



March 26, 2009

VIA FACSIMILE AND FEDERAL EXPRESS

Sean Lane  
Assistant U.S. Attorney  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, 5th Floor  
New York, New York 10007

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

RE: *Am. Civil Liberties Union v. Dep't of Def.*, No. 08-4912-cv  
(2d Cir.)

PLEASE RESPOND TO:  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2660  
F/212.549.2654  
WWW.ACLU.ORG

Dear Sean,

I write to request that your clients, the Central Intelligence Agency ("CIA") and the Department of Defense ("DOD"), reconsider their position in *American Civil Liberties Union et al. v. Department of Defense et al.*, No. 08-4912-cv (2d Cir.), and review all documents at issue in the appeal for release.

CALIFORNIA OFFICE  
39 DRUMM STREET  
SAN FRANCISCO, CA 94111-4805  
T/415.343.0770  
F/415.395.0950

As you know, this appeal concerns the district court's partial denial of Plaintiffs' third summary judgment motion, which challenged the Government's withholding of key documents responsive to Plaintiffs' FOIA requests. These challenged documents include:

OFFICERS AND DIRECTORS  
NADINE STROSSEN  
PRESIDENT  
  
ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

- an August 1, 2002 Department of Justice Office of Legal Counsel ("OLC") memorandum authored by Jay S. Bybee advising CIA of whether CIA's proposed interrogation methods would violate statutory prohibitions against torture;
- a September 17, 2001 directive signed by former President Bush granting CIA authority to set up detention centers outside the United States;
- classified documents retained by the OLC for which the Government identified CIA as the original classification authority;
- records of the CIA Office of Inspector General gathered in connection with closed investigations into improprieties or illegal conduct;

RICHARD ZACKS  
TREASURER

- documents identified by DOD as relating to the death or abuse of prisoners or use of unlawful interrogation techniques.

Plaintiffs submit that CIA and DOD should reconsider their withholding of these documents in light of President Obama's January directives on Transparency and the FOIA, and Attorney General Holder's related March memorandum. *See* Memorandum from President Obama for the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4,683 (Jan. 21, 2009); Memorandum for the Heads of Executive Departments and Agencies: Transparency and Open Government, 74 Fed. Reg. 4,685 (Jan. 21, 2009); Memorandum from Attorney General Holder for the Heads of Executive Departments and Agencies: Freedom of Information Act (Mar. 19, 2009).

The aforementioned directives and memorandum underscore the same principles pursuant to which Plaintiffs have sought disclosure of documents withheld by CIA and DOD. In light of the new standards and guidance articulated by President Obama and Attorney General Holder, we ask your clients to reconsider their litigation position in the Second Circuit appeal and to review all challenged documents for possible release. I look forward to hearing from you at your earliest convenience.

Sincerely,



Amrit Singh  
Staff Attorney  
American Civil Liberties Union  
Immigrants' Rights Project  
125 Broad St, 18<sup>th</sup> Floor  
New York, N.Y. 10004  
Ph: 212 549 2609  
Fax: 212 549 2654

*Counsel for Plaintiffs-Appellees*

cc: Jenny-Brooke Condon