

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,
et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

04 Civ. 4151 (AKH)

**DECLARATION OF LEON E. PANETTA,
DIRECTOR, CENTRAL INTELLIGENCE AGENCY**

I, LEON E. PANETTA, hereby declare and state:

1. I continue to serve as the Director of the Central Intelligence Agency (CIA). In my capacity as Director, I lead the CIA and manage the Intelligence Community's human intelligence and open source collection programs on behalf of the Director of National Intelligence (DNI). I have held this position since 13 February 2009. I have held a number of positions in the executive and legislative branches, including serving as President Clinton's Chief of Staff from 1994 to 1997, Director of the Office of Management and Budget (OMB) from 1993 to 1994, and congressional representative to California's 16th (now 17th) Congressional District from 1977 to 1993.

2. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. The judgments expressed in this declaration are my own. Through the exercise of my official duties, I have been advised of this litigation and I am familiar with the CIA documents and information currently at issue in this case.

3. I submit this declaration to supplement my prior unclassified and classified declarations, both dated 8 June 2009, and in further support of the withholding in full of a sample of 65 documents reflecting the contents of 92 destroyed videotapes of detainee interrogations that occurred between April and December 2002. Of these 65 documents, 57 are records generated during the course of CIA counterterrorism operations, or their equivalent (operational records). The majority of these operational records are CIA operational communications (operational cables) which, as I noted in my prior declaration, are the most contemporaneous documents the CIA possesses concerning these interrogations.

4. As set forth in more detail in my prior unclassified and classified declarations, the release of any portion of the operational records at issue would, among other things, cause exceptionally grave damage to clandestine human intelligence collection and foreign liaison relationships. My conclusion is based in part on information available to the Agency, including

the classified information set forth in my aforementioned classified declaration in this case.

5. In withholding the operational records in their entirety, I took into account the prior release on April 16, 2009 of declassified memoranda of the Department of Justice Office of Legal Counsel, and that there would be future releases of non-exempt information pertaining to CIA interrogations, such as the recent release on August 24, 2009. While the Government released certain information regarding the CIA's activities on those two dates - and will continue to release non-exempt information relevant to this topic when possible, consistent with the national security -- much of the information regarding the CIA's terrorist detention and interrogation program remains classified. Moreover, none of the documents released on August 24, 2009 or April 16, 2009 were records generated during the course of CIA operations, or their equivalent, like the 57 operational records at issue (as contrasted with non-operational documents such as policy analysis, legal guidance or even finished intelligence products).

6. Specifically, information such as certain details about the conditions of confinement, circumstances of capture, locations of detention facilities, assistance of foreign entities, and sensitive intelligence received from detainees has not been disclosed, as the release of such information would

currently cause serious, and, in some cases, exceptionally grave damage to the national security. Operational details regarding the CIA's former interrogation program -- that is, information regarding how the program was actually implemented -- also remain classified, as do descriptions of the implementation or application of interrogation techniques, including details of specific interrogations where Enhanced Interrogation Techniques (EITs) were used (excepting such general information that has been released to date on these topics). Similarly, the identities of CIA employees, contractors, and consultants involved in the interrogation program remain classified. Although the program and the use of EITs have been discontinued, the United States is still engaged in extensive counterterrorism operations, including the questioning of terrorists. The release of operational details regarding the implementation of the program would tend to reveal more generally the Government's approach to questioning terrorist suspects, and thus must remain classified.

7. As explained in my prior unclassified declaration, I am not suggesting a blanket policy whereby no communications from the field, or their equivalents, could ever be released in part. As a practical matter, however, the CIA rarely releases operational documents, particularly operational cables. Moreover, when such releases do occur, they rarely occur close

in time to the operations in question or when the United States is still engaged in operations of the same or similar type. In this case, the United States is still engaged in extensive counterterrorism operations, including the questioning of terrorists. Thus, the release, even in redacted form, of contemporaneous records generated in the course of counterterrorism operations, or their equivalent, would lead our allies, liaison partners and potential human sources to perceive that the CIA is unable to keep secret even its most sensitive records regarding its clandestine operations. Such a perception, and the loss of trust it would engender, would do lasting damage to the CIA's ability to gather intelligence or conduct clandestine operations.

8. Finally, the remaining 8 documents in this sample of 65, while not documents generated during the course of CIA operations, or their equivalent, nonetheless contain a variety of information, to include operational information, that has been withheld based on FOIA Exemptions 1, 3, 5 and 6 as set forth more fully in my prior declarations and other declarations submitted by the CIA.

* * * *

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

Executed this 21st day of September, 2009.

A handwritten signature in black ink, appearing to read 'Leon E. Panetta', is written over a horizontal line. The signature is stylized and somewhat cursive.

Leon E. Panetta

Director

Central Intelligence Agency