

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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AMERICAN CIVIL LIBERTIES UNION and  
THE AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiff,

12 Civ. 794 (CM)

-against-

U.S. DEPARTMENT OF JUSTICE, et al.,

Defendants.  
\_\_\_\_\_x

ORDER AMENDING DECISION OF JUNE 23, 2015,  
DIRECTING THE UNSEALING OF CERTAIN ORDERS  
PREVIOUSLY FILED, DIRECTING THE ENTRY OF  
JUDGMENT, AND CLOSING CASE

McMahon, J.:

The court, for its final order in this case:

1. **June 23 Decision Filed:** The court’s Memorandum Decision and Order dated June 23, 2015, (the “June 23 Decision”), together with paragraph-by-paragraph classification notations as subsequently inserted by the Government, is the final decision and order of the court after remand, and is hereby ordered filed under seal in the manner used for highly classified material. A redacted copy of the June 23 Decision was publicly filed yesterday (Docket # 128).

2. **June 23 Decision Amended:** The June 23 Decision shall be deemed amended, at page 67,<sup>1</sup> first full paragraph, so that, with respect to document 145, it reads as follows: “That said, there is material here that can be disclosed. Under the heading ‘Potential Constitutional Issues,’ the first bullet point on page 2 is derived directly from the legal analysis as to which exemptions have been waived; with the exception of *the first sentence, the fourth sentence and the last sentence of that paragraph [Redaction begins here]*....” The only material added to the June 23 Decision by amendment is the material that appears in italics in the preceding sentence.

<sup>1</sup> In the July 6 order I said “page 66,” but the pagination has changed now that the Government has inserted all the classification notations into the decision.

To make life easier for the Plaintiff and the Court of Appeals, I suggest that the Government prepare an amended version of the June 23 Decision, inserting these seven words. I would have done so myself, but the Government begged me not to amend my decision yet again.

3. **July 6 Order Unsealed**: The court previously filed an order dated July 6, 2015 under seal. That order deals with the Government's response (filed under seal) to a second "segregability" review that the responding Agencies were directed to undertake on May 13, 2015. The court's July 6 order has been unsealed and was publicly filed yesterday (Docket # 129). The Government's July 1, 2015 submission, which is the subject of the July 6 order, shall remain under seal.

4. **July 15 Letter Filed Under Seal**: The Government provided the court with a letter, dated July 15, 2015, explaining the reasons for making certain redactions in the publicly available version of June 23 Decision. That letter shall be filed under seal.

5. **May 13 Draft Decision**: The June 23 Decision was preceded by a May 13, 2015 Memorandum Decision and Order (the May 13 Draft Decision), which was accompanied by an Order of Notification that was publicly filed (Docket # 123). The May 13 Draft Decision was transmitted to the Government so that the Government would (1) produce certain documents for *in camera* review on an expedited basis, (2) undertake a second segregability review of all documents on the Vaughn Indices (the review that led to the Government's July 1 submission), and (3) insert classification notations into the May 13 Draft Decision so that it could be finalized and filed. The May 13 Draft Decision was filed under seal and remains under seal.

As stated in the May 13 Order of Notification, the court originally intended to issue the May 13 Draft Decision in the form in which it was sent to the Government (with the addition of classification notations), and then to draft a second, separate decision that would address the documents reviewed *in camera*. In other words, it was not originally intended to be a draft decision. However, once the Government produced the documents for *in camera* review and I began that exercise, I realized that it made much more sense to insert my rulings after *in camera* inspection into the May 13 Draft Decision, so that the parties and the Court of Appeals would not have to jump back and forth between two decisions. The resulting document was the June 23 Decision. The parties were apprised of this change of course in a Notice to the Parties that was publicly docketed on June 24, 2015 (Docket # 124).

The May 13 Draft Decision should be treated as what it turned out to be: an incomplete draft version of the June 23 Decision, which has been entirely superceded by the June 23 Decision.

The June 23 Decision contains a few inconsequential stylistic changes from the May 13 Draft Decision and corrects some typographical errors that were noticed when proof reading the June 23 Decision. Such is the inevitable consequence of allowing me to re-read my work.

The June 23 Decision contains only one substantive change from the May 13 Draft Decision. The one paragraph discussion of “Listed Fact #7,” which appears at the bottom of page 10 and the top of page 11 of the June 23 Decision, did not appear in the May 13 Draft Decision. Because this change (which was made *sua sponte* and not in response to any request from the Government) had the potential to impact the Government’s second segregability review, which was then under way, a memorandum alerting the Government to the insertion of this paragraph was transmitted to the United States Attorney’s Office on June 24, 2015. That Memorandum will be publicly filed today.

I apologize to the ACLU (as I have already apologized to the Government) for whatever confusion has been engendered by my decision to shift course and issue a single decision when I had originally planned to issue two. In the end, I believe we have a more coherent piece of work product.

This order ends the case. The Clerk of the Court shall enter judgment directing that:

1. OLC produce redacted versions of OLC Documents 46, 144 and 145, and the complete text of Document 150;
2. CIA produce Tab C to Document 59 and redacted versions of Documents 109 and 113;

to Plaintiffs, and otherwise GRANTING the motions of OLC and CIA for summary judgment dismissing the case as against them; and GRANTING in its entirety the motion of DOD for summary judgment dismissing the case as against it.

The Clerk of the Court shall thereafter close the file.

Dated: July 17, 2015



U.S.D.J.

BY ECF TO ALL COUNSEL