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MEMO ENDORSED

September 19, 2014

The Honorable Colleen McMahon
United States District Court
Southern District of New York
Room 1350
500 Pearl Street
New York, NY 10007

Re: *ACLU v. DOJ et al.* Case No. 12 Civ. 794

Dear Judge McMahon:

On September 5, 2014 the Court directed the ACLU to file a "request for production" indicating which documents identified on the Office of Legal Counsel's *Vaughn* index it "wish[e]d to be disclosed." I am writing in response to that direction and also to propose briefing schedules for resolution of issues relating to documents still withheld (in their entirety or in part) by OLC, CIA, and DOD. The ACLU has conferred with the government about these briefing schedules, which are proposed by the parties jointly.

Request for Production of Records Listed on OLC *Vaughn*

The ACLU seeks disclosure of all records listed on the OLC's *Vaughn* index except for

- records identified as drafts of Doc Nos. 4 and 5 (Doc Nos. 113; 131-143; 148-237; 238-242); and
- records identified as "open source media materials" (Doc Nos. 123-130).

The ACLU is willing to forgo its claim to other draft legal memoranda listed on the OLC's *Vaughn* index where the index also lists a final version of those memoranda. Because of redactions on the index, however, the ACLU is not able to identify these draft legal memoranda by number.

The ACLU is also willing to forgo its claim to records identified as Doc Nos. 57-66; 68-71; 73-74; 81; 83; 87-93; 96-100; 102-104; 110; 117; 118; 120-122 if the government can represent to the ACLU that these

9/22/2014
 1) The schedule all acceptable
 2) You will have my decision, references on page 2 of this letter, the government will have week (at least, the government will have remain unresolved issues will remain unresolved
 3) The government should prepare a modified OLC Vaughn index, all documents not sought by the ACLU (including draft memoranda, and the document listed in the carriage paragraph.)

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documents do not mention Abdulrahman al-Aulaqi (or any spelling variant of that name).

Proposed Briefing Schedule for OLC Documents

The parties understand that the Court intends to rule shortly regarding issues relating to the set of OLC memoranda that the government has provided to the Court *in camera*. The parties jointly propose that the Court set the following briefing schedule for resolution of (i) the OLC's withholding of records other than the memoranda already provided to the Court *in camera*; and (ii) as to the memos already provided to the Court *in camera*, any issues not resolved by the Court's anticipated decision:

- **Oct. 3:** OLC to file its motion for summary judgment, including public *Vaughn* declarations.¹
- **Oct. 31:** ACLU to file its opposition and cross-motion.
- **Nov. 21:** OLC to file its reply and opposition.
- **Dec. 12:** ACLU to file its reply.

Proposed Briefing Schedule for CIA/DOD Documents

The Court has directed the CIA and DOD to file *Vaughn* indices *in camera* by September 25. The parties respectfully submit that the Court's interest in efficient adjudication of the case would be served by the agencies' filing of public *Vaughn* declarations as well as *ex parte* indices, even if the production of public *Vaughn* declarations requires that the agencies be afforded more time.² Accordingly, the parties respectfully propose that the Court set the following briefing schedule for resolution of issues relating to the CIA's and DOD's responses to the ACLU's FOIA request:

- **Nov. 14:** CIA and DOD to file their motion for summary judgment together with *ex parte Vaughn* indices and public *Vaughn* declarations.
- **Dec. 3:** the ACLU to file its opposition and cross-motion.
- **Dec. 19:** the CIA and DOD to file their reply and opposition.
- **Jan. 9:** the ACLU to file its reply.

¹ The ACLU believes that the OLC has an obligation to provide public *Vaughn* indices, not just *Vaughn* declarations, and reserves its right to seek public indices if they are not provided.

² The ACLU believes that the CIA and DOD have an obligation to provide public *Vaughn* indices, not just *Vaughn* declarations, and reserves its right to seek public indices if they are not provided.

* * *

The parties appreciate the Court's attention to this matter.

Respectfully,

/s/ Jameel Jaffer

*Counsel for Plaintiffs American Civil Liberties
Union and American Civil Liberties Union
Foundation*

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