. Appropriately trained personnel regularly conduct FOIA and Privacy Act searches of the DS&T records system as part of their normal responsibilities.

30. The DS provides the CIA with mission-critical services, including the protection of CIA personnel, security matters generally, facilities, communications, logistics, training, financial management, medical services, and human resources. It maintains records on all current and former CIA employees, whether employed in a contract or staff capacity, as well as other individuals for whom security processing or evaluation has been required. Appropriately trained personnel

regularly conduct FOIA and Privacy Act searches of the DS records system as part of their normal responsibilities.

31. The DIR Area is a cluster of offices directly responsible to the Director of CIA, such as the Office of General Counsel, the Office of Inspector General, and the Office of Congressional Affairs, and is distinct from the Agency's four main directorates (NCS, DI, DS, and DS&T). Appropriately trained DIR Area personnel regularly conduct FOIA searches of the DIR Area systems of records as part of their normal responsibilities.

32. After a tasked component within one of the directorates described above initially locates a set of documents in response to a FOIA request, officers must review the documents to determine whether they, in fact, respond to the request. Because of the nature of a particular records system -- or the search tools, indices, or terms employed -- an initial search may locate many documents that are not responsive to the request. In fact, it is quite common for the number of non-responsive documents to far exceed the number of responsive documents. Such nonresponsive records are removed from set of responsive records.

33. In this case, the CIA employees who performed the necessary FOIA searches: (a) have access to the pertinent intelligence, operational, and administrative records; (b) are

qualified to search those records; and (c) regularly search those records in the course of their professional duties.

B. The CIA's Search for Records Responsive to Plaintiffs' FOIA Requests

34. In the First Stipulation, the Parties agreed that the CIA's withholding of records that have been or currently are being litigated in American Civil Liberties Union v. Dep't of Defense, 04 Civ. 4151 (S.D.N.Y.) (AKH) (the "ACLU Litigation"), will not be litigated in the instant action. Accordingly, the CIA's search for responsive records was limited to those records that were not litigated in that prior action.

35. The Parties further agreed in the First Stipulation that, pursuant to the Central Intelligence Agency Information Act of 1984, 50 U.S.C. § 431, the CIA would limit its search to non-operational files of components within the CIA. The search of non-operational files included NCS records to the extent those records were found in other non-exempt files, for instance, OIG investigation files.

36. The CIA's search of non-exempt files for documents responsive to the CCR FOIA Request, the First Amnesty Request and the Second Amnesty Request focused on the CIA directorate determined by IMS to be the most likely to have records responsive to the Plaintiffs' requests: the DIR Area.

37. The search for documents responsive to these three FOIA requests took place within the DIR Area for two reasons. First, at the time the search was conducted, the President and the Director of the CIA had acknowledged the existence of a CIA detention program. Thus, as the Director had made statements about the program, the Director's Area was likely to contain responsive records. Second, the requests ask for records "reflecting, discussing or referring to . . . policy" and records discussing the "legality" or "treatment" of CIA or "ghost detainees," as well as records regarding any violations of those policies. Records responsive to these requests are likely to be found in the cluster of components in the DIR Area, such as the Office of General Counsel and Office of Inspector General ("OIG"). Thus, IMS determined that the CIA components reasonably likely to contain responsive records would be in the DIR Area.

38. Professionals in the relevant components searched their records systems for responsive records. For instance, the Office of Inspector General identified all its case files that concerned detainees or rendition, including records analyzing the legality of these practices and records identifying the identities of any persons subject to detention or rendition. Where the reviewer could not determine whether a record regarding detention or detainees was responsive to the request,

CIA deemed it responsive. Other DIR Area components searched for records using search terms that were reasonably calculated to reveal responsive records, such as the terms "ghost detainee" and "rendition."

39. The CIA's initial search for records responsive to the CCR FOIA Request and the First and Second Amnesty FOIA Requests located more than 7000 responsive records (the "Responsive Records"). In addition to the Responsive Records, the CIA also identified certain ongoing OIG investigations that would likely have records responsive to the request. As addressed in greater detail in Part V(F) of this declaration, the records from OIG investigations that remained open as of 1 December 2007 are not included in the set of Responsive Records.

40. Of the Responsive Records, approximately 230 were located in the Office of General Counsel. Approximately 89 were located in DIR Area components other than the Office of General Counsel and the Office of the Inspector General. The remaining Responsive Records were found in the investigation files of the Office of Inspector General (the "OIG Investigation Files").[3]

[3] The breakdown of the 12 different categories of documents is as follows: 10 Office of General Counsel Cables; 59 Office of General Counsel Memoranda; 53 Office of General Counsel E-mails; 102 Miscellaneous Office of General Counsel records; 3644 Office of Inspector General Cables; 2534 Office of Inspector General E-mails; 549 Office of Inspector General Reports; 1232 Miscellaneous Office of Inspector General records; 2 Non-OIG Non-OGC Cables; 2 Non-OIG Non-OGC E-mails; 31 Non-OIG Non-OGC Memoranda, and 69 Miscellaneous Non-OIG Non-OGC Records.

Many of the Responsive Records that were found in the OIG Investigation files originated in the NCS.

41. Pursuant to the First Stipulation, OIG records pertaining to investigations that remained open as of the date Plaintiffs filed their complaint, 7 June 2007, but that had been closed by the date of 1 December 2007 (the "Additional OIG Records") were processed separately from the Responsive Records. The CIA identified more than 2100 responsive Additional OIG Records (which are in addition to the more than 7000 Responsive Records described in the preceding paragraph).

42. The CIA also conducted searches for records responsive to categories 1, 2, 7, 8 and 11 through 14 of the Specific FOIA Request.

43. Category 1 of the Specific FOIA Request seeks "the spring 2004 report by the [OIG] on the CIA's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Based upon the date and the description of the office that authored it, I have determined that the record requested in Category 1 refers to the Office of Inspector General's Special Review regarding counterterrorism detention and interrogation activities (the "Special Review"), the final report for which is dated 7 May 2004. Although I would not characterize the Special Review as concerning "the CIA's compliance with the Convention Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment," that Convention is mentioned in the text of the report. The CIA's search located no other OIG report from Spring 2004 about the Convention against Torture.[4]

44. I understand that, pursuant to First Stipulation, the Special Review report is outside the scope of this litigation as it is being litigated in the ACLU Litigation. The CIA therefore originally referred Plaintiffs to the version of this document that was released with redactions after rulings by United States District Judge Alvin K. Hellerstein in the ACLU Litigation. On August 24, 2009, the CIA released a version of the Special Review to the plaintiffs in the ACLU Litigation with fewer redactions, as certain information contained in the report recently had been declassified.

45. Category 2 requested a list of "erroneous renditions" compiled by the CIA OIG. Records management professionals determined that if the OIG compiled such a list in the course of an investigation, the list logically would be found in the files of the OIG Investigations Staff. The OIG Investigations Staff is led by an Assistant Inspector General for Investigations and a Deputy Assistant Inspector General for Investigations. As

[4] The Specific FOIA Request also quotes a *New York Times* article, which contains a characterization of the conclusions reached by the Special Review. The fact that the CIA has identified and produced a document responsive to the date, author, and subject specified in the request does not and should not imply that the CIA agrees with Plaintiffs' or the *New York Times'* characterization of a purported conclusion of the report.

part of their official duties, the Assistant and Deputy Assistant Inspector General for Investigations initiate and supervise the conduct of investigations relating to programs and operations of the CIA.

46. To determine whether any such document exists, the CIA officers conducting the search for records responsive to Category 2 consulted with the Deputy Assistant Inspector General for Investigations within the OIG. This official has served as Deputy Assistant Inspector General for Investigations from March 2004 to the present. In addition, she served as the Acting Assistant Inspector General for Investigations from January 2005 to June 2005 when her supervisor's position was vacant. The Deputy Assistant Inspector General for Investigations was serving in the OIG in May 2004 when the OIG Investigations Staff issued the OIG Special Review. She is, therefore, intimately familiar with OIG investigations regarding CIA counterterrorism detention and interrogation activities, including renditions. In addition, the Deputy Assistant Inspector General for Investigations was involved in the search of OIG files and the review of documents in closed OIG investigations files in connection with this case. She is, therefore, intimately familiar with the documents in OIG files relating to CIA detainees.

47. Based upon her official responsibilities described above -- including her supervision of the Investigations Staff, her involvement in the OIG Special Review, and her review of OIG files in connection with this case -- at all times relevant to Plaintiffs' request the Deputy Assistant Inspector General for Investigations was familiar with all investigations initiated and being conducted by the Investigations Staff and the content of its files. If during the course of its investigations the Investigations Staff had compiled a list of erroneous renditions, the Deputy Assistant Inspector General for Investigations would be aware of the existence of such a list.

48. The Deputy Assistant Inspector General for Investigations reviewed Plaintiffs' Specific FOIA Request, as well as the *Washington Post* article from which it quoted. In response to the search request for Category 2, the Deputy Assistant Inspector General for Investigations stated that no such document exists. Therefore, there are no responsive records for Category 2 of Plaintiffs' request.

49. Category 7 and Category 8 of the Specific FOIA Request seek cables reflecting the alleged use of the "attention shake" in connection with the CIA's interrogation of Khalid Sheikh Muhammad and Abu Zubaydah. CIA officials responsible for coordinating the search consulted with the relevant NCS officials regarding the existence of such cables and they stated

that the "attention shake" was not an interrogation technique employed by the CIA. Accordingly, no responsive documents exist.

50. Category 11 of the Specific FOIA Request seeks cables between CIA officials and operatives in the field discussing and/or approving the use of waterboarding on Abu Zubaydah. To conduct a search for these documents, CIA officers searched within a word-searchable database of cables maintained by the NCS that was designed to aggregate all CIA cables concerning Abu Zubaydah during the time of his detention and interrogation, among other individuals. The CIA officers conducting the search performed searches within this database that included the terms "waterboard," "water," and other variations of the term "waterboard." This search produced two classified intelligence cables between CIA Headquarters and the CIA field that are responsive to Category 11 of Plaintiffs' request and that are not otherwise being litigated in the ACLU Litigation. After consulting with other CIA officers, they determined that it was not likely that any other files would contain additional responsive records. CIA thus searched all files likely to contain materials responsive to Category 11.

51. Category 12 of the Specific FOIA Request seeks cables between CIA officials and operatives in the field discussing and/or approving the use of waterboarding on Khalid Sheikh

Mohammed. To conduct a search for these documents, CIA officers searched within a word-searchable database of cables maintained by the NCS that was designed to aggregate all CIA cables concerning Khalid Sheikh Muhammad during the time of his detention and interrogation, among other individuals. The CIA officers conducting the search performed searches within this database that included the terms "waterboard," "water," and other variations of the term "waterboard." This search produced 49 classified intelligence cables between CIA Headquarters and the CIA field that are responsive to Category 12 of Plaintiffs' request. After consulting with other CIA officers, they determined that it was not likely that any other files would contain additional responsive records. CIA thus searched all files likely to contain materials responsive to Category 12.[5]

52. Category 13 of the Specific FOIA Request seeks video tapes, audio tapes, and transcripts of materials related to interrogations of detainees that were acknowledge to exist during the U.S. v. Moussaoui case and described in an October 25, 2007 letter from the former U.S. Attorney for the Eastern District of Virginia to Chief Judge Karen Williams of the United

[5] Operational cables, such as those requested in Category 11 and 12, are typically exempt from FOIA search obligations pursuant to the CIA Information Act, 50 U.S.C. § 431. However, this operational files Exemption has exceptions, including files containing information that is the specific subject matter of certain investigations, including those conducted by the Department of Justice and the CIA OIG. 50 U.S.C. § 431(c)(3). In this instance, the CIA determined that the subject matter of records requested in Category 11 and 12 was within the scope of such investigations, and therefore searched for responsive documents within the NCS.

States Court of Appeals for the Fourth Circuit and District Court Judge Leonie Brinkema, Eastern District of Virginia. To identify and locate records responsive to this request, the CIA officers conducting this search consulted with officers in the NCS, who would most likely be able to identity and locate the particular records requested. After consulting with the NCS, the search officers determined that the responsive records consisted of three transcripts, two video recordings and one audio recording. The relevant NCS officers confirmed that, to the best of their knowledge, no other responsive records exist.

53. Category 14 requests a 13 September 2007 notification from a CIA attorney to the United States Attorney for the Eastern District of Virginia regarding a video tape. This item relates to the criminal prosecution *United States v. Zacharias Moussaoui*. To search for any documents responsive to this request, the CIA officers conducting this search consulted with the attorneys in the CIA Office of General Counsel who were familiar with the CIA's involvement in the *Moussaoui* case. These attorneys stated that no such written notification had been made; rather, the referenced notification was made telephonically. Therefore, there are no responsive records for Category 14 of the Specific FOIA Request.

54. In addition to the documents previously described herein, the CIA also released in part, on August 24, 2009, two

documents requested by former Vice President of the United States Richard B. Cheney (the "Cheney Records"). The released documents consist of analytical reports produced by and located in the DI regarding critical foreign intelligence obtained from certain CIA detainees, including Khalid Sheikh Muhammad, and as such are responsive to Plaintiffs' December 21, 2004 requests. Although the CIA did not otherwise search the DI for documents responsive to Plaintiffs' requests, the CIA's search for responsive documents to date is nevertheless both adequate and consistent with the standard of reasonableness required by FOIA.

55. The DI's records systems primarily contain finished intelligence reports and intelligence for analysis. As a general matter (although not without exception), they do not contain detailed information on the conduct of specific covert operations (although DI analysts may have access to such information on a case-by-case basis) or otherwise link specific analyses to specific intelligence sources, including but not limited to the identities of specific CIA detainees. It is for that reason that the experienced IMS information management professionals (*i.e.*, the individuals who, as described above, conduct searches for responsive documents pursuant to FOIA requests) reasonably determined that the DI was not likely to possess records responsive to Plaintiffs' requests in this case.

56. The existence of two responsive documents in the DI - which, unlike many DI products, do contain information regarding specific covert operations - does not change the informed view of the IMS professionals who are generally familiar with DI records systems and have handled hundreds of CIA's FOIA searches that a search of the DI in this case would not be reasonably likely to lead to the discovery of any additional responsive records.

III. Processing of Records

57. In the instant case, IROs reviewed the records described on the attached Vaughn index to determine which, if any, FOIA Exemptions apply to the information contained in such records, and whether non-exempt information could reasonably be segregated from non-exempt information. In evaluating responsive documents, officers segregated exempt information to avoid the inadvertent disclosure of classified information or intelligence sources and methods. If officers determined that no segregable, non-exempt portions of documents could be released without potentially compromising classified information, information concerning intelligence sources and methods, or other information protected by FOIA Exemptions, then such documents were withheld from the Plaintiffs in full.

58. In the course of reviewing documents for exempt information and segregability, components at times identified

information that required coordination with or referral to another CIA component or another agency because the other component or agency originated the information or otherwise has an interest in it.[6]

59. When all of the components and agencies completed their respective reviews of the documents described on the attached Vaughn index, IMS professionals and other CIA employees under the direction and supervision of the CIA Information and Privacy Coordinator, incorporated all of their recommendations regarding Exemption, segregation, redaction, and release. CIA professionals then conducted a review from a corporate perspective on behalf of the entire CIA. In this review, CIA professionals resolved conflicting recommendations, ensured that the release or withholding determinations complied with law and published CIA regulations, identified additional exempt information that reflects overall CIA interests, and produced the integrated final record copy of each document.

60. During the corporate review, the CIA Information and Privacy Coordinator may withhold additional information in order to protect overall CIA equities. When considered individually, a document may not indicate on its face that it contains exempt information. Nevertheless, when reviewers consider all responsive documents in total, it frequently becomes apparent

[6] See Exec. Order No. 12958, § 3.7(b).

that, considered collectively, the documents reveal information exempt from release.

61. Following its first review of the Responsive Records, on April 15, 2008, the CIA released in whole or in part 104 records, each of which contained segregable, non-exempt information. On June 20, 2008, the CIA released in part two additional records, and on September 3, 2008, one additional record.

62. Additionally, as I discussed above, in July 2009 the CIA voluntarily undertook to reprocess the records described on the attached Vaughn index. As a result of this reprocessing, on August 24, 2009, the CIA released in whole or in part an additional 26 records, and re-released 9 records previously released in part with fewer redactions. The CIA also informed the plaintiffs that it was no longer asserting a Glomar response with respect to categories 7 and 8 of the Specific FOIA Request.

63. In total, the CIA has released to the plaintiffs approximately 133 records (the "Released Records") that are responsive to the CCR FOIA Request, the First Amnesty Request, and the Second Amnesty Request, not including the three Released OLC Memos.[7] The Released Records that were selected for

[7] As I previously noted, on April 16, 2009, the CIA released to the plaintiffs the Released OLC Memos. However, as the withholdings in the Released OLC Memos are currently being litigated in the ACLU litigation, pursuant to the terms of the First Stipulation these three documents are no longer the

inclusion on the attached Vaughn index are attached to this declaration as Exhibit L.

64. The CIA also referred records to other federal agencies for direct response to the requestor, in accordance with 32 C.F.R. § 1900.22(b). The CIA withheld the remaining records in their entirety pursuant to 5 U.S.C. § 552(b). In determining whether to withhold information obtained by or belonging to other federal agencies in documents described on the attached Vaughn index, the CIA coordinated its response with the relevant agency in accordance with 32 C.F.R. § 1900.22(b).

65. The remaining records were withheld in full pursuant to FOIA Exemptions b(1), b(2), b(3), b(5), b(6) and b(7).

IV. Selection of the Sample Set

66. Pursuant to the First Stipulation and the Second Stipulation, this declaration and the attached indices describe a representative sample of approximately 350 the records withheld in full or in part.

67. The first approximately 250 documents were selected from the Responsive Records using the procedure outlined in paragraphs 7 through 9 of the First Stipulation.[8] Specifically,

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subject of this lawsuit. Accordingly, the Released OLC Memos are not included in the set of the Released Records.

[8] Due to a miscalculation in an Excel spreadsheet, there was one exception to this sampling procedure. The CIA erroneously selected the 25 miscellaneous records in the OIG subcategory by selecting documents number 1, 62, 122, and thereafter every sixtieth document. This discrepancy was due entirely to

the Responsive Records were first divided based on where they were found - Office of General Counsel records, Office of Inspector General records, and other records. Those three categories were sub-divided into four additional categories: Cables, E-mails, Reports/Memoranda, and Miscellaneous. The Plaintiffs selected a certain number of records from each sub-category for the Vaughn index. The CIA then selected these records in accordance with the Plaintiffs' instructions (that is, every second OGC memo, every 146th OIG Cable).

68. The next approximately 50 documents were selected from the Additional OIG Records using the same procedure described in the preceding paragraph, in accordance with the First Stipulation.

69. The next 2 documents consist of the Cheney Records.

70. The next 49 documents consist of documents responsive to Category 12 of the Specific FOIA Request.

71. The next 8 records consist of records responsive to Categories 11 and 13 of the Specific FOIA Request.

72. The CIA has also added one additional document to its Vaughn Index referred to the CIA for coordination from the Office of the Director of National Intelligence, which appears at document 360 in the Vaughn index.

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inadvertence, and without any foreknowledge of which records would be selected.

73. Pursuant to the Second Stipulation, the processing deadline for records 15, 22, 23, 38, 77, 87, 154, 155, 157 and 229 has been extended until December 18, 2009, to permit coordination with Congress. To the extent the CIA withholds information from those records, the relevant Vaughn entries will be submitted on that date.

V. Applicable FOIA Exemptions

A. Exemption (b)(1)

74. FOIA Exemption (b)(1) provides that FOIA does not require the production of records that are:

> (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and
>
> (B) are in fact properly classified pursuant to such Executive order.

5 U.S.C. § 552(b)(1). As explained in detail below, the documents responsive to the FOIA request at issue contain information that, if disclosed, would reveal intelligence sources and methods, and are therefore properly classified pursuant to the relevant Executive Order.

1. Classifying Authority

75. As a preliminary matter, I will explain the relevant classification authority.

76. The CIA was established by section 104(a) of the National Security Act of 1947 (the "Act"), as amended, 50

U.S.C.A. § 403-4. Section 104A of the Act, 50 U.S.C.A. § 403-4a, established the position of the Director of the Central Intelligence Agency ("DCIA"), whose duties and responsibilities include serving as head of the CIA and collecting information through human sources and by other appropriate means; correlating and evaluating intelligence related to the national security and providing appropriate dissemination of such intelligence; providing overall direction for coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection; and performing such other functions and duties related to intelligence affecting the national security as the President, or the Director of National Intelligence ("DNI"), may direct. A more particularized statement of the authorities of the DCIA and the CIA is set forth in sections 1.5, 1.6, and 1.7(a) of Executive Order 12333, as amended.[9]

77. Section 1.3(a) of Executive Order 12958, as amended,[10] provides that the authority to classify information originally

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[9] Exec. Order No. 12333, *reprinted as amended in* 50 U.S.C.A. § 401 note at 24 (West Supp. 2008) *and revised by* Exec. Order No. 13470, 73 Fed. Reg. 45325 (July 30, 2008).

[10] Executive Order 12958 was amended by Executive Order 13292. *See* Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to Executive Order 12958 are to the Order as amended by Executive Order 13292. *See* Exec. Order No. 12958, *reprinted as amended in* 50 U.S.C.A. § 435 note at 193 (West Supp. 2008).

may be exercised only by the President and, in the performance of executive duties, the Vice President; agency heads and officials designated by the President in the Federal Register; and United States Government officials delegated this authority pursuant to section 1.3(c) of the Order. Section 1.3(c)(2) provides that TOP SECRET original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to section 1.3(a)(2) of the Order.

78. In accordance with section 1.3(a)(2) of Executive Order 12958, the President designated the DCIA as an official who may classify information originally as TOP SECRET.[11] Section 1.3(b) of the Executive Order provides that original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL.

2. Procedural Requirements

79. Section 6.1(h) of the Executive Order defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection

[11] Order of President, Designation under Executive Order 12958, 70 Fed. Reg. 21,609 (Apr. 21, 2005), reprinted in 50 U.S.C.A. § 435 note at 192 (West Supp. 2006). This order succeeded the prior Order of President, Officials Designated to Classify National Security Information, 60 Fed. Reg. 53,845 (Oct. 13, 1995), reprinted in 50 U.S.C.A. § 435 note at 486 (West 2006), in which the President similarly designated the Director of the CIA as an official who may classify information originally as TOP SECRET.

against unauthorized disclosure and is marked to indicate its classified status when in documentary form." Section 6.1(y) of the Order defines "national security" as the "national defense or foreign relations of the United States."

80. Section 1.1(a) of the Executive Order provides that information may be originally classified under the terms of this order only if all of the following conditions are met:

> (1) an original classification authority is classifying the information;
>
> (2) the information is owned by, produced by or for, or is under the control of the United States Government;
>
> (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
>
> (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

Exec. Order 12958, § 1.1(a).

The Executive Order also mandates that records be properly marked and that the records have not been classified for an improper purpose. I will discuss each of these requirements in turn.

81. *Original classification authority* - Under the authority of section 1.3(c)(2), the Director of the CIA has delegated original TOP SECRET classification authority to me.

As an original classification authority, I am authorized to conduct classification reviews and to make original classification decisions. IMS professionals and other CIA employees have reviewed the documents responsive to Plaintiffs' FOIA Requests under the criteria established by Executive Order 12958 and have described to me the information contained therein. With respect to the information described in section V(A)(3) of this declaration relating to CIA sources, methods, and activities, I have determined that this information is properly classified TOP SECRET, SECRET, and/or CONFIDENTIAL by an original classification authority.

82. *U.S. Government information* - Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the United States Government. With respect to the information relating to CIA sources, methods, and activities as described in section V(A)(3) of this declaration for which FOIA Exemption (b)(1) is asserted in this case, that information is owned by the U.S. Government, was produced by the U.S. Government, and is under the control of the U.S. Government.

83. *Categories in Section 1.4 of the Executive Order* - With respect to the information relating to CIA sources, methods, and activities described in section V(A)(3) of this declaration for which FOIA Exemption (b)(1) is asserted in this

case, that information falls within the following classification categories in the Executive Order: "foreign government information" [§ 1.4(b)]; "information . . . concern[ing] . . . intelligence activities . . . [and] intelligence sources or methods" [§ 1.4(c)]; and "foreign relations or foreign activities of the United States" [§ 1.4(d)]. I describe this information and its relation to the national security below.

84. *Damage to the national security* - Section 1.2(a) of the Executive Order provides that information shall be classified at one of three levels if the unauthorized disclosure of the information reasonably could be expected to cause damage to the national security, and the original classification authority is able to identify or describe the damage. Information shall be classified TOP SECRET if its unauthorized disclosure reasonably could be expected to result in *exceptionally grave damage* to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in *serious damage* to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in *damage* to the national security.

85. With respect to the information relating to CIA sources, methods, and activities described in section V(A)(2) of this declaration for which FOIA Exemption (b)(1) is asserted in this case, I have determined that much of this information is

classified TOP SECRET because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in exceptionally grave damage to the national security. I have also determined that much of this information is classified SECRET, because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in serious damage to the national security. Some information is classified CONFIDENTIAL because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in damage to the national security. The damage to national security that reasonably could be expected to result from the unauthorized disclosure of this classified information is described below.

86. *Proper purpose* - With respect to the information relating to CIA sources, methods, and activities described in section III(A)(2) of this declaration for which FOIA Exemption (b)(1) is asserted in this case, I have determined that this information has not been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

87. *Marking* - With respect to the information in the sampled documents for which FOIA Exemption (b)(1) is asserted in this case, as indicated in the attached Vaughn index, IMS professionals and other CIA employees have reviewed the documents and have determined that they are properly marked in accordance with section 1.6 of the Executive Order.[12] Each document bears on its face one of the three classification levels defined in section 1.2 of the order; the identity, by name or personal identifier and position, of the original classification authority or the name or personal identifier of the person derivatively classifying the document in accord with section 2.1 of the order; the agency and office of origin, if not otherwise evident; declassification instructions; and a concise reason for classification that, at a minimum, cites the applicable classification categories of section 1.4.[13]

88. *Proper classification* - With respect to the information in the sampled documents for which FOIA Exemption (b)(1) is asserted in this case, as indicated in the attached Vaughn index, the CIA has reviewed the documents and has

[12] Many of the operational communications were originally marked as SECRET in our communications database, even though they should have been marked as TOP SECRET. While we are not altering original electronic copies, this error is being corrected for copies printed for review in this case.

[13] Some of these documents also contain markings for "Special Access Programs," also known as "Sensitive Compartmented Information" or "SCI." Section 4.4 of Executive Order 12958 establishes the legal requirements for establishing SCI. Some of these markings are themselves classified, as explained more fully below.

determined that they have been classified in accordance with the substantive and procedural requirements of Executive Order 12958 and that, therefore, they are currently and properly classified.

3. Substantive Requirements

89. In processing the documents for this litigation, IMS professionals and other CIA employees have reviewed the records identified as exempt under Exemption (b)(1) in the attached Vaughn index and determined that they contain information that is currently and properly classified. These records contain myriad classified facts and categories of classified information, including information regarding cover, the location of CIA field installations, and the CIA's foreign intelligence relationships. As a general matter, however, and in the aggregate, they concern information regarding interrogation, the CIA terrorist detention program, and rendition. It is difficult to discuss these activities in an unclassified manner. However, I will attempt to describe, to the greatest extent possible on the public record, the damage to the national security that would result from the disclosure of this information.

a. Intelligence Sources

90. Certain of the information in the documents at issue has been withheld because its disclosure could be expected to lead to the identification of intelligence sources of the CIA. The DCIA, as the official responsible for the conduct of foreign

intelligence operations, has broad authority to protect intelligence sources from disclosure.

91. One of the major functions of the CIA is to gather intelligence from around the world for the President and other United States Government officials to use in making policy decisions. To accomplish this, the CIA must rely on information from knowledgeable sources that the CIA can obtain only under an arrangement of absolute secrecy. Intelligence sources will rarely furnish information unless they are confident that they are protected from retribution or embarrassment by the absolute secrecy surrounding the source-CIA relationship. In other words, intelligence sources must be certain that the CIA can and will do everything in its power to prevent the public disclosure of their association with the CIA.

92. Intelligence sources include clandestine human intelligence sources, foreign intelligence and security services, and foreign governments generally. I will explain each of these intelligence sources and the reasons for the protection of these sources in more detail below.

(1) Human Sources

93. The CIA relies both on United States citizens and foreign nationals to collect foreign intelligence, and it does so with the promise that the CIA will keep their identities secret and prevent public disclosure. This is because the CIA's

revelation of this secret relationship could harm the individual. In the case of a United States citizen, for example, a business executive who shares with the CIA information collected in the course of his everyday business conducted abroad could suffer serious consequences if his or her relationship with the CIA was disclosed. If the business executive were to travel to certain parts of the world, disclosure of his or her relationship with the CIA could even place his or her life at risk.

94. In the case of a foreign national abroad who cooperates with the CIA, almost always without the knowledge of his or her government, the consequences of the disclosure of this relationship are often swift and far-ranging, from economic reprisals to harassment, imprisonment, and even death. In addition, such disclosure places in jeopardy the lives of every individual with whom the foreign national has had contact, including his or her family and associates.

95. In some cases, persons who are not even CIA sources are at times subject to retribution merely because they are suspected of cooperating with the CIA. The information requested in this case includes records referring to persons who were in United States' custody at some point and records relating to their interrogations. Release of such records may expose individuals who are no longer in United States' custody

to retribution merely because they were at one time held by the United States. In addition, even the appearance of cooperation with the United States may expose these individuals or their associates to harm.

96. In many cases, the very nature of the information that the source communicates necessarily tends to reveal the identity of the human source because of the limited number of individuals with access to the information. This is dangerous for two reasons. First, if such information is disclosed, the source may be perpetually vulnerable to discovery and retribution. Second, such information is helpful to foreign intelligence services and terrorist organizations. If a human source of the CIA is identified, foreign intelligence agencies and foreign terrorist organizations will better understand what information the CIA may have regarding their operations. Understanding what insights the CIA may have into the operations of foreign terrorist organizations allows such organizations to take measures to counteract the CIA's ability to collect vital intelligence information.

97. Moreover, the release of information that would or could identify an intelligence source would damage seriously the CIA's credibility with all other current intelligence sources and undermine the CIA's ability to recruit future sources. As stated previously, most individuals will not cooperate with the

CIA unless they have confidence that their identities will remain forever secret. Additionally, the CIA itself has a primary interest in keeping these identities secret, not only to protect the sources, but also to demonstrate to other sources and future sources that these sources can trust the CIA to preserve the secrecy of the relationship.

98. If a potential source has any doubts about the ability of the CIA to preserve secrecy, that is, if he or she were to learn that the CIA had disclosed the identity of another source, his or her desire to cooperate with the CIA would likely diminish. In other words, sources, be they present or future, usually will not work for the CIA if they are convinced or believe that the CIA may not protect their identities. The loss of such intelligence sources, and the accompanying loss of the critical intelligence that they provide, would seriously and adversely affect the national security of the United States.

99. For the foregoing reasons, the CIA has determined that certain of the records described on the attached Vaughn index contain information that reasonably could be expected to lead to the identification of human intelligence sources and is properly classified SECRET or TOP SECRET pursuant to the criteria of Executive Order 12958, because the unauthorized disclosure of this information could reasonably be expected to cause serious or exceptionally grave damage to the national security of the

United States. As a result, this information has been withheld in full because it is exempt from disclosure pursuant to FOIA Exemption (b)(1).

(2) Foreign Liaison and Government Information

100. Another kind of intelligence source upon which the CIA relies and therefore must protect from unauthorized disclosure is foreign liaison and foreign government information. Foreign liaison information is information that the CIA obtains clandestinely from foreign intelligence and security services. In this way, the foreign service itself functions as an intelligence source.

101. Similarly, foreign government information is information that the CIA obtains clandestinely from officials of foreign governments with whom the CIA maintains an official liaison relationship. In this way, the official of the foreign government functions as the intelligence source.

102. Both foreign liaison services and individual foreign government officials provide sensitive information in strict confidence to the CIA on issues of importance to United States foreign relations and national security. These services and officials of such services convey information to the CIA with the CIA's express agreement that the content of the information,

as well as the mere fact of the relationship through which they have provided the information, will remain secret.

103. If the CIA were to violate this express agreement, internal or external political pressure on the foreign government could cause the foreign liaison service or foreign government official to limit or even end the CIA relationship, causing the United States Government to lose valuable foreign intelligence. In fact, this political pressure could compel the foreign government to take defensive actions against the CIA, such as reducing the approved CIA presence in that country, which would further damage CIA's ability to collect intelligence about other countries or persons operating in that country.

104. Like the revelation of information provided by individual human sources, in many cases, the very nature of the information that the foreign liaison service or foreign government official provides necessarily tends to reveal the identity of the source of the information and, therefore, the relationship itself.

105. In this way, disclosing the fact of the relationship or the information itself would suggest to other foreign liaison services and foreign government officials that the CIA is unable or unwilling to observe an express agreement of absolute secrecy. This perception could cause the liaison services and government officials to limit their provision of information to

the CIA or even to end the relationship altogether, thus causing the United States Government to lose valuable foreign intelligence.

106. Moreover, this perception could discourage foreign governments from entering into any kind of relationship with the CIA, thus preventing altogether the collection of information from these sources.

107. As such, any official acknowledgment by the CIA of a past or current liaison relationship, or any revelation of information by the CIA that implicates a past or current relationship, with a foreign intelligence service or a foreign government official could cause serious damage to relations with that foreign government and possibly other relationships with other governments as well. This could result in a significant loss of intelligence information for the United States Government and thereby cause serious damage to national security.

108. Liaison relationships with foreign intelligence services offer the United States a force-multiplier for its intelligence collection activities, especially in the global war on terrorism. Intelligence services with which the CIA has a close or robust liaison relationship will provide the CIA with the intelligence reported by many of its own intelligence sources. Such services may even task their own sources to

gather information at the request of the CIA. Therefore, through liaison relationships, CIA can gather and provide intelligence information to United States national security and foreign policy decision-makers that is critical to informed decision making. Harm to these relationships can be particularly damaging to the fight against terrorism.

109. Therefore, the CIA has determined that certain of the records described on the attached Vaughn index contain information that reveals the fact or the nature of a CIA liaison relationship and is currently and properly classified SECRET or TOP SECRET pursuant to the criteria of Executive Order 12958 because its unauthorized disclosure reasonably could be expected to cause serious or exceptionally grave damage to the national security of the United States. As a result, this information has been withheld in full because it is exempt from disclosure pursuant to FOIA Exemption (b)(1).

110. Information provided by foreign liaison services and foreign government officials is also properly classified SECRET or TOP SECRET pursuant to Executive Order 12958, because it falls within two other protected categories of information: foreign government information provided to the United States Government, § 1.4(b), and information that, if disclosed, could reasonably be expected to cause damage to the foreign relations or foreign activities of the United States, § 1.4(d). Section

1.1(c) of Executive Order 12958 stresses the importance and sensitivity of foreign government information, stating that "[t]he unauthorized disclosure of foreign government information is presumed to cause damage to the national security." As such, for these additional reasons, this information is exempt from disclosure pursuant to FOIA Exemption (b)(1).

b. Intelligence Methods

111. Some of the information requested by Plaintiffs has been withheld because the information would tend to reveal intelligence methods. Generally, intelligence methods are the means by which the CIA accomplishes its mission. I will describe some specific intelligence methods as examples in further detail below. (Other intelligence methods may not be described on the public record.) Like the DCIA's authority for protecting intelligence sources, the DCIA also has broad authority for protecting intelligence methods.

112. In exercising this authority, the DCIA protects not only references to intelligence methods but also the information produced by those intelligence methods. One of the primary missions of foreign intelligence services is to discover the particular methods that the CIA uses. To this end, foreign intelligence services scour open sources for officially released intelligence information. These foreign intelligence services are capable of gathering information from myriad sources,

analyzing this information, and deducing means to defeat CIA collection efforts from disparate and seemingly unimportant details. What may seem trivial to the uninformed may, in fact, be of great significance, and may put a questioned item of information in its proper context. As such, it is the fact of the use of a particular intelligence method in a particular situation, in addition to the method itself, that the DCIA must protect.

113. A particular intelligence method is effective only so long as it remains unknown and unsuspected to its target. When an intelligence method is revealed, this causes the target of the method to take countermeasures. Once the target discovers the nature of an intelligence method or the fact of its use in a certain situation, the method usually ceases to be effective.

114. As such, the DCIA must protect the full spectrum of intelligence methods from disclosure because such information would be of material assistance to those who would seek to penetrate, detect, prevent, or damage the intelligence operations of the United States. Knowledge of or insights into specific intelligence collection methods would be of invaluable assistance to those who wish to detect, penetrate, counter, or evaluate the activities of the CIA. In fact, without legal protection against the public release of intelligence methods, the CIA would likely become impotent.

115. When a particular intelligence method ceases to be effective, the United States endures a significant loss. This is because the cost of developing and validating an intelligence method is hugely disproportionate to the cost of destroying that method via public disclosure. A single intelligence method can cost many millions of dollars, but a single newspaper story generated by a single disclosure can often end the utility of the method. Moreover, the actual damage and loss to the United States from the loss of the intelligence method is not only the cost of the method itself but also the loss of intelligence during the time it takes to fund and field a replacement method.

116. Detailed knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, or damage the intelligence operations of the United States. The result of disclosure of a particular method leads to the neutralization of that method, whether the method is used for the collection of intelligence information, the conduct of clandestine activities, or the analysis and evaluation of intelligence information.

117. For the foregoing reasons, the CIA has determined that certain of the records described on the attached Vaughn index contain information pertaining to intelligence methods that could reasonably be expected to cause serious or exceptionally

grave damage to the national security and therefore that information is currently and properly classified SECRET or TOP SECRET pursuant to the criteria of Executive Order 12958. As a result, this information has been withheld from release because it is exempt from disclosure pursuant to FOIA Exemption (b)(1).

118. Specifically, IMS professionals and other CIA employees have determined that the information relating to intelligence methods contained in the records described in the attached Vaughn index includes information regarding cover, field installations, cryptonyms and pseudonyms, foreign intelligence relationships, and dissemination control markings. These methods are described below.

(1) Cover

119. One specific intelligence method used by the CIA is cover. In order to carry out its mission of gathering and disseminating intelligence information, the CIA places individual CIA employees under cover to protect the fact, nature, and details of the CIA's interest in foreign activities and the intelligence sources and methods employed to assist those activities. The CIA considers the cover identities of individual employees and cover mechanisms both to be intelligence methods.

120. The purpose of cover is to provide a believable, non-threatening reason for a CIA officer to move around and meet

individuals of intelligence interest to the United States, and to do so without attracting undue attention.

121. Disclosing the identity of an undercover employee could expose the intelligence activities with which the employee has been involved, the sources with whom the employee has had contact, and other intelligence methods used by the CIA. Compromise of an officer's cover not only reveals his or her intelligence officer status, but also allows hostile intelligence services and terrorist organizations to find out precisely the location in which that person works. In fact, disclosing the identity of an undercover employee could jeopardize the life of the employee, his or her family, his or her sources, and even innocent individuals with whom he or she has had contact.

122. Disclosing cover mechanisms used by the CIA would expose and officially confirm those mechanisms, hindering the effectiveness of the cover for current and future undercover employees, as well as current and future intelligence operations.

123. Therefore, the CIA has determined that certain of the records described on the Vaughn index contain information pertaining to cover, the unauthorized disclosure of which reasonably could be expected to cause damage, and in some cases, serious damage, to the national security of the United States,

and thus this information is currently and properly classified CONFIDENTIAL and, in some cases, SECRET. As such, this information has been withheld from disclosure pursuant to FOIA Exemption (b)(1).

(2) Field Installations

124. Another intelligence method used by the CIA is to operate covert installations abroad.

125. Official acknowledgment that the CIA maintains an installation in a particular location abroad would likely cause the government of the country in which the installation is located to take countermeasures, either on its own initiative or in response to public pressure, in order to eliminate the CIA presence within its borders, or otherwise to retaliate against the United States Government, its employees, or agents. Revelation of this information also could result in terrorists and foreign intelligence services targeting that installation and persons associated with it.

126. Additionally, in some cases, the disclosure of information concerning a covert CIA installation would, in and of itself, reveal another specific intelligence method for which the CIA uses the installation.

127. For the foregoing reasons, the CIA has determined that certain of the records described on the Vaughn index contain information pertaining to covert CIA installations abroad that

reasonably could be expected to cause serious damage to the national security of the United States and therefore that this information is currently and properly classified SECRET pursuant to Executive Order 12958. As such, this information has been withheld from release pursuant to FOIA Exemption (b)(1).

(3) Cryptonyms and Pseudonyms

128. The use of cryptonyms and pseudonyms is an intelligence method whereby words and letter codes are substituted for actual names, identities, or programs in order to protect intelligence sources and other intelligence methods. Specifically, the CIA uses cryptonyms in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest, such as a source, foreign liaison service, or a covert program. The CIA uses pseudonyms, which are essentially code names, solely for internal CIA communications.

129. When obtained and matched to other information, cryptonyms and pseudonyms possess a great deal of meaning for someone able to fit them into the proper framework. For example, the reader of a message is better able to assess the value of its contents if the reader can identify a source, an undercover employee, or an intelligence activity by the cryptonym or pseudonym. By using these code words, the CIA adds an extra measure of security, minimizing the damage that would

flow from an unauthorized disclosure of intelligence information.

130. In fact, the mere use of a cryptonym or pseudonym in place of plain text to describe a program or person is an important piece of information in a document. Use of such code words may signal to a reader the importance of the program or person signified by the codeword. By disguising individuals or programs, cryptonyms and pseudonyms reduce the seriousness of a breach of security if a document is lost or stolen.

131. Although release or disclosure of isolated code words may not in and of itself necessarily create serious damage to the national security, their disclosure in the aggregate or in a particular context could permit foreign intelligence services to fit disparate pieces of information together and to discern or deduce the identity or nature of the person or project for which the cryptonym or pseudonym stands.

132. For the foregoing reasons, the CIA has determined that certain of the documents described on the Vaughn index contain information that would reveal a cryptonym or a pseudonym that could reasonably be expected to cause damage or serious damage to the national security of the United States and therefore that this information is properly classified CONFIDENTIAL or SECRET pursuant to the Executive Order 12958. As such, this

information has been withheld from release pursuant to FOIA Exemption (b)(1).

(4) Foreign Intelligence Relationships

133. Another intelligence method used by the CIA is, as previously discussed, to obtain foreign intelligence and assistance through liaison relationships with foreign intelligence and security services and foreign government officials. The DCIA must protect these relationships both as intelligence sources and methods.

134. Each relationship constitutes a specific method for the collection of intelligence, and the fact of the use of each relationship in a given circumstance must be protected. As previously discussed under the category of intelligence sources, divulging information concerning a particular liaison relationship could compromise the relationship and thereby destroy this specific intelligence method.

135. For the foregoing reasons, CIA has determined that certain of the records described on the Vaughn index contain information that pertains to a CIA relationship with a foreign intelligence service or foreign government officials that could reasonably be expected to cause serious or exceptionally grave damage to the national security and therefore that this information is therefore currently and properly classified SECRET or TOP SECRET pursuant to Executive Order 12958. As

such, the information has been withheld from release pursuant to FOIA Exemption (b)(1).

(5) Dissemination-Control Markings

136. Additional intelligence methods used by CIA are those concerned with the protection and dissemination of information. These methods include procedures for marking documents to indicate procedures for and indicators restricting dissemination of particularly sensitive information contained in the documents. This also includes markings for Sensitive Compartmented Information.

137. Although such markings, standing alone, may sometimes be unclassified, when placed in the context of specific intelligence collection or analysis they may reveal or highlight areas of particular intelligence interest, sensitive collection sources or methods, or foreign sensitivities. To avoid highlighting information that reveals such matters, the CIA withholds dissemination control markings and markings indicating the classification levels and controls of individual paragraphs or specific bits of information. Otherwise, if the CIA were to withhold dissemination control and classification markings only in cases where the accompanying information indicates a special intelligence interest, a particularly sensitive method, or a foreign liaison relationship, the CIA would focus public attention on those sensitive cases.

138. Additionally, as a practical matter, deleting dissemination control markings (other than the overall classification level) rarely deprives a requester of the information he or she is actually seeking.

139. For the foregoing reasons, the CIA has determined that certain of the records described on the Vaughn index contain information that concerns dissemination-control markings that reasonably could be expected to cause damage or serious damage to the national security of the United States and therefore that this information is currently and properly classified CONFIDENTIAL or SECRET pursuant to Executive Order 12958. Thus, this information has been withheld from release pursuant to Exemption (b)(1). In addition, such dissemination markings when not classified are properly withheld under Exemption (b)(3), as explained below.

c. Intelligence Activities

(1) General Intelligence Activities

140. Intelligence activities refer to the actual implementation of intelligence sources and methods in the operational context. Intelligence activities are highly sensitive because their disclosure often would reveal details regarding specific intelligence collection activities. The CIA is charged with both foreign intelligence and counterintelligence collection and analysis responsibilities.

Although it is obviously widely acknowledged that the CIA is responsible for performing activities in support of this mission for the United States, the CIA cannot confirm or deny the existence of any specific intelligence collection or disclose the target of such intelligence gathering activities.

141. To disclose the existence (or non-existence) of a particular intelligence collection activity would reveal U.S. intelligence needs, priorities, and capabilities to a foreign intelligence service or hostile organization seeking to take advantage of any national security weakness. The damage that would be caused by such an admission is clear. Foreign government services and hostile organizations would be advised that their activities and information had been targeted by the CIA; future intelligence collection activities would be made more difficult by such a revelation; and, as a result, the conduct of such operations would become even more dangerous.

142. Similarly, the CIA's clandestine intelligence interest in a specific individual or organization represents an intelligence activity, source and/or method. If, for example, the CIA admits that it possesses clandestine intelligence information about a particular individual who may be an intelligence operative of a foreign intelligence service or a member of a terrorist organization, the CIA essentially admits to that operative that his or her intelligence or terrorist

activities have been detected by the CIA. Such an acknowledgment alerts this operative that he or she must take countermeasures to make his or her future intelligence activities undetectable by the CIA. If the operative's countermeasures are successful, the CIA loses its ability to monitor his or her activities. Moreover, others who may be collaborating with the operative also will soon cease engaging in these detectable activities with similar results. In a case where the targeted operative is no longer active, the foreign intelligence service or terrorist organization for which he or she worked is still alerted to the fact that his or her intelligence or terrorist activities may have been detected by the CIA. This benefits the hostile organization because it will be alerted to that fact that any information gained from that operative's missions may be compromised to the CIA.

143. In general, the monitoring of a terrorist or intelligence organization of potential intelligence interest to the CIA is a very costly enterprise with significant resource and national security implications. At present, these costs are, in a sense, shared by both the CIA (which attempts to monitor foreign intelligence services' and terrorist organizations' sources, operatives, and activities) and the foreign intelligence service or terrorist organization (which attempt to conceal from the CIA the identities of their sources,

operatives and activities). The CIA sometimes may expend resources monitoring a particular organization or individual which is not, in fact, a foreign intelligence or terrorist source or operative, while foreign intelligence or terrorist organizations may sometimes undertake elaborate precautions because they believe they are being monitored by the CIA when, in fact, they are not. If the CIA's intelligence interest in a given individual or organization is known, such a revelation would provide the foreign intelligence or terrorist organization with information concerning which intelligence sources or types of intelligence activities the CIA can and cannot monitor. It may also indicate which are potential CIA sources. It will at a minimum indicate CIA interest in identified individuals or organizations. These admissions may greatly benefit a foreign intelligence service or terrorist organization by enabling it to redirect its resources to identify potential CIA sources, circumvent the CIA's monitoring efforts, and generally enhance its intelligence or deception activities at the expense of the United States. As a result, the CIA's efforts may be thwarted or made more difficult, reducing the CIA's effectiveness, requiring a diversion of CIA resources, and resulting in a loss of valuable intelligence information.

144. Similar concerns apply to the CIA's interrogation of prisoners in the custody of other government agencies.

Interrogation is one means the CIA uses to collect vital intelligence. However, revealing the substance of these interrogations would reveal many of the issues discussed previously. It would identify an intelligence target of the CIA. It would reveal the information that the CIA knows about that target, the information it does not know, and the information in which the CIA has an interest. This information would greatly benefit a foreign terrorist organization or intelligence service, as it would disclose gaps in the CIA's intelligence collection, identify areas of vital concern to the United States, and allow the foreign intelligence service or terrorist organization to take counter-measures.

145. For the foregoing reasons, the CIA has determined that certain of the records described on the Vaughn index contain information that concerns intelligence activities that reasonably could be expected to cause serious damage or exceptionally grave damage to the national security of the United States and therefore that this information is currently and properly classified SECRET or TOP SECRET pursuant to Executive Order 12958.

(2) Terrorist Detention and Interrogation

146. A large number of the documents at issue in this case relate to a highly classified CIA program to capture, detain, and interrogate key terrorist leaders and operatives in order to

help prevent terrorist attacks (the "Program"). As part of this Program (most if not all operational details of which remain largely classified notwithstanding recent releases of information), former President George W. Bush authorized the CIA to set up terrorist detention facilities outside the United States. This program included a number of the intelligence sources and methods I have previously described, and the operational details of the program remain classified. However, I will attempt to provide, to the extent possible on the public record, more detail regarding these specific intelligence activities of the CIA, and how these documents relate to the classified sources and methods described previously.

147. I have already described the levels of classification outlined in Executive Order 12958. In addition to those levels of classification, Executive Order 12958, section 4.3, provides that specified officials may create special access programs upon a finding that the vulnerability of, or threat to, specific information is exceptional, and the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure. The CIA is authorized to establish special access programs relating to intelligence activities, sources, and methods. These special

access programs relating to intelligence are called Sensitive Compartmented Information ("SCI") programs.

148. Information relating to the Program was originally placed - and largely remains - in a TOP SECRET//SCI program to enhance protection from unauthorized disclosure. The unauthorized disclosure of the intelligence sources and methods relating to the Program reasonably could be expected to cause exceptionally grave damage to national security. Specifically, disclosure of such information is reasonably likely to degrade the CIA's ability to effectively question terrorist detainees and elicit information necessary to protect the American people.

149. In particular, the CIA documents at issue in this case contain highly classified information that would disclose additional intelligence sources and methods related to the Program, including but not limited to the conditions of confinement, specific interrogation methods used by the CIA with respect to specific detainees, the locations of CIA intelligence activities overseas, and assistance provided by certain foreign governments in furtherance of the Program.

150. Even though (as discussed below) certain details of the CIA Detention Program, such as the use of enhanced interrogation techniques, have been discontinued, the information withheld from the documents would still be of value to al Qa'ida and must be protected because the withheld

information provides insight not only into the use of EITs and conditions of confinement, but also into the strategy and methods used by the United States when conducting any sort of interrogation, including those under the Army Field Manual. If the information withheld were to be disclosed, it would not only inform al Qa'ida about the historical use of EITs but also what techniques the United States would use in a current interrogation.

151. For example, may of the documents in the sample set consist of or reflect TOP SECRET communications between CIA Headquarters and field intelligence officers related to interrogations of CIA detainees. Drafted during the timeframe the interrogations were being conducted, these communications are among the most contemporaneous documents the CIA possesses concerning these interrogations. I have determined that the disclosure of these documents, and other documents regarding the Program that remain classified, could be expected to result in exceptionally grave damage to the national security of the United States by informing our enemies of what we knew about them, and when, and in some instances, how we obtained the intelligence we possessed.

152. Disclosure of the classified information regarding the Program contained in the classified documents is also reasonably likely to damage foreign relations. Among the most critical

sources and methods in the collection of foreign intelligence are the relationships that the United States maintains with the intelligence and security services of foreign countries. Through these intelligence liaison relationships, the CIA can collect intelligence and provide to U.S. national security and foreign policy officials information that is critical to informed decision making -- information that the CIA cannot obtain through other sources and methods.

153. In this case, foreign governments have provided critical assistance to CIA counterterrorism operations, including but not limited to hosting of foreign detention facilities, under the condition that their assistance be kept secret. If the United States demonstrates that it is unwilling or unable to stand by its commitments to foreign governments, they will be less willing to cooperate with the United States on counterterrorism activities.

154. Accordingly, the CIA has determined that certain of the records described on the attached Vaughn index concern the details of CIA intelligence activities that would cause serious or exceptionally grave damage to the national security of the United States and therefore that this information is currently and properly classified SECRET or TOP SECRET pursuant to Executive Order 12958. Therefore, this information has been withheld from release pursuant to Exemption (b)(1).

4. Official Disclosures

155. I am aware that a limited amount of information regarding the Program has been publicly disclosed by both the previous Administration and the current Administration, as well as in the context of this litigation.

156. On September 6, 2006, for example, former President George W. Bush delivered a speech in which he disclosed the existence of the Program. President Bush also disclosed that fourteen individuals formerly in CIA custody had been transferred to Guantanamo Bay.[14]

157. Although the former President publicly disclosed that the fourteen individuals were detained and questioned outside the United States in a program operated by the CIA, he also explicitly stated that many specifics of the program, including where the detainees had been held, the details of their confinement, and other operational details could not be divulged and would remain classified. In fact, many of those details constituted then - and still constitute - TOP SECRET, Sensitive Compartmented Information.

158. I am also aware that the Director of the Central Intelligence Agency, Leon E. Panetta, has previously submitted to the court in the ACLU Litigation, currently pending in the

[14] Since the President's September 6, 2006 speech, the Government has disclosed that two additional individuals were transferred to Guantanamo Bay.

U.S. District Court for the Southern District of New York, attached hereto as Exhibit M (hereafter the "Panetta Declaration"), as well as a classified declaration in the same matter, addressing among other things certain recent disclosures of information related to the Program, and a supplemental unclassified declaration in the ACLU Litigation. I hereby incorporate all three Panetta Declarations by reference.

159. In his declaration, Director Panetta acknowledged (as I do here) that on April 16, 2009, the President of the United States declassified and released in large part certain Department of Justice, Office of Legal Counsel (OLC) memoranda analyzing the legality of specified EITs. Some of the operational documents at issue in this case contain descriptions of EITs applied to specific detainees during specific overseas operations.

160. Among other things, the Panetta Declaration discusses the damage to national security that could result from the disclosure of specific operational details regarding the conditions of CIA detention and specific CIA operational interrogation procedures. For example, Director Panetta stated that although the government has released a handful of legal memoranda discussing the use of certain interrogation techniques and confinement conditions in the abstract, the operational

details of those techniques and conditions remain classified. Panetta Decl. Para. 10.

161. Critically, Director Panetta stated: "Even if EITs are never used again, the CIA will continue to be involved in questioning terrorists under legally approved guidelines. The information in these documents would provide future terrorists with a guidebook on how to evade such questioning." Panetta Decl. Para. 11. Director Panetta also stated that the release of this classified information could aid al Qa'ida's already effective propaganda efforts. Id. at Para. 12.

162. Given that many of the documents at issue in this case are classified precisely because they would reveal operational details of the government's use of EITs, and other operational details of the Program, the rationale of the Panetta Declaration is directly relevant to many of the documents at issue here.

163. The following anecdote is instructive to illustrate the potential damage that could result from public disclosure of information regarding the Program. Just prior to the President's 6 September 2006 speech announcing the transfer of detainees to Guantanamo Bay, the CIA provided certain foreign governments specific assurances that the CIA would protect the fact of their cooperation from disclosure. These liaison partners expressed their deep appreciation and highlighted that their continued cooperation was conditioned on the CIA's

commitment and ability to keep their assistance strictly confidential.

164. Specifically, one particular foreign government reduced its cooperation with the CIA when its role in the terrorist detention program leaked to a third country whose national had been detained within the program. The foreign government lost the trust and cooperation of that third country in matters of their own national security. Repair of the CIA's relationship with this foreign government came only through the senior-level intervention of the CIA Director personally apologizing for the leak. Despite this significant effort, to this day the damage this one incident has caused to the CIA's relationship with the foreign government is incalculable, as the CIA can never be sure to what extent the foreign government is withholding vital intelligence necessary to the national security of the United States.

165. The CIA released all reasonably segregable information from the records described on the Vaughn index, including segregable information regarding the Program that has been officially disclosed or otherwise declassified at the time these records were processed.

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166. In sum, and notwithstanding the recent disclosure of a limited amount of information regarding the Program, the CIA has

determined that unauthorized disclosure of information which reasonably could be expected to lead to the identification of intelligence activities, sources and methods, foreign government information, or information that would harm foreign relations or foreign activities of the United States, is currently and properly classified pursuant to the criteria of Executive Order 12958, as its disclosure could reasonably be expected to cause damage, serious damage, or exceptionally grave damage to the national security of the United States, and is thus exempt from disclosure pursuant to FOIA Exemption (b)(1). Coextensively, information that could lead to the revelation of an intelligence activity, source, or method falls precisely within the scope of 50 U.S.C.A. §§ 403-1(i), 403g, and is also exempt from disclosure pursuant to FOIA Exemption (b)(3).

B. Exemption (b)(2)

167. FOIA Exemption (b)(2) states that FOIA does not apply to matters that are "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2). Exemption (b)(2) encompasses two distinct categories of information: (a) internal information of a less significant nature, such as administrative routing notations and agency rules and practices, sometimes referred to as "low 2" information; and (b) more substantial internal information, the disclosure of which would risk circumvention of a legal

requirement, sometimes referred to as "high 2" information. As reflected in the Vaughn Index, a partial "low 2" exception has been asserted over a limited number of documents.

C. Exemption (b)(3)

168. FOIA Exemption (b)(3) provides that the FOIA does not apply to matters that are:

> specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute
>
> > (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
> >
> > (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld . . .

5 U.S.C. § 552(b)(3). The CIA has reviewed the documents responsive to Plaintiffs' FOIA Requests and determined that there are three relevant withholding statutes: the National Security Act of 1947, the Central Intelligence Agency Act of 1949 and Rule 6(e)(2)(B) of the Federal Rules of Criminal Procedure ("Rule 6(e)").

169. *National Security Act of 1947* - Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C.A. § 403-1(i)(1) (West Supp. 2007), provides that the Director of National Intelligence ("DNI") shall protect intelligence sources and methods from unauthorized disclosure. Under the direction of the DNI pursuant to section 102A of the Act, as amended, 50

U.S.C.A. § 403-1(i), and in accordance with section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C.A. § 403g, and sections 1.6(b) and 1.6(d) of Executive Order 12333, the DCIA is responsible for protecting CIA sources and methods from unauthorized disclosure.

170. For this reason, the DNI has personally authorized the Director of the CIA to take all necessary and appropriate measures to ensure that intelligence sources and methods are protected from disclosure in this litigation. Attached to this declaration as Exhibit N is a true and correct copy of the memorandum from the DNI to the Director of the CIA memorializing that authorization.

171. The CIA has reviewed the documents identified as classified on the attached Vaughn index, and has determined that they contain information that if disclosed would reveal intelligence sources and methods. The CIA, therefore, relies on the National Security Act of 1947 to withhold any information that would reveal intelligence sources and methods.

172. In contrast to Executive Order 12958, the National Security Act's statutory requirement to protect intelligence sources and methods does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure. In any event, the information relating to intelligence sources and

methods in these documents that is covered by the National Security Act is the same as the information relating to intelligence sources and methods that is covered by the Executive Order for classified information. Therefore, the damage to national security that reasonably could be expected to result from the unauthorized disclosure of such information relating to intelligence sources and methods is co-extensive with the damage that reasonably could be expected to result from the unauthorized disclosure of classified information. This damage is described above in the section of this declaration describing the classified information on the documents included on the attached Vaughn index.

173. *Central Intelligence Agency Act of 1949* - Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C.A. § 403g (West Supp. 2007), provides that in the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of Title 50, which provides that the DNI shall be responsible for the protection of intelligence sources and methods from unauthorized disclosure, the CIA shall be exempted from the provisions of any law which requires the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the CIA. As a result, CIA employees' names and personal identifiers (for

example, employee signatures, employee numbers or initials), titles, file numbers, and internal organizational data are absolutely protected from disclosure by law.

174. Section 17A(e)(3) of the Central Intelligence Agency Act, 50 U.S.C.A. § 403q (West Supp. 2007), states that the Office of Inspector General, upon receiving information from any person during the course of an authorized investigation, "shall not disclose the identity of that employee without the consent of the employee" unless such disclosure is "unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken." As a result, the identities of persons who provide information to the Inspector General are protected from disclosure by law.

175. With respect to the documents at issue, as described in the attached Vaughn index, IMS professionals and other CIA employees have reviewed these documents and determined that many of them contain information regarding the organization, functions, names, and official titles of personnel employed by the CIA, as well as internal organizational information such as file numbers. In addition, many of them contain the identities of persons who provided information to the Office of Inspector General. Again, the CIA Act's statutory requirement to further protect intelligence sources and methods by protecting CIA

functions does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure. In any event, with respect to the documents responsive to Plaintiffs' FOIA Requests that are properly classified, the information relating to CIA functions and intelligence sources and methods that is covered by the CIA Act's statutory requirement is the same as the information relating to intelligence sources and methods that is covered by the Executive Order for classified information. Therefore, the damage to national security that reasonably could be expected to result from the unauthorized disclosure of CIA functions and intelligence sources and methods is co-extensive with the damage that reasonably could be expected to result from the unauthorized disclosure of classified information, which is described in the relevant paragraphs above in the sections identifying these documents.

176. *Rule 6(e)* - Rule 6(e) constitutes a withholding statute within the meaning of FOIA Exemption b(3). Rule 6(e) specifically prohibits the disclosure of "matters occurring before the grand jury." Document 300 memorializes a conversation between a member of the OIG's investigative staff and a DOJ prosecutor regarding prosecution strategy before a grand jury, and specifically potential witnesses (who are described but not named) that the prosecutor plans to subpoena

to testify before the grand jury. The record also names the target of the grand jury investigation. Accordingly, the release of this record would tend to disclose matters occurring before the grand jury, and is therefore exempt from disclosure pursuant to Exemption (b)(3).

D. Exemption (b)(5)

177. FOIA Exemption (b)(5) provides that FOIA does not apply to inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the agency. IMS professionals and other CIA employees have reviewed the documents identified as exempt under Exemption (b)(5) on the attached Vaughn index, and determined that they are intra-agency or inter-agency records that contain information that is protected from disclosure by four privileges.

178. *Attorney-client* - The attorney-client privilege protects confidential communications between a client and his attorney relating to a matter for which the client has sought legal advice. The CIA has reviewed the records described on the attached Vaughn index for which the CIA has asserted the attorney-client privilege. Those records contain confidential communications between CIA staff and the CIA's legal advisors, including both attorneys within the CIA's Office of General Counsel and attorneys with the Department of Justice, acting in

their capacity as legal advisors to the CIA. These communications relate to matters for which the attorneys provided legal advice to the CIA. This legal advice was based upon, and reflects, facts provided by the CIA to its attorneys. These documents were prepared by and at the direction of the CIA's attorneys, with the joint expectation of the attorneys and CIA staff that they would be held in confidence. Moreover, these documents have been held in confidence, except insofar as there are limited quotations from these letters in OLC memoranda that have been released in this litigation.

179. *Attorney work-product* - The attorney work product privilege protects information, mental impressions, legal analysis, conclusions, and opinions prepared by attorneys or other representatives of a party in anticipation of criminal, civil, or administrative proceedings. In drafting written communications to OLC for the purpose of seeking legal advice, CIA lawyers had as one purpose to prepare for the possibility of criminal, civil, or administrative litigation against the CIA and CIA personnel who participated in the Program.

180. Similarly, documents 33, 43, 53 and 66 each reflect CIA attorneys' analysis, thoughts, opinions, mental impressions, and/or advice regarding the legal implications of certain operational aspects of the Program. These documents similarly were prepared in recognition of existing litigation concerning

the Program, and in preparation for future anticipated civil, criminal and administrative proceedings.

181. The CIA's concerns regarding the potential for litigation regarding detention and interrogation activities was not unfounded. Indeed, at the time some of these documents were prepared, criminal, civil and administrative proceedings regarding the detention and interrogation activities were already proceeding in a number of forums.

182. Those records described on the attached Vaughn index for which the CIA has asserted the work product privilege were prepared in contemplation of specific litigation and reflect attorneys' tactical and strategic thinking. These records were created with the expectation that they would be held in confidence, and they have been held in confidence, except insofar as there are limited quotations from these letters in OLC memoranda that have been released in this litigation. Accordingly, they are properly withheld pursuant to the attorney work product privilege.

183. *Deliberative process* - Exemption (b)(5) has been construed to incorporate the civil discovery concept that information or documents of pre-decisional, deliberative process are exempt from disclosure. The deliberative process privilege protects the internal deliberations of the government by exempting from release those recommendations, analyses and

discussions - both factual and legal - prepared to inform or in anticipation of decision-making. The integrity of the government's deliberative process, not just the documents themselves, is protected by this privilege.

184. The records specified on the attached Vaughn index are protected by the deliberative process privilege because they each contain information that reflects the pre-decisional deliberations of CIA and other executive branch officials. For example, as described on the attached Vaughn index, these records reflect pre-decisional discussions between executive branch officials regarding possible approaches to take with respect to outstanding policy issues, candid internal discussions between CIA staff regarding policy issues, non-final drafts, working papers, briefing papers, recommendations, legal advice, briefing papers, requests to DOJ OLC for legal advice, and recommendations for actions to policymakers from staff members. These records were all solicited, received or generated as part of the process by which policy is formulated, either by the CIA or by other executive branch officials. Disclosure of this information would therefore reveal the pre-decisional deliberations of executive branch officials.

185. The deliberative process privilege also protects the factual information contained in these documents. The particular facts contained in these drafts, working papers,

briefing papers, recommendations, requests for advice, and other similar documents were identified, extracted, and highlighted out of other potentially relevant facts and background materials by the authors, in the exercise of their judgment. Accordingly, the disclosure of the facts that were selected for inclusion in drafts, briefing materials, recommendations, advice or other such documents would themselves tend to reveal the author's and the agency's deliberative process.

186. To the extent that some of the documents on the attached Vaughn index contain specific policy recommendations, with the exception of Document 3, these documents do not indicate that either the recommendation itself or the underlying reasoning in support of such recommendation was ever adopted by the appropriate decision-maker. Document 3 has a one page cover memorandum, which states that the recommendations in the attached four page memorandum (which is identical to Document 4) were adopted by policymakers. The cover sheet does not indicate that the policymakers adopted the memorandum in full or any of the reasoning of the four-page memorandum.

187. Because the officials involved in these pre-decisional deliberations expected that their candid discussions and recommendations regarding sensitive national security issues would remain confidential, release of these records would discourage open and frank discussions among executive branch

officials in the future, thereby threatening the confidence needed to ensure the candor of future CIA deliberations. Such information is therefore properly exempt from disclosure under Exemption (b)(5).

188. *Privilege protecting statements made to the Office of Inspector General* - Exemption (b)(5) has also been construed to protect the confidential statements made by persons during the course of Office of Inspector General investigations. The purpose of this privilege is to protect statements made under an expectation of confidence. This is necessary to protect the integrity of Office of Inspector General investigations and to ensure that employees freely cooperate with any such investigations. This information is contained in OIG Interview Reports and memoranda, identified as documents 126, 131, 133-136, 138-140, 143-146, 149-151, 164-171, 173, 230-231, and 242 on the attached Vaughn index.

189. As described in the attached Vaughn index, many of the documents responsive to Plaintiffs' FOIA Requests contain statements made to Office of Inspector General investigators during the course of investigations. Office of Inspector General regulations state that these statements will be held in confidence, subject to the other duties of the Office. Releasing these documents would undermine the assurances of

confidence and decrease employees' willingness to cooperate with Office of Inspector General Investigations.

190. *Presidential communications privilege* - Exemption (b)(5) also exempts from disclosure information protected by the presidential communications privilege. The presidential communications privilege protects confidential communications that relate to potential presidential decision-making and that involve the President, his senior advisors, or staff working for senior presidential advisors. The privilege protects communications in connection with the performance of the President's responsibilities of his office and made in the process of shaping policies and making decisions. In addition to communications directly involving the President, the privilege protects communications involving presidential advisors, including both communications which these advisors solicited and received from others as well as those they authored themselves. Protecting the frank and candid deliberations of ideas and expression of views is essential in order to ensure that advisors are able to thoroughly examine issues, formulate opinions and recommendations, and provide appropriate advice to the President. This privilege applies to documents in their entirety, and covers final and post-decisional materials as well as pre-decisional documents.

191. The presidential communications privilege, as incorporated under Exemption (b)(5), is being asserted by the CIA in this case to withhold eight documents in full (reflected in the attached Vaughn index): 14, 17, 24, 29, 32, 98, 100, and 152. The documents for which the presidential communication privilege has been asserted, as specified in the attached Vaughn index, contain information reflecting communications solicited and received by senior presidential advisors from CIA officials as well as communications authored by senior presidential advisors in the course of discussing issues related to formulating recommendations and advice for presidential decision-making.

192. The withheld documents were generally among those relied on by senior presidential advisors for the purpose of providing confidential advice to former President George W. Bush regarding potential decisions related to the CIA Terrorist Detention and Interrogation Program. Among the public decisions made by President Bush regarding detainee policies are his signing of the Detainee Treatment Act of 2005, his signing of the Military Commissions Act of 2006, and his speech on September 6, 2006, announcing the transfer of detainees from CIA custody to Guantanamo Bay.

193. Documents 98 and 100 were authored by CIA officials in preparation for NSC Principals and Deputies Committee meetings

with senior presidential advisors, where they would be called upon to provide information or recommendations on issues related to presidential decision-making. Document 32 is an e-mail written by a CIA official to another CIA official, describing a meeting with senior presidential advisors. These documents include information reflecting or memorializing communications between senior presidential advisors and CIA officials where presidential advisors solicited and received information or recommendations in the course of gathering information for decisions, or potential decisions, to be made by President Bush.

194. Document 14 was authored by the National Security Advisor and solicits comments on certain suggestions based on written orders signed by President Bush. Document 152 was authored by the National Security Advisor, and circulates comments on a draft document to NSC principals, including the Director of Central Intelligence. Documents 17, 24, and 29 describe for the record policy decisions made by former President Bush, or by senior presidential advisors, after soliciting and receiving relevant information from CIA officials, and communicated to the CIA. All of these documents include information reflecting or memorializing communications either solicited and received or authored by senior presidential advisors on issues related to decisions, or potential decisions, to be made by President Bush.

195. The presidential advisers involved in these deliberations would have reasonably expected that their discussions and recommendations regarding sensitive national security issues would remain confidential. Disclosure of these communications and deliberations would necessarily inhibit presidential advisers from engaging in the full and candid exploration of issues and options that is essential in order to effectively prepare advice and recommendations for the President. Thus, all eight of these documents are properly withheld pursuant to the presidential communication privilege.

E. Exemption (b)(6)

196. FOIA Exemption (b)(6) provides that FOIA does not apply to "personnel and medical files" "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). As described in the attached Vaughn index, the CIA has withheld information in some documents on the ground that, if disclosed, these documents would constitute a clearly unwarranted invasion of the personal privacy of individuals by revealing their names and other personal information.

197. Information that applies to or describes a particular individual qualifies as "personnel," "medical," or "similar files" under Exemption (b)(6). Here, the information at issue

identifies the names of, or identifying information about, CIA employees or persons interviewed by the CIA Office of Inspector General. Therefore, the CIA has determined that the names of these persons and their identifying information, such as dates of birth, social security numbers, and biographical information, qualify as both "personnel" and "similar" files and are thus amenable to (b)(6) protection.

198. Once the threshold issue of "personnel" and "similar" files has been met, the Agency is required to balance the interests between the safeguarding of an individual's private information from unnecessary public scrutiny against the public's interest in disclosure. In this case, there is no overriding public interest that requires the disclosure of the names of, or identifying information about, the CIA employees and other persons interviewed by the CIA OIG at issue.

199. Even if some minimal public interest could be found in disclosure of the personal information at issue, the balance would still tilt dramatically against disclosure. Disclosure of this personal information would certainly violate the personal privacy of these persons. Consequently, because the privacy interests involved outweigh the negligible public interest in disclosure, the CIA has determined that the information is properly withheld under Exemption (b)(6).

F. Exemption (b)(7)(A)

200. FOIA Exemption (b)(7) protects from mandatory disclosure certain records or information compiled for law enforcement purposes. FOIA Exemption (b)(7)(A), 5 U.S.C. § 552(b)(7)(A), authorizes the withholding of

> records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.

A determination to withhold information on this basis requires first a finding that a law enforcement proceeding is pending or prospective, and second that release of the information could reasonably be expected to harm the pending law enforcement action.

201. The CIA has categorically withheld in full records from the OIG's files pertaining to on-going and open investigations ("Open Investigation Files") pursuant to Exemption (7)(A). The CIA's OIG conducts investigations to uncover fraud and abuse as well as to determine CIA component and employee compliance with applicable law and regulations. If the OIG uncovers evidence of violations of law, it may refer matters to the Department of Justice for prosecution. The OIG's investigatory files consist of documents OIG investigators have collected or created in the course of their investigations.

202. The Open Investigation Files, which contain thousands of records, all relate to pending law enforcement proceedings.

Although the exact subject matter of these OIG investigations is classified, I have been informed that each of the open OIG investigations was focused upon specific allegations of potentially unlawful activity, for the purpose of determining if there had been a violation of criminal law.

203. Processing documents in the OIG's open investigatory files would interfere with those investigations because it might alert CIA components and individuals that they are under investigation. The OIG's investigations are confidential. The confidentiality of the open investigations, among individuals and components within the CIA, is essential to the efficacy of those investigations. In order to process the open OIG investigations, however, OIG would require the assistance of CIA personnel outside the OIG's office. The OIG does not have staff or counsel with experience in making release and withholding decisions for FOIA requests. Accordingly, OIG staff could not competently process these records to determine which Exemptions would apply to those records. OIG therefore would require the assistance of the CIA Office of General Counsel, Information Management Officers, and Information Review Officers and their staffs, in order to review potentially responsive documents, to analyze the applicability of FOIA Exemptions, to describe the withheld records for a Vaughn index, and to make litigation decisions regarding the records on behalf of the CIA.

204. Moreover, in order to review and process FOIA requests, IMS personnel must be able to consult with subject matter experts in other CIA components, such as the component that originated the record or the information contained in such record. If records contain information originated by or pertaining to other federal agencies, the records are sent through IMS in consultation with IMS and OGC counsel for coordination with FOIA review personnel from the other federal agencies. IMS personnel would not reasonably be able to conduct such consultations relating to responsive records from open OIG investigations without interfering with the confidentiality of the law enforcement proceedings, even if the records were initially disclosed only to a small number of IMS personnel.

205. In revealing this information to CIA employees outside of OIG, those persons would discover whom and what activities the OIG was investigating and what evidence had been collected, thus revealing the nature, scope, and targets of the OIG investigations. Revealing the nature, scope, and targets of the open OIG investigations to non-OIG personnel at the CIA would compromise the confidentiality of the open OIG investigations and would be reasonably likely to harm the OIG's pending law enforcement investigations.

206. Release of this information to the public could also reasonably be expected to harm the OIG's pending investigations.

The Open Investigation Files are comprised primarily of: (1) interview documentation (e.g., handwritten notes of interviews and interview reports); (2) correspondence of OIG investigators (e.g., e-mails and letters); (3) evidence collected (e.g., intelligence cables, correspondence, reports); and (4) draft reports and working papers. Release of records from each of these categories of files could (a) reveal the course, nature, scope or strategy of an ongoing investigation; (b) prematurely reveal evidence in the ongoing investigation; (c) hinder OIG ability to control or shape the investigation; and (d) reveal investigative trends, emphasis, or targeting schemes. Revealing such information to the public would compromise the confidentiality of open OIG investigations and would be reasonably likely to harm the OIG's pending law enforcement investigations. Accordingly, the CIA has determined that this information is properly withheld under Exemption 7(A).

G. Exemption (b)(7)(C)

207. Exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C), authorizes the withholding of:

> records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.

208. FOIA Exemption (b)(7)(C) has been invoked in this case for withholding personal identifying information contained in

statements made during interviews with OIG. As described above, the OIG collects and generates records for law enforcement purposes. The records that have been withheld pursuant to Exemption (7)(C) include statements taken from persons interviewed during the course of OIG investigations, identified as documents 126, 131, 133-136, 138-140, 143-146, 149-151, 164-171, 173, 230-231, and 242 on the attached Vaughn index. These statements were specifically taken in the context of OIG investigations that focused upon allegations of potentially unlawful activity, for the purpose of determining if there had been a violation of criminal law. Thus, the OIG records at issue were compiled in the course of a criminal investigation.

209. A determination to withhold information under this Exemption necessitates a balancing of the individual's right to privacy against the public's right of access to information in government files. As explained above in the discussion concerning FOIA Exemption (b)(6), the information at issue invades third party privacy interests, and advances no public interest.

210. For the reasons set forth above, FOIA Exemption (b)(7)(C) has been properly invoked, in conjunction with FOIA Exemption 6, to withhold the names and identifying information about third parties, including CIA employees, mentioned in documents compiled during an investigation. As stated above,

the release of such information could reasonably be expected to constitute an unwarranted invasion of the personal privacy of numerous third parties.

H. Exemption (b)(7)(D)

211. FOIA Exemption (b)(7)(D), 5 U.S.C. § 552(b)(7)(D), authorizes the withholding of:

> records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to disclose the identity of a confidential source . . . and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

The records responsive to Plaintiffs' FOIA Requests contain the identities of, and information furnished by, confidential sources of the Office of Inspector General. This information is contained in OIG Interview Reports and memoranda, identified as documents 126, 131, 133-136, 138-140, 143-146, 149-151, 164-171, 173, 230-231, and 242 on the attached Vaughn index.

212. The CIA Office of Inspector General is a criminal law enforcement authority within the scope of Exemption (b)(7)(D). As described previously, the OIG investigates fraud and abuse as well as violations of laws and regulations applicable to the CIA. The investigations of the OIG that generated responsive records in this case were criminal investigations or national

security intelligence investigations within the meaning of Exemption (b)(7)(D). That is, the investigations focused upon specific allegations of potentially unlawful activity, for the purpose of determining if there had been a violation of criminal law.

213. Office of Inspector General regulations require the OIG to maintain the confidentiality of the information that is provided to them during the course of an investigation. Agency regulations state that, as a matter of policy, OIG does not disclose the identities of persons it interviews or the substance of their statements unless required to fulfill the responsibilities of OIG. In addition, that regulation states that OIG is barred from releasing the identities of persons making statements to OIG, without that person's consent, unless it is unavoidable or the disclosure is made to the Department of Justice for the purpose of deciding whether a criminal prosecution should be undertaken. This assurance of confidentiality is important to ensuring the full cooperation of persons who provide statements to the Office of Inspector General.

214. For the reasons set forth above, the CIA invoked Exemption (b)(7)(D) to withhold the statements of persons to the Office of Inspector General that were taken in the course of criminal or national security intelligence investigations.

I. Segregability

215. As described previously, the CIA has released a number of records, in whole or in part, in response to Plaintiffs' FOIA Requests. Those records that have been withheld in full contained no reasonably segregable, non-exempt information. The unclassified and unprivileged information in these records is so inextricably intertwined with the classified and privileged information that the release of any non-exempt information in the withheld documents would produce only incomplete, fragmented, unintelligible sentences and phrases that are devoid of any meaning (or, in some cases, would reveal the specific operational context of otherwise unclassified information, thereby revealing classified information). The unclassified and unprivileged information in the withheld records does not contain any meaningful information responsive to Plaintiffs' FOIA requests.

VI. The CIA's Glomar Responses

216. As noted above, the CIA issued a Glomar response for Categories 3, 4, 5, 6, 9, 10, 15, 16, and 17 of the Specific FOIA Request. These categories fall into three groups: (1) requests for communications regarding Maher Arar (Categories 3 and 4); (2) requests for documents concerning the use of specific interrogation techniques on detainees (Categories 5, 6, 9, 10); and (3) requests for communications and documents

regarding Mohammed Farag Ahmad Bashmilah and Salah Nasser Salim Ali (Categories 15-17). After providing a general explanation for the CIA's Glomar response, I will address the CIA's Glomar response with respect to each of these categories in turn.

217. A Glomar response to Categories 3, 4, 5, 6, 9, 10, 15, 16, and 17 of the Specific FOIA Request is appropriate under both Exemptions b(3) and b(1). Exemption b(3) requires a Glomar response to these categories because the confirmation or denial of the existence of records responsive to such categories would reveal intelligence sources or methods that are protected by the National Security Act of 1947 and the CIA Act. As described above, the National Security Act provides that the DNI shall protect intelligence sources and methods from unauthorized disclosure, and the DNI authorized the Director of the CIA in this case to take all necessary and appropriate measures to ensure that intelligence sources and methods are protected from disclosure. The confirmation or denial of the existence of records responsive to Categories 3, 4, 5, 6, 9, 10, 15, 16, and 17 of the Specific FOIA Request would result in the unauthorized disclosure of intelligence sources and methods. A Glomar response is thus required under FOIA pursuant to Exemption b(3).

218. A Glomar response is also required for each of the categories listed above pursuant to Exemption b(1) because the confirmation or denial of the existence of records responsive to

such categories would reveal information classified pursuant to an Executive Order. Section 3.6(a) of Executive Order 12958 specifically provides for a Glomar response in certain circumstances:

> An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

219. The requests made by Plaintiffs in the above-referenced categories are just such circumstances, wherein the mere confirmation or denial of the existence of responsive records would reveal classified facts relating to intelligence sources and methods. A Glomar response is thus required under FOIA pursuant to Exemption b(1).

220. The specific requests set forth in Categories 3-4, 5-6, 9-10, and 15-17 are distinct from other more typical FOIA requests, including the other requests made in this case. In those other, often broader requests, the CIA's identification of any responsive records and release or withholding of the records sought, in whole or part, confirms to the requester (and to the public, for that matter) the existence or non-existence of such CIA records. In response to such requests, confirmation poses no harm to the national security or intelligence sources or methods, because the focus is on releasing or withholding

specific substantive information. In such cases, the fact that the CIA possesses or does not possess responsive records would not lead to the unauthorized disclosure of intelligence sources or methods, and is not itself a classified fact.

221. However, in certain cases, a response that does not confirm or deny the existence of responsive records is necessary to safeguard intelligence sources and methods from unauthorized disclosure, and to protect against harm to national security, through, for instance, damage to sources or methods or to U.S. foreign relations. In cases such as these, whether or not records exist could reveal sensitive information. For instance, consider a clandestine intelligence activity in which the CIA had participated but not acknowledged its interest or involvement. If a FOIA request asked for records regarding the CIA's involvement in that intelligence activity, the CIA's acknowledgement of responsive records would reveal that the CIA had in fact participated in the intelligence activity. If a FOIA request asked for records regarding the intelligence activity generally, the CIA's acknowledgement of responsive records would reveal that the CIA at minimum had an interest in the intelligence activity. Conversely, if the CIA had not participated in the intelligence activity but had purposefully not confirmed this fact, revealing the lack of responsive

records would reveal that the CIA had not participated or did not have an interest in the activity.

222. In cases in which a request is made for information regarding a matter that has not been acknowledged by the CIA, the CIA must respond to requests for CIA records in a consistent manner. In order for a Glomar response to be credible and effective, the CIA must use it with every requester seeking such records, including in those instances where the CIA does not actually hold responsive records. If the CIA were to give a Glomar response only when it possessed responsive records, and inform requesters when it has no records, the Glomar response would effectively be an admission of records. Because the CIA will not provide a "no records" response when it actually does have records, the only means by which the CIA can protect intelligence sources and methods and/or avoid the disclosure of classified information in such cases is to routinely issue a Glomar response to requesters seeking information on a matter that the CIA has not acknowledged, which relates to CIA sources or methods and/or to classified information.

223. In each of the three groups of requests for which the CIA used a Glomar response in this instance, merely acknowledging the existence or non-existence of records would necessarily reveal information regarding intelligence sources and methods, as well as information that is properly classified.

In each of these instances, disclosure of the existence or non-existence of responsive records would cause the unauthorized disclosure of intelligence sources or methods in contravention of the National Security Act of 1947. Moreover, in each such instance, the fact of the existence or non-existence of responsive records is properly classified at or above the SECRET level, meaning that disclosure of the existence or non-existence of such records could reasonably be expected to cause at least serious damage to the national security.

224. As described in further detail below, the existence or non-existence of records responsive to these categories has never been officially acknowledged. The Director of National Intelligence, in authorizing the Director of the CIA to ensure that intelligence sources and methods are protected from disclosure in this case, instructed the CIA to protect from disclosure the information that would necessarily be revealed by a response to these categories. Thus, the confirmation or denial of the existence of records responsive to these categories would result in the unauthorized disclosure of intelligence sources and methods. Such a disclosure is protected under the National Security Act of 1947 and the CIA Act and thus exempt under FOIA Exemption b(3).

225. Moreover, as described in further detail below, the existence or non-existence of records responsive to these

categories in plaintiffs' request concerns "intelligence activities . . . [and] intelligence sources or methods" pursuant to section 1.4(c) of Executive Order 12958, and/or "foreign relations or foreign activities of the United States" pursuant to section 1.4(d) of the Executive Order, the disclosure of which could reasonably be expected to harm the national security. Such information is therefore classified under the Executive Order and exempt from disclosure under FOIA Exemption b(1).

A. Plaintiffs' Request for Information Regarding the Sharing of Information Regarding Maher Arar (Categories 3 and 4)

226. The CIA cannot respond to Categories 3-4, the two categories of the Specific FOIA Request seeking communications between the CIA and the Canadian intelligence services regarding Maher Arar, without revealing whether or not such communications exist. If the CIA were to provide anything other than a Glomar response to these two categories, it would be forced to acknowledge, at minimum, (1) whether the CIA had an intelligence interest in Mr. Arar; and (2) whether it exchanged intelligence information regarding Mr. Arar with the Canadian government. The CIA has never acknowledged whether or not it had any involvement in the detention and removal of Mr. Arar, much less whether it received and responded to a request for information regarding Mr. Arar from the Canadian government. This

information is protected from disclosure under Exemption b(3), because it would reveal intelligence sources and methods protected by the NSA, and under Exemption b(1), because it would reveal information classified pursuant to an Executive Order.

227. As for Exemption b(3), the NSA precludes a response to Categories 3 and 4 because the information that would necessarily be revealed by such a response would disclose intelligence sources and methods, as explained below.

228. Whether the CIA had an intelligence interest in Mr. Arar and gathered information on him would reveal intelligence sources and methods. Confirming or denying this fact would reveal the intelligence gathering interests and capabilities of the CIA. The CIA's clandestine intelligence interest in a foreign national and its gathering of information on that individual represent an intelligence method and an intelligence activity. If the CIA were required to confirm or deny whether it gathered information about a specific individual, it would reveal whether it had an interest in that person related to the CIA's ongoing intelligence gathering function and the CIA's capabilities regarding such a collection. Such revelations could provide insight into the sources for the intelligence information that the CIA collected on the specific individual, if any. For example, there might be a small number of possible sources of intelligence information on a specific individual.

If anything regarding the timing or content of the intelligence information collected on that individual were revealed, individuals knowledgeable about the situation might be able to deduce the specific source of that information.

229. In addition, whether the CIA exchanged intelligence information with the Canadian government regarding Mr. Arar similarly would likewise disclose intelligence sources and methods. In particular, it would reveal information regarding the CIA's relationship with a foreign liaison service. This would reveal information regarding the CIA's intelligence sources and methods, as well as foreign relations and foreign activities of the United States government. The importance of protecting liaison relationships as intelligence sources was described earlier in this declaration, and this is a specific example of that type of relationship. If the CIA were to confirm that communications responsive to the two categories in the Specific FOIA Request exist, the CIA would confirm an intelligence sharing relationship with the Canadian intelligence services and that such sharing had taken place in this instance.

230. The disclosure of such information regarding intelligence sources and methods is unauthorized under the NSA because the DNI has specifically found that this information must be protected from disclosure in the interest of national security. The existence or non-existence of records responsive

to these categories is therefore protected from disclosure by the NSA, and a Glomar response is required under Exemption b(3).

231. Likewise, the existence or non-existence of documents regarding communications between the CIA and the Canadian intelligence services regarding Maher Arar is classified. Those facts are classified because, to the extent these communications existed, (i) they would concern "intelligence activities . . . [and] intelligence sources or methods" pursuant to section 1.4(c) of Executive Order 12958, and/or "foreign relations or foreign activities of the United States" pursuant to section 1.4(d) of Executive Order 12958, and (ii) disclosure of their existence could reasonably be expected to cause at least serious damage to the national security. Such harm is described below.

232. As explained above, whether the CIA had an intelligence interest in Mr. Arar and gathered information on him would reveal the intelligence gathering interests and capabilities of the CIA, i.e., an intelligence method and an intelligence activity. This would harm the national security because, if the CIA were required to confirm or deny whether it gathered information about a specific individual, it would reveal whether it had an interest in that person related to the CIA's ongoing intelligence gathering function and the CIA's capabilities regarding such a collection. Such revelations would provide foreign intelligence services or other hostile

entities with information concerning the reach of the CIA's intelligence monitoring to the detriment of the United States.

233. Such information might also provide insight into the sources for the intelligence information that the CIA collected on the specific individual, if any, as explained above, and thereby harm the national security. The importance of protecting the CIA's intelligence interests from disclosure, as well as the ways in which the CIA's intelligence gathering interests and capabilities represent intelligence sources and methods, is explained in Part V(A) of this declaration.

234. In addition, whether the CIA exchanged intelligence information with the Canadian government regarding Mr. Arar would, as explained above, disclose information regarding the CIA's relationship with a foreign liaison service, i.e., information regarding the CIA's intelligence sources and methods, as well as foreign relations and foreign activities of the United States government in a particular instance. A confirmation of such activities here would provide to foreign intelligence services and other hostile entities valuable information regarding the extent of the CIA's liaison relationships generally and in this specific instance. Similarly, a denial of responsive communications would provide such entities with the same type of information, specifically, that the reach of the CIA's liaison relationships did not extend

to this instance. Either response could reasonably be expected to harm the national security.

235. For these reasons, the existence or non-existence of records responsive to Categories 3 and 4 is properly classified.

236. In their Specific FOIA Request, Plaintiffs cite a report by a Commission of Inquiry of the Canadian Government regarding the Arar matter. Such a report does not constitute an official disclosure by the CIA or the United States Government. Information contained within such a report, whether true or not, is akin to other statements and reports containing non-official disclosures that claim to reveal classified information. As with information within such statements and reports, the CIA has not confirmed or denied whether the information contained within the report of the Canadian Commission of Inquiry is correct. By not confirming or denying the veracity of this information, the CIA is able to continue to protect information regarding the reach of its liaison relationships and whether it collected intelligence on Mr. Arar.

B. Plaintiffs' Request for Information Regarding the Use of Specific Interrogation Techniques (Categories 5-6 and 9-10)

237. The CIA cannot confirm or deny the existence of documents responsive to Categories 5-6 and 9-10 of the Specific FOIA Request, which seek, respectively, purported cables between CIA headquarters and the field discussing the use of a slap and

sleep deprivation on detainees Abu Zubaydah and Khalid Sheikh Mohammed. Each of these categories requests documents regarding the use of an acknowledged EIT (i.e., a slap or sleep deprivation) on a specific and acknowledged terrorist detainee (i.e., Abu Zubaydah and Khalid Sheikh Mohammed). Anything other than a Glomar response would confirm that the CIA did or did not use the specified EIT on these specific individuals. The CIA has never officially acknowledged these sensitive operational details. This information is protected from disclosure under Exemption b(3), because it would reveal intelligence sources and methods protected by the NSA, and under Exemption b(1), because it would reveal information classified pursuant to an Executive Order.

238. As for Exemption b(3), the NSA precludes a response to Categories 5-6 or 9-10 because the information that would necessarily be revealed by such a response would disclose intelligence methods. In particular, responding to Categories 5-6 or 9-10 would reveal details regarding the CIA's detention and interrogation program and whether or not the CIA used certain specified methods to interrogate certain individuals.

239. The disclosure of such information regarding intelligence methods is unauthorized under the NSA because the DNI has specifically found that this information must be protected from disclosure in the interest of national security.

The existence or non-existence of records responsive to these categories is therefore protected from disclosure by the NSA, and a Glomar response is required under Exemption b(3).

240. In addition, the existence or non-existence of cables relating to the use of these particular EITs on these particular detainees is classified. Those facts are classified because, to the extent these cables existed, (i) they would concern "intelligence activities . . . [and] intelligence sources or methods" pursuant to section 1.4(c) of Executive Order 12958, and (ii) disclosure of their existence could reasonably be expected to cause at least serious damage to the national security. In particular, the existence or non-existence of cables relating to the use of particular EITs would disclose whether, although authorized in theory, particular EITs were used in fact upon specific detainees at specific times, from which terrorists or future terrorists could infer facts about the U.S. government's interrogation processes. Such information could include the use or non-use of specific EITs and conditions of confinement, but also into the strategy and methods used by the United States when conducting any sort of interrogation, including those under the Army Field Manual. If the information withheld were to be disclosed, it would not only inform al Qa'ida about the historical use or non-use of EITs but also what techniques the United States would use in a current

interrogation. Such information could be used by terrorists to train current or future terrorists to evade interrogation.

241. Additionally, such operational information could be used by al Qa'ida or other terrorists for propaganda purposes. As described in the Panetta Declaration, incorporated by reference herein, disclosure of operational details (including the existence or non-existence of cables regarding the use or non-use of EITs as to specific detainees) about the Program could reasonably expected to severely damage national security.

242. For these reasons, the existence or non-existence of records responsive to Categories 5-6 and 9-10 is properly classified.

243. In their request for records responsive to these categories, Plaintiffs refer to statements made by a former CIA officer during a media interview. These statements do not constitute an official acknowledgement of information by the CIA or the U.S. Government. As explained above, the CIA does not typically confirm or deny media reports that claim to reveal classified information - confirming an unauthorized disclosure would only exacerbate the harm of the initial disclosure, while routine denials of false reports would only serve to highlight instances where classified information was accurately revealed in media reports.

244. The referenced statements, if they did contain classified information, could not constitute official acknowledgments simply because they were made by a former CIA officer. The former CIA officer does not have - and has never had, even while purportedly employed by the CIA - the authority to declassify information. His statements in no way constitute officially authorized disclosures by the CIA or the U.S. Government.

C. Plaintiffs' Request for Information Regarding Two Individuals (Categories 15-17)

245. Categories 15 and 16 request documents regarding the capture, transfer, and/or detention of Mohamed Farag Ahmad Bashmilah, and Category 17 requests documents regarding Bashmilah and a second individual, Salah Nasser Salim Ali, that were provided to the Government of Yemen by the U.S. Government. The CIA cannot confirm or deny the existence of records responsive to these requests. To do so would require the CIA to specifically confirm or deny several facts: whether the CIA was involved or had an interest in the capture, transfer, and detention of Bashmilah; whether the CIA communicated with the U.S. Embassy in Yemen on this matter; whether Bashmilah was ever in U.S. custody; whether Bashmilah was transferred from the custody of the U.S. Government to the Government of Yemen; whether the U.S. Government was in communication with the

Government of Yemen regarding the custody transfer of Bashmilah; whether the CIA and/or the U.S. Government generally had collected information on Bashmilah and Ali; and whether the U.S. Government shared such information on these two individuals with the Government of Yemen. The CIA has never officially confirmed or denied any of these facts. This information is protected from disclosure under Exemption b(3), because it would reveal intelligence sources and methods protected by the NSA, and under Exemption b(1), because it would reveal information classified pursuant to an Executive Order.

246. As for Exemption b(3), the NSA precludes a response to Categories 15-17 because the information that would necessarily be revealed by such a response would disclose intelligence sources and methods.

247. Specifically, as I described earlier in this declaration, foreign liaison relationships are one type of intelligence method. Disclosure of any information sharing or coordination between the CIA and the Government of Yemen would disclose a CIA liaison relationship, which would reveal information regarding the CIA's intelligence sources and methods.

248. In addition, as explained above with respect to the request for communications regarding Maher Arar, disclosing whether the CIA gathered intelligence information on specific

individuals such as Bashmilah and Ali would reveal information regarding intelligence methods. If the CIA were to confirm or deny whether it gathered information about these two individuals, it would reveal whether it had an interest in them related to the CIA's ongoing intelligence gathering function and the CIA's capabilities regarding such a collection.

249. The disclosure of such information regarding intelligence sources methods is unauthorized because the DNI has specifically found that this information must be protected from disclosure in the interest of national security. The existence or non-existence of records responsive to these categories is therefore protected from disclosure by the NSA, and a Glomar response is required under Exemption b(3).

250. Moreover, the information that would be revealed from any response to Categories 15 through 17, other than a Glomar response, is classified and could be expected to result in damage to the national security. If, for instance, the CIA were to confirm that documents responsive to these categories in the Specific FOIA Request exist, the CIA would confirm an intelligence sharing relationship with the Government of Yemen and that such sharing had taken place in this instance. Such a confirmation would provide to foreign intelligence services and other hostile entities valuable information regarding the extent of the CIA's liaison relationships generally and with respect to

these individuals. Similarly, a denial that responsive documents exist would provide such entities with the same type of information, specifically, that the reach of the CIA's liaison relationships did not extend to these individuals.

251. As I discussed earlier in this declaration, the CIA relies on foreign partners to provided needed information and assistance in the CIA's counter-terrorist operations. Many of those partners require that the CIA will keep their relationship in the strictest confidence. Any violation of this confidence could weaken, or even sever, the relationship between the CIA and its foreign partners, degrading the CIA's ability to combat terrorism.

252. The sensitivity of these foreign relationships is one reason that the CIA finds it necessary to assert a Glomar response. Foreign governments and liaison services are often subject to internal and external political pressure to not cooperate with the United States in general. Even countries with normally positive relationships with the United States are often under pressure to not cooperate with the CIA. Therefore, the cooperation of these countries is usually reliant on both the CIA's promise to keep such cooperation secret and the country's confidence in the CIA's ability to deliver on that promise. If the CIA is forced to acknowledge the existence or non-existence of documents responsive to a request which

implicated the assistance of a foreign partner, such acknowledgement would be seen as a tacit confirmation or denial of a foreign intelligence relationship.

253. For these reasons, the existence or non-existence of records responsive to Categories 15-17 is properly classified.

254. In addition, if the CIA were to confirm that documents responsive to these categories in plaintiffs' FOIA request exist, it would reveal whether it had an interest in the two individuals named related to the CIA's ongoing intelligence gathering function and the CIA's capabilities regarding such a collection. Such revelations would provide foreign intelligence services or other hostile entities with information concerning the reach of the CIA's intelligence monitoring. It may also provide insight into the sources for the intelligence information that the CIA collected on the specific individual, as described above. More specifically, actions taken in connection with the terrorist detention and interrogation program also constitute intelligence activities. Such actions would include any involvement by the CIA in the capture, detention, and transfer of custody of the named individuals, if this occurred.

255. In their request for records responsive to these categories, Plaintiffs reference two purported letters from the Government of Yemen. These letters do not constitute an

official disclosure of information by the CIA or the U.S. Government. As with the Canadian Commission of Inquiry report referenced by Plaintiffs in their request for documents relating to Maher Arar, information in the Yemeni documents, whether true or not, is similar to other statements and reports containing non-official disclosures that claim to reveal classified information. As with such statements and reports, the CIA has not confirmed or denied the information contained within the Yemeni documents. By not confirming or denying the veracity of this information, the CIA is able to continue to protect the intelligence methods and intelligence activities implicated by the information at issue.

256. The purported letters from the Government of Yemen do not vitiate the CIA's concern for protecting the confidentiality of its relationships with foreign partners. Even if a foreign government chooses to release certain information on its own, up to claiming an affiliation with the CIA - which the foreign government in the present case does not do - that does not mean that it would welcome CIA confirmation or denial of the statement.

257. Furthermore, other governments and liaison services look to how successful the CIA is at abiding by its promises of secrecy when deciding whether to continue cooperating with the CIA or enter into future agreements. Therefore, were the CIA to

violate its promises of secrecy it would not only damage relationships with the country to whom the promise was broken, but also with other countries who have, or are considering, relationships with the CIA.

258. Additionally, preventing the CIA from issuing a Glomar response to requests based upon the alleged disclosures of former employees or foreign governments would leave the CIA and its foreign partners vulnerable to exploitation by hostile groups or foreign governments.

259. For example, a hostile foreign intelligence service or disgruntled current or former CIA employee could generate fictitious statements about CIA involvement in various activities that it suspected the CIA of performing, transmit those stories to the media, and then submit FOIA requests based on the statements. If the CIA were required to respond with either a confirmation or denial of the existence of records, the hostile service or disgruntled employee would be able to expose the capabilities and operations of the CIA and its foreign partners in a far simpler and more cost effective manner than traditional espionage.

260. Therefore, if the CIA were required to respond to every request based upon a statement from a former employee or foreign government, as in the present case, with a confirmation or denial of the existence or non-existence of records, rather

than issuing a Glomar response, serious and far reaching damage could be done to the country's national security.

VII. Conclusion

261. For the reasons described above, the records described in the attached Vaughn index were withheld in whole or in part on the basis of FOIA Exemptions (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(D). The documents in open OIG Investigation files were withheld on the basis of Exemption (b)(7)(A).

* * * *

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

Executed this 18th day of September, 2009.

Wendy M. Hilton
Associate Information Review Officer
National Clandestine Service
Central Intelligence Agency