

~~FILED UNDER SEAL~~¹

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE NEW YORK TIMES COMPANY,
CHARLIE SAVAGE, SCOTT SHANE,
AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs-Appellants,

v.

UNITED STATES DEPARTMENT OF
JUSTICE, UNITED STATES
DEPARTMENT OF DEFENSE, CENTRAL
INTELLIGENCE AGENCY,

Defendants-Appellees.

Nos. 13-422(L),
13-445 (Con)

**PUBLIC, REDACTED VERSION OF
RESPONSE TO COURT'S JUNE 10, 2014, ORDER**

Defendants-appellees the U.S. Department of Justice, the U.S. Department of Defense, and the Central Intelligence Agency (collectively, the government) respectfully submit this response to the Court's order of June 10, 2014.

1. The Court's proposed opinion with respect to the government's rehearing petition, which the Court provided to the government *ex parte* on June 6, 2014, for *in camera* classification review, does not contain classified information.

¹ The original of this document is being filed under seal because it quotes from the Court's proposed revised version of the Court's April 21, 2014, public opinion, which is under court seal, and the Court's proposed opinion on the rehearing petition, which has not yet been released publicly by the Court. A public version of this document is being filed at this time with those portions blacked out.

2. The Court's proposed revised version of the Court's April 21, 2014, public opinion (currently under court seal), which the Court provided to the government *ex parte* on June 6, 2014, for *in camera* classification review of the revisions, does not contain classified information, but one factual error that the government had requested be corrected in two different sentences (*see* Classified Pet. for Rehearing 3-4 & n.2) was corrected only in one. The government requests that it be corrected in the second sentence as well, on page 45 of the Court's proposed April 21, 2014, public opinion [REDACTED]

3. The version of the OLC-DOD Memorandum that the government provided as Attachment B to its rehearing petition does not contain classified information. It appears that is the version that the Court intends to release along with its proposed revised version of its April 21, 2014, public opinion. The Court's proposed opinion on rehearing, however, should be modified because the description of the redactions it granted on rehearing appears, in some instances, to not address all the redactions that are requested in the rehearing petition and reflected in Attachment B.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Court's June 10 Order

contains similar language that states that the Court "granted the petition for rehearing to the extent that it requested further deletions from the OLC-DOD Memorandum."

[REDACTED]

If the version of the OLC-DOD Memorandum that the Court intends to release is the version provided by the government as Attachment B, there is no remaining issue on classification or privilege. If the Court does not intend to further redact all of the requested information as set forth in the government's Attachment B, the government respectfully renews its request for a 30-day administrative stay of release of the OLC-DOD Memorandum to permit the government to determine whether to seek relief from the *en banc* Court or the Supreme Court, and to seek such relief if appropriate.

4. The government understands that the Court is deferring decision on the rehearing petition with respect to the issues related to the *Vaughn* index.

Respectfully submitted,

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