

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CIVIL LIBERTIES UNION,  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et  
al.,

Defendants.

No. 1:13-cv-01870 (JEB)

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'  
FOURTH MOTION FOR AN EXTENSION OF TIME**

Plaintiffs respectfully request that this Court deny Defendants' fourth motion for an extension of time to process the SSCI Report and CIA Report, and set a November 17, 2014 deadline for the processing of these two documents. In the alternative, Plaintiffs request that the Court set a briefing schedule that is based on the date of the public release of the executive summary, findings, and conclusions of the SSCI Report (the "SSCI Report Summary") and the CIA Report.

Defendants' and the Court's obligations under FOIA are independent of the political process currently unfolding between the CIA and the Senate Select Committee on Intelligence ("SSCI"). Defendants' motion for an extension of time in this case is particularly troubling because of the open-ended nature of the request. *See* Defs.' Fourth Mot. for Extension of Time, *ACLU v. CIA*, No. 13-cv-1870 (JEB) (Oct. 28, 2014), ECF No. 34. The request is also at odds

with Defendants' prior representations to this Court. *See* Hearing Tr., *ACLU v. CIA*, No. 13-cv-1870 (JEB) (Oct. 7, 2014), at 4:8-9 (“[W]e don’t anticipate further extensions beyond October 29th.”).

Even though FOIA places independent obligations on Defendants to make the SSCI Report and the CIA Report public—and Plaintiffs have pressed for expeditious release—it appears that release through the separate political process will likely occur in mid-November. With respect to negotiations between the CIA and SSCI, counsel for the Defendants have represented to counsel for the Plaintiffs that “SSCI would not commit to a date for release, but hoped for a mid-November release.” Accordingly, Plaintiffs believe that November 17 is a reasonable deadline for this Court to set for the processing of the SSCI Report Summary and the CIA Report.

In the alternative, if the Court denies Plaintiffs' request for a November 17 deadline and grants Defendants' motion, Plaintiffs request that the briefing schedule for the SSCI Report, the CIA Report, and the Panetta Report be set based on the public release date of the SSCI Report Summary and the CIA Report. In the unique circumstances of this case, release of the SSCI Report Summary, and the facts surrounding that release, will be relevant to the question of whether the SSCI Report Summary and the Report itself are “agency records” subject to FOIA. *See, e.g., U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144 (1989); *United We Stand Am., Inc. v. Internal Revenue Serv.*, 359 F.3d 595, 597, 602 (D.C. Cir. 2004). Thus, contrary to Defendants' assertion, proceeding with the briefing schedule currently in place will prejudice Plaintiffs. It will also undermine judicial economy, as any decision on the status of the SSCI Report Summary or the withholding of the CIA Report could be rendered moot by the disclosure of those very records.

If the briefing schedule is not tied to the processing and release of two of the documents at issue in this case, the Court may be forced to resolve duplicative motions for summary judgment. Under Defendants' proposal, the parties would be required to brief the agency record question for the SSCI Report Summary and the SSCI Report starting in December 2014, and then brief the question a second time following the release of the SSCI Report Summary. The same would be true of the CIA Report, which the government now states it is prepared to defend as properly withheld in full, despite the near certainty that substantial portions of it will be released in near future. *Cf.* Defs.' Fourth Mot. for Extension of Time, at 3 ("SSCI has specifically requested that the CIA Response not be released in advance of the" SSCI Report Summary).

Thus, to avoid prejudicing Plaintiffs, and in the interests of judicial economy, Plaintiffs request that, if the Court grants Defendants' motion, it set the following briefing schedule:

- Defendants' summary judgment brief will be due four weeks following the public release of the SSCI Report Summary and the CIA Report;
- Plaintiffs' opposition and cross-motion will be due three weeks thereafter;
- Defendants' opposition and reply will be due three weeks thereafter;
- Plaintiffs' reply will be due two weeks thereafter.

\* \* \*

For these reasons, Plaintiffs oppose an indefinite extension of the processing date for the SSCI Report and CIA Report; request that the Court set a processing deadline of November 17 for the SSCI Report and CIA Report; and in the alternative, request that the Court modify the briefing schedule in this case as set forth above. A proposed order is enclosed.

Respectfully submitted,

/s/Hina Shamsi

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