



July 2, 2009

Via Facsimile and Fedex

The Hon. Alvin K. Hellerstein
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 1050
New York, NY 10007

Re: *Am. Civil Liberties Union v. Dep't of Def.*, No. 1:04-CV-4151

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS'
RIGHTS PROJECT

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Dear Judge Hellerstein,

Plaintiffs strenuously object to what amounts to the government's request for a fourth extension of its deadline to reprocess the CIA's Office of the Inspector General's Special Review Report ("OIG's report"). As explained in Plaintiffs' letter to the Court yesterday, Plaintiffs understand the Court's June 3, 2009 Scheduling Order to have endorsed the production schedule proposed by the government on May 28, 2009. *See* Scheduling Order 1-2 (June 3, 2009) (dkt. no. 350). The government's May 28, 2009 letter, in turn, requested a deadline of June 19, 2009 for the government to produce a reprocessed version of the report. *See* Letter to Hon. Alvin K. Hellerstein from Lev L. Dassin, dated May 28, 2009. That schedule, requested by the government, allowed the CIA ample time—thirty-seven days from the time it moved the Second Circuit to remand the appeal—to reprocess the OIG's report. Nevertheless, Plaintiffs did not object to the government's first two extensions of the June 19 deadline until July 1. Plaintiffs objected, yesterday, however, when the government unilaterally and indefinitely extended the deadline beyond July 1, 2009. With today's letter, the government has unilaterally extended its deadline yet again, by nearly two months on top of the initial extensions. Plaintiffs now urge the Court to reject the government's attempt to delay release of the report until August 31, 2009 and to order an immediate status conference if it deems it necessary.

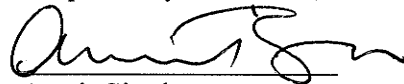
As Plaintiffs have previously explained, the OIG's report is of crucial importance to the ongoing debate about the legality and effectiveness of the CIA's so-called "enhanced interrogation techniques." The report is cited by Office of Legal Counsel memoranda as criticizing the CIA's use of waterboarding, and news reports have highlighted its centrality to the

debate.¹ The Court also recognized the importance of the OIG's report to the public debate when, during a telephone conference on May 27, 2009, it asked the government to prioritize its reprocessing of the report.

Notwithstanding the clear public interest in speedy release of the report, the government now seeks to delay its disclosure for an additional two months based upon the flawed and overly broad claim that an interim FOIA disclosure of the report would risk inconsistent application of FOIA's exemptions. The government's argument is contrary to logic. Interim reprocessing of the OIG's report would aid, not risk inconsistency with, later reprocessing of the remaining CIA documents. The government's argument is simply a pretext for further delay that the Court should reject. In any event, to the extent there is any truth to the government's claim that it must reprocess other documents first, that argument counsels not in favor of delay but rather in favor of expediting the reprocessing and release of *all* CIA documents at issue.

Plaintiffs therefore request that the Court reject the government's attempt to delay release of the report until August 31, 2009 and to order an immediate status conference if it deems it necessary. Plaintiffs are also disturbed by the clear trend emerging in the government's repeated delays in disclosure of documents critical to a complete understanding of the CIA's interrogation program. For that reason, Plaintiffs respectfully urge the Court to disallow any further extensions by the CIA.

Respectfully submitted,



Amrit Singh
Staff Attorney
American Civil Liberties Union

¹ See e.g., Carrie Johnson, *Former Official: Treatment of Terror Suspects a "Collective Failure,"* Wash. Post, May 13, 2009 ("The clinically worded papers ignited fresh debate and prompted advocates on both sides of the aisle to call for release of more memos and reports, including findings from the CIA inspector general and the Justice Department's ethics watchdogs." (emphasis added)); Mark Mazzetti & Scott Shane, *Interrogation Debate Sharply Divided Bush White House,* N.Y. Times, May 3, 2009 (highlighting the importance of the May 7, 2004 Helgerson Special Review Report in elucidating internal debates within the White House); see also *Fairness in the Torture Probe: Why the Justice Department Should Embrace Disclosure in Its Investigation of Bush Administration Legal Advice,* Wash. Post, May 9, 2009; *In the Spirit of Openness,* N.Y. Times, Apr. 22, 2009 ("Americans also need to know who pushed the Justice Department lawyers to twist the law and the Constitution to excuse torture.").

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