



July 1, 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

Dear Judge Hellerstein,

PLEASE RESPOND TO:
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Plaintiffs write to object to the government's unilateral decision to indefinitely extend its Court-ordered deadline to release a reprocessed version of the Central Intelligence Agency's Office of the Inspector General's Special Review Report ("OIG's report"). Although that report was due to be released today, at approximately 5:15 p.m., the government notified Plaintiffs that it would apprise Plaintiffs of the schedule for release of the OIG's report by noon tomorrow. Plaintiffs now seek an order from the Court requiring the government to produce the OIG's report by no later than July 6, 2009 and requiring the government to seek any further extensions sufficiently in advance of the deadline to allow this Court an opportunity to rule on the request. Moreover, Plaintiffs object to any further extensions.

On May 22, 2009, following the Second Circuit's remand of the portion of this case concerning the OIG's report, Plaintiffs urged the Court to expedite proceedings concerning the reprocessing and release of the report, due to the significant public interest in its disclosure and the near-six-year delay in its release. *See* Letter to Hon. Alvin K. Hellerstein from Amrit Singh, dated May 22, 2009. On May 27, 2009, the government responded, asserting that it needed three months to reprocess all of the CIA documents at issue in the remand, including the OIG's report. *See* Letter to Hon. Alvin K. Hellerstein from Lev L. Dassin, dated May 27, 2009.

On the same day as the government's filing, the Court called counsel for both parties to discuss the reprocessing schedule for the remanded documents. Plaintiffs requested that the government prioritize reprocessing of the OIG's report, and the Court agreed, asking the government to notify the Court by the following day whether it could prioritize the OIG's report

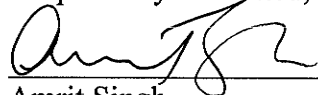
and whether it could shorten the schedule for reprocessing the balance of the CIA documents. The next day, May 28, 2009, the government acceded to the Court's request that it prioritize the OIG's report and "request[ed] until June 19, 2009 to process the [OIG's report]." *See* Letter to Hon. Alvin K. Hellerstein from Lev L. Dassin, dated May 28, 2009. The government continued to argue that it needed three months to reprocess the balance of the CIA documents. *Id.*

On June 3, 2009, the Court, in essence, endorsed the government's proposed schedule, setting a deadline for all CIA documents to be reprocessed by August 31, 2009 and, in Plaintiffs' view, implicitly ordering the government to reprocess and release the OIG's report by June 19, 2009, the date that the government agreed to at the Court's request. *See* Scheduling Order 1-2 (June 3, 2009) (dkt. no. 350).

Since that time, Plaintiffs have not objected to two minor extensions of the June 19, 2009 deadline—to June 26 and then to July 1—subject to their stated understanding that the original deadline was a part of the Court's Scheduling Order of June 3, 2009. Although the government should have sought leave from the Court for the extensions, it did not do so based on its assertion that it was not required to do so by this Court's June 3 order. In effect, the government took the position that its previous representation to the court that the CIA would produce the report by June 19, 2009 was irrelevant, despite the Court's specific request that the government prioritize the reprocessing of the report and despite the fact that the June 19 deadline was subsequently endorsed by the Court's June 3 order.

Today, the government, at the last possible moment before the close of business, unilaterally decided to indefinitely extend the July 1 deadline. The Court should not allow the government to disregard the Scheduling Order. Plaintiffs therefore seek an order from the Court requiring the government to produce the OIG's report by no later than July 6, 2009 and requiring the government to seek any further extensions sufficiently in advance of the deadline to allow this Court an opportunity to rule on the request.

Respectfully submitted,



Amrit Singh

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