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October 19, 2009

BY FACSIMILE

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007-1312

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

Dear Judge Hellerstein:

We write to provide the Court with an update regarding the compliance of the Central Intelligence Agency ("CIA") with this Court's orders to search and process records relating to the destruction of CIA videotapes of interrogation, and the persons and reasons behind their destruction (so-called "paragraph 4 documents"). See Court Orders, dated April 20, 2009, July 20, 2009, July 30, 2009, August 25, 2009, and Sept. 2, 2009.

As part of its compliance efforts, the CIA has searched for responsive paragraph 4 documents that might be located within the CIA Office of Inspector General ("OIG").¹ As required by this Court's Order of September 2, 2009, the CIA has conducted a line-by-line review of approximately 100 responsive OIG documents and processed these documents to identify any non-exempt information for release. The CIA has determined that certain of these 100 documents contain information that is not covered by any FOIA exemptions that may be asserted by the CIA. The CIA has been informed, however, that release of the information in question from these OIG documents would interfere with the ongoing criminal investigation of Special Prosecutor John Durham into the destruction of the videotapes.² This information has been

¹ In addition to these OIG records, the CIA also is moving forward with the review and processing of other documents that are potentially responsive to paragraph 4, including electronic records. See, e.g., Court Order dated August 25, 2009 (addressing not only OIG records but also large electronic repositories within the CIA).

² On July 29, 2009, the Court met with Special Prosecutor John Durham, at which time Mr. Durham described, *inter alia*, "the scope of his criminal investigation into destruction of the videotapes." Court Order, dated July 30, 2009, at 2. The Court "accepted Mr. Durham's representations," found that "the material issues of Plaintiffs' contempt motion [in this case] are

withheld at Mr. Durham's request under FOIA exemption 7(A), which specifically provides for the withholding of information compiled for law enforcement purposes "to the extent that production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings." Accordingly, while the CIA has completed its processing of these OIG records, at this time there is no information that may be released from these records.

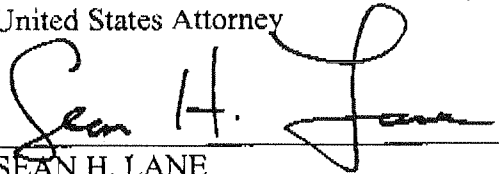
Mr. Durham will be writing directly to the Court under separate cover to address the records in question.

We thank the Court for considering this submission.

Respectfully,

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subsumed by his criminal investigation," and accepted Mr. Durham's "concerns that hearings that [the Court] might conduct on the contempt motion would interfere with his investigation." Id.