

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION,	)	
<u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case 1:08-cv-00437
	)	
DEPARTMENT OF DEFENSE, <u>et al.</u> ,	)	
	)	
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. 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 other federal departments and agencies. Specifically, the NCS is responsible for the conduct of foreign intelligence collection activities through the clandestine use of human sources.

3. As the AIRO, I am authorized to assess the current, proper classification of CIA information based on the classification criteria of Executive Order 12958, as amended,<sup>1</sup> and applicable regulations. As part of my official duties, I ensure that determinations such as the release or withholding of information related to the CIA are proper and do not jeopardize CIA interests, personnel, or facilities, and, on behalf of the Director of National Intelligence (DNI) and the Director of the CIA, do not jeopardize CIA intelligence activities, sources, or methods. I am able to describe, based on my experience, the damage to the national security that reasonably could be expected to result from the unauthorized disclosure of classified information.

4. 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

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<sup>1</sup> Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to Exec. Order No. 12958 are to the Order as amended by Exec. Order No. 13292. See Exec. Order No. 12958, 3 C.F.R. § 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 204 (West Supp. 2009).

(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, CIA directorates other than the NCS. For any records containing information that does not originate in, or come under the cognizance of, the NCS, I make the following statements based on information made available to me as Records Validation Officer for the purpose of this litigation.

5. As a senior CIA official and under a written delegation of authority pursuant to section 1.3(c) of Executive Order 12958, as amended, I hold original classification authority at the TOP SECRET level. I am authorized, therefore, to conduct classification reviews and to make original classification and declassification decisions.

6. Through the exercise of my official duties, I am familiar with this civil action. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

7. 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 request, the

documents located, and the FOIA exemptions upon which the CIA relied to redact and withhold documents and information responsive to Plaintiffs' FOIA request.

8. For the Court's convenience, I have divided this declaration into six sections: (1) Plaintiffs' FOIA request and subsequent proceedings; (2) CIA's search for and processing of documents responsive to Plaintiffs' FOIA request; (3) summary judgment, appeal, and subsequent developments; (4) a description of the information redacted from the documents responsive to Plaintiffs' FOIA request; (5) applicable FOIA exemptions; and (6) conclusion. The fourth section describes, to the extent possible in an unclassified manner, the information the CIA withheld from the responsive documents. If the Court determines that it needs additional information about the withheld information in this litigation, I can provide a more detail declaration. However, that declaration would contain classified information and would have to be filed ex parte and under seal for the Court's in camera review.

#### I. PLAINTIFFS' FOIA REQUEST AND SUBSEQUENT PROCEEDINGS

9. By letter dated 20 April 2007, Plaintiffs submitted a FOIA request to the Department of Defense (DOD) and the CIA requesting documents relating to fourteen High-Value Detainees (HVDs) detained at the United States Naval Base Guantánamo Bay,

Cuba.<sup>2</sup> Each of these fourteen HVDs had a hearing in Spring 2007 before a Combatant Status Review Tribunal (CSRT) in Guantánamo Bay. Specifically, with respect to each of the fourteen HVDs, Plaintiffs requested:

- a. Unredacted versions of the CSRT hearing transcripts;
- b. Copies of all records provided to the CSRT by the detainees or their Personal Representatives; and
- c. Copies of all records provided to the CSRT by the Recorder.

10. In addition, Plaintiffs' FOIA request included a request for expedited processing and a fee waiver. A true and correct copy of the FOIA request is attached as Exhibit A.

11. By letter dated 4 May 2007, the CIA acknowledged receipt of Plaintiffs' FOIA request and granted Plaintiffs' request for expedited processing and a fee waiver. A true and correct copy of the CIA's 4 May 2007 letter is attached as Exhibit B.

12. I understand that in May 2008 the Government and Plaintiffs agreed that this litigation would encompass only the first two items in Plaintiffs' FOIA request, and not the third item that requested records provided by the CSRT to the

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<sup>2</sup> The fourteen HVDs that are the subject of Plaintiffs' FOIA request are Abu Faraj al-Libi, Walid Bin Attash, Khalid Sheikh Muhammad, Ramzi Bin al-Shibh, Ahmed Khalfan Ghailani, Mohd Farik bin Amin (known as Zubair), Mustafa Al Hawsawi, Abd Al Rahim Hussein Mohammed (known as Al Nashiri), Bashir Bin Lap (known as Lillie), Ali Abd al-Aziz Ali (known as Ammar Al Baluchi), Riduan Bin Isomuddin (known as Hambali), Zayn Al Abidin Muhammad Husayn (known as Abu Zubaydah), Majid Khan, and Guleed Hassan Ahmed.

Recorder. I understand that the Government is filing a motion for summary judgment. This declaration is filed in support of the Government's motion for summary judgment.

II. THE CIA'S SEARCH FOR AND PROCESSING OF RECORDS RESPONSIVE TO PLAINTIFFS' FOIA REQUEST

13. The CIA identified fourteen transcripts of CSRT hearings as responsive to Plaintiffs' FOIA request.

14. Separately from Plaintiffs' FOIA request and at DOD's request, the CIA had conducted classification reviews of the CSRT hearing transcripts for the fourteen HVDs. During this review the CIA determined that eight of the transcripts were unclassified and six of the transcripts were classified. The CIA redacted classified information from the six classified transcripts to produce redacted, unclassified versions of the transcripts. I understand that DOD posted all fourteen transcripts--eight unclassified and six redacted--on DOD's website, where they have been available to the public since 9 August 2007.

15. In response to Plaintiffs' FOIA request, the CIA reviewed the transcripts according to FOIA standards. Based on that review, the CIA determined that the information the CIA originally redacted from the six transcripts could not be publicly released and is appropriately exempt from disclosure

under FOIA exemptions (b) (1) and (b) (3), as discussed in detail below.

16. After the CIA completed its review of the transcripts in response to Plaintiffs' FOIA request, the CIA transmitted the redacted transcripts to DOD for their release to Plaintiffs. I understand that DOD released the transcripts to Plaintiffs on 13 June 2008.

17. In addition to the CSRT transcripts, the CIA also identified documents submitted by the HVDs or their Personal Representatives to the CSRT, which are responsive to the second item in Plaintiffs' FOIA request. Many of these documents, such as prepared statements by the HVDs, were read verbatim into the record of the CSRT and are contained in the transcript. Based on my review of the CSRT transcripts and the documents submitted to the CSRT by the HVDs or their Personal Representative, I have determined that only five of these documents that are not publicly available were not included in the CSRT transcripts.

18. These five documents are:

- a. A one-page diary excerpt of Abu Zubaydah;
- b. A two-page written statement of Khalid Sheikh Muhammad;
- c. A seven-page written statement of Hambali;
- d. Two pages of "Detainee Session Notes" prepared by the Personal Representative of Majid Khan and entered into evidence at his CSRT hearing; and

- e. A one-page written statement of Bin Lap responding to particular items of evidence.

19. The CIA processed these five documents in response to Plaintiffs' FOIA request and determined that two of the documents--items a. and d. above--could be released in full. The remaining three documents contain information that is exempt from disclosure pursuant to FOIA exemptions (b)(1) and (b)(3). This information was redacted from the following three documents: the written statement of Khalid Sheikh Muhammad; the written statement of Hambali; and the written statement of Bin Lap.

20. After the CIA completed the review of these five documents, the CIA released them directly to Plaintiffs on 25 June 2008.

### III. SUMMARY JUDGMENT, APPEAL, AND SUBSEQUENT DEVELOPMENTS

21. Plaintiffs originally challenged the CIA's and DOD's redactions to the six CSRT transcripts and three detainee written statements. On 29 October 2008, this Court ruled that the redactions taken by Defendants were appropriate and granted summary judgment for Defendants. Plaintiffs appealed that judgment to the U.S. Court of Appeals for the District of Columbia Circuit on 10 December 2008.



22. Subsequent to the appeal, several events have occurred that required the CIA to reevaluate its position. On 22 January 2009, President Barack Obama issued three executive orders:

a) Executive Order 13491,<sup>3</sup> which, among other things, limits interrogation techniques employed by the United States Government to those found in Army Field Manual 2-22.3 (Army Field Manual), revoked prior interrogation guidelines inconsistent with the Army Field Manual, and ordered the CIA to close any detention facilities it operates; b) Executive Order 13492,<sup>4</sup> which ordered that the detention facility at the U.S. Naval Base Guantanamo Bay, Cuba, be closed no later than one year from the date of the order and that the status of each individual held at Guantanamo be reviewed to determine whether release, transfer, prosecution, or some other disposition best suits the national security and foreign policy interests of the United States and the interests of justice; and c) Executive Order 13493,<sup>5</sup> which institutes a review of lawful options for the disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations. The CIA has complied with these executive orders and discontinued the use of Enhanced Interrogation Techniques (EITs) and closed its detention facilities.

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<sup>3</sup> Exec. Order No. 13491, 74 Fed. Reg. 4893 (Jan. 27, 2009).

<sup>4</sup> Exec. Order No. 13492, 74 Fed. Reg. 4897 (Jan. 27, 2009).

<sup>5</sup> Exec. Order No. 13493, 74 Fed. Reg. 4901 (Jan. 27, 2009).

23. On 16 April 2009, the United States declassified and publicly released substantial portions of four legal opinions of the Office of Legal Counsel (OLC) of the Department of Justice that discussed the legality of EITs. This release constituted a limited declassification of information relating to the legality of EITs.

24. On 14 May 2009, the Defendants filed with the court of appeals a motion to remand this case to this Court so that the Defendants could review their position in light of these events. On 19 May 2009, the court of appeals remanded the case. On remand, DOD continues to withhold the names and signatures of the tribunal president, members, personal representatives, translators, reporters, recorders, the detainee's personal representatives, and the members of the Judge Advocate General corps present at the tribunals on the basis of FOIA Exemption b(6). On remand, the CIA released the transcript of Ammar al Baluchi in its entirety (with the exception of DOD names and signatures) and released additional information in the five remaining CSRT transcripts and three detainee written statements.

**IV. INFORMATION REDACTED FROM RESPONSIVE DOCUMENTS**

25. I understand that Plaintiffs do not contest the redaction of the names of the tribunal presidents, members,

reporters, recorders, the detainee's personal representatives, or the members of the Judge Advocate General corps present at the tribunals. Further, I understand that Plaintiffs do not contest the redaction of the tribunal presidents' signatures.

26. The CIA redacted information from five of the fourteen CSRT transcripts responsive to Item 1 of Plaintiffs' request and three of the five documents responsive to Item 2 of Plaintiffs' FOIA request. I will now summarize the information redacted from each of these documents, to the extent possible on the public record.

A. Item 1 CSRT Transcripts

1. Mustafa Al Hawsawi (ISN 10011)

27. From the 29-page CSRT transcript of Mustafa Al Hawsawi, the CIA redacted only a portion of one sentence on page 24 of the transcript. This sentence contains information regarding foreign relations and foreign activities of the United States, which is properly classified as described in Section V.A.2. below. In addition, the redacted information relates to a core function of the CIA and its personnel--collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as described in Section V.B. below.

**2. Al Nashiri (ISN 10015)**

28. From the 39-page CSRT transcript of Al Nashiri, the CIA made redactions on pages 16, 17, 19 and 23. The CIA redacted detailed information from these pages regarding the detention of Al Nashiri and the conditions of his confinement, as well as the interrogation methods that he claims to have experienced and intelligence information that Al Nashiri provided during his detention and interrogation. This information is properly classified as explained in Section V.A.2. below. In addition, the redacted information relates to a core function of the CIA and its personnel--collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as described in Section V.B. below.

**3. Abu Zubaydah (ISN 10016)**

29. From the 30-page CSRT transcript of Abu Zubaydah, the CIA made redactions on pages 6, 9, 22, 23, 25, 25, 26, 27, and 28. The CIA redacted detailed information from these pages regarding the detention of Abu Zubaydah and the conditions of his confinement, as well as the interrogation methods that he claims to have experienced and intelligence information that Abu

Zubaydah provided during his detention and interrogation. This information is properly classified as explained in Section V.A.2. below. In addition, the redacted information relates to a core function of the CIA and its personnel--collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as described in Section V.B. below.

4. Majid Khan (ISN 10020)

30. From the 50-page CSRT transcript of Majid Khan, the CIA made redactions on pages 16, 17, 21, 22-31, 35, 36, 37-38, and 45-46. In addition to statements by Majid Khan at the hearing, the CIA redacted substantial portions of two exhibits offered by Majid Khan: a written "Statement of Torture" and an oral "Statement of Torture," both of which were prepared in advance of the CSRT hearing. The information the CIA redacted from this transcript was detailed information regarding the capture of Majid Khan, the conditions and locations of his detention, interrogation methods he claims to have experienced, intelligence information gained through his detention and interrogation, and information relating to foreign relations and foreign activities of the United States. This information is properly classified as explained in Section V.A.2. below. In

addition, the redacted information relates to a core function of the CIA and its personnel--collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as described in Section V.B. below.

5. Khalid Sheikh Muhammad (ISN 10024)

31. From the 27-page CSRT transcript of Khalid Sheikh Muhammad, the CIA redacted information on pages 14, 15, 16, and 24. The CIA redacted information regarding the conditions and locations of his detention, the interrogation methods he claims to have experienced, intelligence information gained through his detention and interrogation, and information relating to foreign relations and foreign activities of the United States. Included in the redacted information were specific questions posed to Muhammad during his interrogation, which would reveal intelligence interests of the CIA. This information is properly classified as explained in Section V.A.2. below. In addition, the redacted information relates to a core function of the CIA and its personnel--collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central

Intelligence Agency Act of 1949, as described in Section V.B. below.

**B. Item 2 CSRT Statements**

**1. Khalid Sheikh Muhammad's Written Statement**

32. The first redacted document responsive to Item 2 of Plaintiffs' FOIA request is a "Written Statement Regarding Alleged Abuse" prepared by Khalid Sheikh Muhammad and submitted by him as an exhibit to his CSRT. The statement is two pages, and the CIA redacted all but the title and descriptive headers on the document. The information the CIA redacted is detailed descriptions of Muhammad's capture, the conditions and locations of his detention, including specific questions he was asked during interrogation, and information relating to foreign relations and foreign activities of the United States. This information is properly classified as explained in Section V.A.2. below. In addition, the redacted information relates to a core function of the CIA and its personnel--collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as described in Section V.B. below.

**2. Hambali's Written Statement**

33. The second redacted document responsive to Item 2 of Plaintiffs' FOIA request is a written statement prepared by Hambali and submitted by him as an exhibit to his CSRT. The statement responds to specific points of evidence offered by the CSRT Recorder. The information redacted from the statement is details of the conditions of his interrogation, including specific questions he was asked. In addition, the CIA redacted information regarding his capture and detention, interrogation methods he claims to have experienced, and information relating to foreign relations and foreign activities of the United States. This information is properly classified as explained in Section V.A.2. below. In addition, the redacted information relates to a core function of the CIA and its personnel-- collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as described in Section V.B. below.

**3. Bin Lap's Written Statement**

34. The third redacted document responsive to Item 2 of Plaintiffs' FOIA request is a written statement prepared by Bin Lap and submitted by him as an exhibit to his CSRT. The statement responds to specific points of evidence offered by the



CSRT Recorder. The CIA redacted the entire substance of the statement, leaving the document's title and introduction. The information the CIA redacted is intelligence information gained through the detention and interrogation of Bin Lap, which is properly classified as explained in Section V.A.2. below. In addition, the redacted information relates to a core function of the CIA and its personnel--collection, analysis, and dissemination of foreign intelligence derived from clandestine intelligence activities, sources, and methods--that is protected from disclosure by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as described in Section V.B. below.

V. APPLICABLE FOIA EXEMPTIONS

A. Exemption (b) (1)

35. 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).

36. The authority to classify information is derived from a succession of Executive orders, the most recent of which is Executive Order 12958. I have reviewed the documents responsive

to Plaintiffs' FOIA request under the criteria established by Executive Order 12958. I have determined that the information withheld from these documents is in fact properly classified pursuant to the Order.

#### 1. Procedural Requirements

37. 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 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."

38. 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).

39. Original classification authority - Section 1.3(a) of the Executive Order provides that the authority to classify information originally 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(b) of the Executive Order provides that original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL. 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 Executive Order.

40. In accordance with section 1.3(a)(2), the President designated the Director of the CIA as an official who may

classify information originally as TOP SECRET.<sup>6</sup> Under the authority of section 1.3(c)(2), the Director of the CIA has delegated original TOP SECRET classification authority to me. With respect to the information described below in this declaration relating to CIA intelligence activities, sources, and methods, I have determined that this information is properly classified TOP SECRET, SECRET, and/or CONFIDENTIAL by an original classification authority.

41. *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 intelligence activities, sources, and methods, and foreign relations and foreign activities, as described in section IV.A.2. 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.

42. *Categories in Section 1.4 of the Executive Order* - With respect to the information relating to CIA intelligence

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<sup>6</sup> 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 205 (West Supp. 2008). 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 2003), in which the President similarly designated the Director of the CIA as an official who may classify information originally as TOP SECRET.

activities, sources, and methods, and foreign relations and foreign activities, described in section IV.A.2. 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: "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.

43. *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, which includes defense against transnational terrorism, 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.

44. With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign 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 this information is classified SECRET or TOP SECRET because it constitutes information the unauthorized disclosure of which reasonably could be expected to result in serious or exceptionally grave damage to the national security, which includes defense against transnational terrorism. The damage to national security that reasonably could be expected to result from the unauthorized disclosure of this classified information is described below.

45. *Proper purpose* - With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign 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 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.

46. *Marking* - With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign activities, described in section IV.A.2. of this declaration for which FOIA Exemption (b)(1) is asserted in this case, I have reviewed the documents and have determined that they are properly marked in accordance with section 1.6 of the Executive Order. Each document bears on its face the SECRET or TOP SECRET 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.<sup>7</sup>

47. *Proper classification* - With respect to the information relating to CIA intelligence activities sources, and methods, and foreign relations and foreign activities, described in section V.A.2. of this declaration for which FOIA Exemption (b)(1) is asserted in this case, I have reviewed the documents

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<sup>7</sup> Some of these documents also contain markings for "Special Access Programs," also known as "Sensitive Compartmented Information" or "SCI." Section 4.3 of Executive Order 12958 establishes the legal requirements for establishing SCI programs. Some of these markings are themselves classified and were redacted from the documents at issue.

and has 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.

## 2. Substantive Requirements

48. In processing the documents for this litigation, I have reviewed the records identified as exempt under Exemption (b)(1) in this declaration and have determined that they contain information that is currently and properly classified. I will describe, to the greatest extent possible on the public record, the damage to the national security that reasonably could be expected to result from the unauthorized disclosure of this information.

49. In general, the fourteen HVDs included in Plaintiffs' FOIA request have been exposed to intelligence activities, sources, and methods and information relating to the foreign relations and activities of the United States. These intelligence sources and methods are also classified information, the disclosure of which reasonably could be expected to result in serious or exceptionally grave damage to the national security. This information is also protected from disclosure under the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as discussed below. The intelligence activities to which the HVDs were exposed



include the capture, detention, confinement, and interrogation of detainees. The information impacting foreign relations to which the HVDs were exposed includes the locations of CIA intelligence activities overseas and the assistance provided by certain foreign governments in furtherance of those activities. Detailed information in each of these areas is included in the redacted documents responsive to Plaintiffs' FOIA request.

**a. *Intelligence Activities and Methods***

50. I will first provide a general description of intelligence activities and their classified nature, and next describe the specific information relating to intelligence activities that the CIA redacted from the documents at issue in this case. 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 counter-intelligence 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.

51. 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.

52. The redacted information at issue in this case concerns two specific intelligence activities: (1) the capture, detention, and confinement of terrorists; and (2) the interrogation of terrorists.

(1) *Capture, Detention, and Conditions of Confinement*

53. The redacted information at issue in this case relates to a highly classified, now discontinued, 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, then-President George W. Bush authorized the CIA to set up clandestine terrorist detention facilities outside the United States. The 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 classified intelligence sources and methods.

54. On September 6, 2006, President 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.<sup>9</sup>

55. While President Bush 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 and the details of their confinement, could not be divulged and would remain classified. Among the details that cannot be publicly released are the conditions of the detainees' capture and other operational details. In fact, such details constitute TOP SECRET, Sensitive Compartmented Information (SCI). It is these details that are redacted from the documents responsive to Plaintiffs' FOIA request.

56. As described in paragraph 22, President Obama ordered the closure of CIA detention facilities and the discontinuation

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<sup>9</sup> Since President Bush's 6 September 2006 speech, the Government has disclosed that two additional individuals were transferred to Guantanamo Bay.

of EITs. In addition, on 24 August 2009 the Government declassified and publicly released substantial portions of several OLC legal opinions that discussed the legality of EITs and general conditions of confinement. Notwithstanding these disclosures, the United States continues to withhold sensitive classified information relating to the former Program, including the circumstances of detainees' captures, where they had been held, the specific details of their confinement, intelligence collected during interrogation, and other operational details. The information withheld from the five CSRT transcripts and the three detainee statements remains highly classified, and its unauthorized disclosure reasonably could be expected to result in damage to the national security.

57. 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 DNI 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.

58. Information relating to the CIA terrorist detention program has been placed 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.

59. While the CIA has discontinued the RDI program, the United States will continue to interrogate terrorists consistent with the law. An effective interrogation program requires the cooperation of foreign governments and the use of effective interrogation techniques. Unauthorized disclosure of the details of the former program would undermine both of these requirements. These details are included in the information redacted from the documents at issue in this case. Unauthorized disclosure of details regarding the capture, detention, and conditions of confinement reasonably could be expected to result in exceptionally grave damage to the national security.

(2) *Interrogation Methods, Questions, and Intelligence Collection*

60. Even though the interrogation program instituted by President George W. Bush, including the use of EITs, has been discontinued, the information withheld would still be of value to al Qaeda and must be protected. 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 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 Qaeda about the historical use of EITs, but also what techniques the United States could use in a current interrogation.

61. The U.S. Government is aware that al Qaeda and other terrorists train in counter-interrogation methods. Public disclosure of the questioning procedures and methods used by the CIA as part of the detention program would allow al Qaeda and other terrorists to more effectively train to resist such techniques, which would result in degradation in the effectiveness of the techniques in the future. If detainees in United States custody are more fully prepared to resist interrogation, it could prevent the United States from obtaining vital intelligence that could disrupt future attacks. These interrogation methods are integral to the United States'

counter-terrorism efforts and are therefore classified TOP SECRET//SCI.

62. The CIA's discontinued detention and interrogation program has provided the U.S. Government with one of the most useful tools in combating terrorist threats to the national security. It has shed light on probable targets and likely methods for attacks on the United States, and has led to the disruption of terrorist plots against the United States and its allies. For example, information obtained through the Program thwarted a plot to fly a plane into the tallest building in Los Angeles. Additional plots that were disrupted include hijacking passenger planes to fly into Heathrow Airport and attacking the U.S. consulate in Karachi, Pakistan, using car bombs and motorcycle bombs. Additionally, information obtained through the program has played a vital role in the capture and questioning of additional senior al Qaeda operatives. For example, interrogations of detainees produced information that provided initial leads to the locations of al Qaeda operatives, which led to their capture. In addition, the United States gained valuable information that explained previously unknown details of al Qaeda, such as its organization, financing, communications, and logistics.

63. In addition to interrogation methods generally, the types of questions asked and specific questions asked to

particular detainees must be protected. The questions asked during interrogation could provide insight into the intelligence interests and knowledge of the United States. Public disclosure of the specific questions that the CIA has asked detainees could reveal what the CIA knew at the time and allow others to infer what the CIA did not know at the time. This information would allow other terrorists to make judgments about the intelligence capabilities of the CIA and to anticipate the type of questioning they might undergo in United States custody.

64. Although certain instances of intelligence gained through interrogation methods have been publicly disclosed by the U.S. Government, such as the examples above, the redacted information remains classified. Intelligence information gained through interrogation is currently used by the U.S. Government to conduct counterterrorism operations and pursue terrorists. If the CIA were to reveal intelligence information gained through its use of interrogation methods, the information would no longer be useful in counterterrorism efforts.

*b. Foreign Relations and Foreign Activities of the United States*

65. Disclosure of the information withheld from the five CSRT transcripts and three detainee statements reasonably could be expected to result in serious damage to the national security. 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.

66. 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. Statements from the HVDs acknowledged to have been in the CIA's detention program about the specific foreign detention locations and other critical assistance that foreign countries have provided to the CIA's counterterrorism operations would damage the CIA's relations with these foreign governments and could cause them to cease cooperating with the CIA on such matters. Such statements are among the redacted information in the documents responsive to Plaintiffs' FOIA request. 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.

67. The damage to national security that could result through public disclosure of the information regarding liaison assistance contained in the documents at issue is not merely conjectural. Just prior to President Bush'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.

68. In one instance, however, a particular foreign government reduced its cooperation with the CIA when its role in the terrorist detention program was 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.

69. In sum, the CIA has determined that unauthorized disclosure of information which reasonably could be expected to lead to the identification of information that would harm foreign relations or foreign activities of the United States, is currently and properly classified as SECRET and/or TOP SECRET pursuant to the criteria of Executive Order 12958, as its disclosure could reasonably be expected to cause serious and exceptionally grave damage to the national security of the United States, and is thus exempt from disclosure pursuant to FOIA Exemption (b) (1).

70. On 16 April 2009, the United States declassified and publicly released a substantial portion of four OLC legal opinions analyzing the legality of specific EITs. The OLC memoranda descriptions of the enhanced interrogation techniques *in the abstract*, however, are of a qualitatively different nature than the conditions of confinement and interrogation techniques as applied described in the CSRT transcripts and detainee written statements. Likewise, on 24 August 2009, the United States declassified and publicly released substantial portions of two OLC opinions discussing conditions of detainee confinement. These opinions discussed general issues of detainee confinement, rather than specific operational details

of the confinement of any specific detainee. The information contained within the CSRT transcripts and detainee written statements concerning operational details of the conditions of confinement and the application of interrogation techniques must continue to be classified TOP SECRET, and withheld from disclosure in their entirety under FOIA Exemptions b(1) and b(3).

71. The recently declassified OLC memoranda are legal analyses by Department of Justice (DOJ) attorneys. Although they discuss the legality of specific proposed intelligence activities, they do not reveal the level of detail described in the transcripts and statements at issue in this case: details of actual intelligence activities, sources, and methods. Even if the EITs are never used again, the United States 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.

72. Additionally, disclosure of explicit details of conditions of confinement and specific interrogations where enhanced interrogation techniques were applied would provide al-Qa'ida with propaganda it could use to recruit and raise funds. Al-Qa'ida has a very effective propaganda operation. When the abuse of Iraqi detainees at the Abu Ghraib prison was disclosed,

al-Qa'ida made very effective use of that information in extremist websites that recruit jihadists and solicit financial support. Information concerning the details of the conditions of confinement and the application of interrogation techniques would provide ready-made ammunition for al Qaeda propaganda. The resultant damage to the national security would likely be exceptionally grave, and the withholding of this information is therefore proper under FOIA Exemption b(1).

*c. False Allegations by High-Value Detainees*

73. I wish to acknowledge that certain allegations made by the HVDs in the documents at issue in this case may be false or exaggerated. Notwithstanding this, the HVDs are in a position to provide accurate and detailed information about some aspects of the CIA's former detention and interrogation program. As already stated, the disclosure of such details reasonably could be expected to result in exceptionally grave damage to national security.

74. False or exaggerated allegations by the HVDs about the classified details of the Program, however, also must be treated as classified information. To do otherwise would have the effect of allowing accurate, highly classified information about the Program to be revealed by the HVDs. If only truthful statements were redacted, a detainee with knowledge of classified facts could easily manipulate the process to reveal

those classified facts. For example, if the United States redacted only the HVDs' true allegations regarding locations of CIA detention facilities, the true locations of these facilities could be revealed by making multiple allegations as to location, through a simple process of elimination. The same is true with respect to conditions of confinement. If only true statements about such conditions were redacted, HVDs with access to classified information regarding actual conditions could paint a picture of those conditions used and not used by making repeated allegations about conditions of confinement.

75. Allowing the HVDs to speak freely about the CIA program will allow them to directly reveal the classified information about the Program that the Government must protect. Redacting only true statements about the Program would allow HVDs to manipulate the process and reveal the true details of the program. Therefore, in order to protect the classified facts at issue here--the details of the CIA terrorist detention and interrogation program--the Government must treat as classified all allegations by the HVDs regarding the program beyond those already officially released.

B. Exemption (b) (3)

76. 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 Request and determined that there are two relevant withholding statutes: the National Security Act of 1947 and the Central Intelligence Agency Act of 1949.

77. *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. 2008), provides that the DNI shall protect intelligence sources and methods from unauthorized disclosure. I have reviewed the documents identified as classified in this declaration and determined that they contain information that if disclosed would reveal intelligence sources and methods.

78. *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. 2008), 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. Among the functions of the CIA are the collection, analysis, and dissemination of foreign intelligence. The collection function includes the clandestine intelligence sources, methods, and activities by which the CIA collects foreign intelligence from human sources. In this case, the information redacted from documents responsive to Plaintiffs' FOIA request contains details of critical functions of the CIA and its personnel. As described above, each classified category of information contained in the documents at issue relates to the CIA's ability to collect counterterrorism intelligence and perform counterterrorism operations--functions that reside at the core of the CIA's mission.

79. In contrast to Executive Order 12958, the National Security Act's statutory requirement to protect intelligence sources and methods and the CIA Act's exemptions from disclosure of certain information do 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 and the CIA 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 at issue in the documents responsive to Plaintiffs' FOIA request.

C. Segregability

80. As described previously, the CIA has released some documents, in whole or in part, in response to Plaintiffs' FOIA request. With respect to the records released in part, I conducted a line-by-line review of these documents to identify and release all reasonably segregable, non-exempt portions of the documents. Based on this review, I determined that the information released to Plaintiffs could be released in segregable form while the remaining information is exempt from disclosure under FOIA exemptions (b)(1) and (b)(3), as explained above.

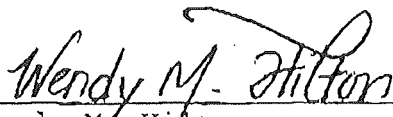
VI. CONCLUSION

81. For the reasons described above, the documents described herein were withheld in part on the basis of FOIA exemptions (b) (1) and (b) (3).

\* \* \* \*

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

Executed this 28<sup>th</sup> day of August, 2009.

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