



United States Attorney
Southern District of New York

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January 16, 2015

By ECF & Facsimile

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007

Re: *ACLU v. Department of Defense et al.*, No. 04 Civ. 4151 (AKH)

Dear Judge Hellerstein:

I am the Assistant United States Attorney representing the Government in the above-captioned Freedom of Information Act (“FOIA”) lawsuit. I write with respect to a passage in the Senate Select Committee on Intelligence’s *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* (the “SSCI Report”) that was cited in plaintiffs’ memorandum dated January 9, 2015. *See* Dkt. No. 533. The passage reads as follows:

After the April 15, 2005, National Security Council Principals Committee meeting, the CIA drafted an extensive document describing the CIA’s Detention and Interrogation Program for an anticipated media campaign. CIA attorneys, discussing aspects of the campaign involving off-the-record disclosures, cautioned against attributing the information to the CIA itself. One senior attorney stated that the proposed press briefing was “minimally acceptable, but only if not attributed to a CIA official.” The CIA attorney continued: “This should be attributed to an ‘official knowledgeable’ about the program (or some similar obfuscation), but should not be attributed to a CIA or intelligence official.” Referring to CIA efforts to deny Freedom of Information Act (FOIA) requests for previously acknowledged information, the attorney noted that, “[o]ur Glomar figleaf is getting pretty thin.” Another CIA attorney noted that the draft “makes the [legal] declaration I just wrote about the secrecy of the interrogation program a work of fiction” Legal urged that CIA leadership needed to “confront the inconsistency” between CIA court declarations “about how critical it is to keep this information secret” and the CIA “planning to reveal darn near the entire program.”

SSCI Report, Executive Summary at 404-405. The SSCI Report cites several internal CIA emails in support of these statements. *See id.* at 405 n.2276-2278.

Relying solely on the above-quoted passage of the SSCI Report, Plaintiffs’ counsel recently represented to this Court that the CIA admitted to having filed a false Glomar

declaration in this case. *See* Dkt. No. 533, at 3 n.1 (claiming that a CIA attorney admitted that the Fourth Declaration of Marilyn Dorn, dated March 30, 2005 (Dkt. No. 79), was a “work of fiction.”).

Consistent with our duties as officers of the Court, we have reviewed the underlying emails cited in the above-quoted passage of the Report.¹ The declarations referred to in the last two sentences of the quoted passage, and in the underlying emails, do not concern declarations filed in this case or, indeed, in any other FOIA case.² Accordingly, Plaintiffs’ assertion is incorrect.

I thank the Court for its consideration of this matter.

Respectfully,

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¹ These emails are privileged and portions of them remain classified.

² In connection with arguing that the CIA’s declarations are not entitled to judicial deference, Plaintiffs’ counsel has made similar representations in other cases to this Court and other district courts. *See ACLU v. DOJ*, 12 Civ. 794 (S.D.N.Y.) (CM) (Dkt. No. 116 at 6); *ACLU v. CIA*, 10 Civ. 436 (D.D.C.) (RMC) (Dkt. No. 69, at 18-19).