

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

AMERICAN CIVIL LIBERTIES UNION,)	
and AMERICAN CIVIL LIBERTIES)	
UNION FOUNDATION,)	
)	
Plaintiffs,)	Civil Action No. 1:13-cv-01870 (JEB)
)	
v.)	
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR EXTENSION OF TIME

Pursuant to Fed. R. Civ. P. (6)(b)(1), Defendant Central Intelligence Agency (“CIA”), by and through undersigned counsel, respectfully moves this Court for an enlargement of time to process two documents for release of any non-exempt information: 1) the CIA’s Response to the Senate Select Committee on Intelligence (“SSCI”) Report concerning the CIA’s former rendition, detention and interrogation (“RDI”) program (“CIA Response”); and 2) what plaintiffs refer to as the “Panetta Report,” an alleged report by the CIA concerning its former detention and interrogation program commissioned by former CIA Director Leon Panetta, which was referred to by Senator Mark Udall on December 17, 2013, during the confirmation hearing for CIA General Counsel nominee Caroline Diane Krass. As explained below, the treatment of the CIA Response and the so-called Panetta Report will depend in part on the declassification review process currently underway for the executive summary, findings, and conclusions, of the SSCI Report, submitted for declassification by SSCI on April 7, 2014. This complex process requires the careful review of over 500 pages of highly classified material. In addition, sufficient time must be allowed not only for coordination with other agencies, but – after completion of

declassification review – for implementation of security measures to ensure the safety of U.S. personnel and facilities overseas. Due to the fluid nature of this process, aspects of which are beyond the CIA’s control, the Agency does not yet have a firm date by which it can complete the processing of the CIA Response and the so-called Panetta Report, although it hopes the declassification review and accompanying processing of those documents can be completed this summer. Thus, the Agency respectfully requests that it be permitted to submit a status report no later than June 20, 2014, at which time it anticipates it can provide a firmer date to complete the processing of the CIA Response and the so-called Panetta Report. In compliance with LCvR 7(m), counsel has discussed the relief requested with counsel for plaintiffs, who do not consent to the relief requested.

BACKGROUND

Plaintiffs, American Civil Liberties Union and American Civil Liberties Union Foundation, filed this lawsuit under the Freedom of Information Act (“FOIA”) on November 26, 2013, seeking release of two records: a report by the Senate Select Committee on Intelligence (“SSCI”) concerning the Central Intelligence Agency’s (“CIA” or the “Agency”) former rendition, detention, and interrogation program (the “Report”), and the CIA’s response to that Report (“CIA Response”). On January 27, 2014, plaintiffs amended their Complaint to include a FOIA request seeking a report by the CIA concerning its detention and interrogation program that was commissioned by former CIA Director Panetta, which was referred to by Senator Mark Udall on December 17, 2013, during the confirmation hearing for CIA General Counsel nominee Caroline Diane Krass. Plaintiffs have referred to this document as the “Panetta Report.”

On January 22, 2014, the parties filed a joint scheduling report, in which they agreed to a briefing schedule with respect to whether the SSCI Report was an “agency record.” That issue is

fully briefed and pending before this Court, but is being held in abeyance pending a status conference currently scheduled for May 29, 2014. In addition, the parties agreed that, contingent upon the plaintiffs' amendment to their Complaint by January 27, 2014, to include the so-called Panetta Report, the CIA would process both the CIA Response and the so-called Panetta Report for release of any non-exempt information by May 22, 2014. The parties were then to jointly consult and file a proposed briefing schedule by June 5, 2014, to dispose of any remaining issues with respect to these records. On January 22, 2014, this Court entered a scheduling order corresponding to the dates to which the parties had agreed.

On April 3, 2014, SSCI voted to have declassified the 480-page executive summary of its report on the CIA's former detention and interrogation program, as well as the findings and conclusions of the Report, which altogether total over 500 pages.

<http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=de39366b-d66d-4f3e-8948-b6f8ec4bab24>. This new version of the Executive Summary differs from and is considerably longer than the prior, 300-page version that SSCI transferred to the Executive Branch in December 2012. On April 7, 2014, the new version of the Report's Executive Summary, as well as its findings and conclusions, were submitted to the White House for declassification. While all declassification decisions are guided by the need to protect national security interests, the President has expressed a clear intent to declassify as much of the executive summary, findings, and conclusions of the SSCI Report as possible, and intends the declassification process to be expeditious. *See* Letter from Kathryn H. Ruemmler, Counsel to the President, to Sen. Dianne Feinstein, Chairwoman, SSCI (Apr. 18, 2014) (confirming that "the President and this Administration are committed to working with you to ensure that the 500-plus page executive summary, findings, and conclusions of the report on the former RDI program undergo a

declassification review as expeditiously as possible, consistent with our national security interests”) (“Ruemmler Letter”) (Exhibit A). The CIA, in consultation with other agencies, is conducting the declassification review. At the direction of the President, the process will be overseen by the Director of National Intelligence. *Id.*

As a result of the submission of the new version of the executive summary, findings, and conclusions of the SSCI Report for declassification review, and in order to coordinate declassification of information in executive summary, findings, and conclusions of the SSCI Report with the CIA Response and the so-called Panetta Report, the CIA is now seeking additional time beyond May 22, 2014 to process the CIA Response and the so-called Panetta Report. While the CIA is working expeditiously to complete its declassification review, this review requires coordination with classification experts, subject matter experts, several other agencies, and senior level government officials that will likely be completed this summer, although an exact time cannot now be determined. In addition, once the review process is complete, the Administration will have to undertake a number of security steps to protect the safety of personnel and facilities abroad. *See* Ruemmler Letter. Thus, several aspects of the declassification review and release process are outside of the CIA’s control. Nonetheless, the Agency expects that in the next several weeks it will have a more definitive idea of how long the declassification review and subsequent security measures will take, and respectfully seeks that it be permitted to submit a status report no later than June 20, 2014, in order to provide for the Court a new processing deadline for the CIA Response and the so-called Panetta Report.

ARGUMENT

Information related to the CIA’s former rendition, detention, and interrogation program – information contained in the SSCI Report itself, as well as the CIA Response and the so-called

Panetta Report – is extraordinarily sensitive. *See, e.g.*, Declaration of Neal Higgins (Feb. 28, 2014), ¶¶ 6-7 (discussing procedures to protect highly sensitive and compartmented nature of classified information used in drafting of SSCI Report) (Docket # 17-2). Likewise, the fact-based declassification review of the SSCI Report’s executive summary, findings, and conclusions, “must be made with the utmost sensitivity to our national security.” *See* Ruemmler Letter (noting that CIA, in consultation with other agencies, would conduct declassification review, to be overseen by Director of National Intelligence). This review will entail high-level review and coordination not just by classification and subject matter experts, attorneys, and senior officials within the CIA, but with other agencies as well, ultimately overseen directly by the Director of National Intelligence. *Id.* The declassification process is thus complex. In this instance the Executive Branch is carefully evaluating, “as an exercise of discretion, whether the public interest in disclosure [of this otherwise classified information] outweighs the damage to the national security that might reasonably be expected from disclosure.” E.O. 13,526, § 3.1(d). Engaging in this public-interest balancing is inherently more difficult and time consuming than simply determining whether a given piece of information meets the threshold standards for classification, and the process requires engagement by multiple levels of government to evaluate the competing policy considerations.

The CIA Response is the Agency’s response to the initial version of the SSCI Report. As such, much of the classified information that it contains corresponds to information in the SSCI Report itself. Likewise, much of the classified information contained in the so-called Panetta Report pertains to the same historical events that are addressed in the SSCI Report. Review of these documents will thus necessarily depend in part upon the declassification of information within the SSCI Report’s executive summary, findings, and conclusions. As such, for both

efficiency and consistency in processing the requested documents for release of any non-exempt information, the Agency should not be required to complete the processing of the CIA Response or the so-called Panetta Report until the declassification review of the SSCI Report's executive summary, findings, and conclusions is complete.

Moreover, as set forth in the Rummeler Letter, even after the declassification review is complete, and prior to release of any declassified information related to the former RDI program, the Administration will have to take a number of security steps to protect U.S. personnel and facilities overseas. *Id.* (noting, "Prior to the release of any information related to the former RDI program, the Administration will also need to take a series of security steps to prepare our personnel and facilities overseas. Based on our prior discussions, I know you share our view that the first order [of] priority must be to ensure their safety and security."). Allowing the Agency and the Administration sufficient time to complete this process is thus crucial.

Finally, plaintiffs will not be prejudiced by the requested extension; if anything, they will benefit from a process designed to declassify and release as much information to the public as possible without unduly harming national security. While plaintiffs may seek to have these documents released sooner, the government interest in properly declassifying this information, as well as in safeguarding the security of overseas personnel and facilities once the declassification process is complete, far outweighs any desire on plaintiffs' part for earlier release of these documents. The President has expressed a clear intent to declassify as much of the executive summary, findings, and conclusions of the SSCI Report as possible, and, consistent with the President's instructions, the CIA is committed to completing the declassification review of these documents as expeditiously as possible. For the reasons noted above, however, this process must proceed in a careful, deliberate manner in order to ensure that the myriad public interest and

national security considerations are properly evaluated. This litigation should not require a date for processing and release of any non-exempt information that would rush or otherwise short-circuit the important and sensitive processes currently underway. Based on the expected progression of this review process, the CIA will be best suited to advise the Court of a new production deadline by June 20.

CONCLUSION

For the foregoing reasons, this Court should grant defendant's motion for extension of time.

Dated: May 15, 2014

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

RONALD C. MACHEN, Jr.
United States Attorney

ELIZABETH J. SHAPIRO
Deputy Branch Director
Civil Division

/s/ Vesper Mei
VESPER MEI (D.C. Bar 455778)
Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, NW
Washington, D.C. 20530
Telephone: (202) 514-4686
Fax: (202) 616-8470
E-mail: vesper.mei@usdoj.gov

Counsel for the Defendant

Exhibit A

THE WHITE HOUSE

WASHINGTON

April 18, 2014

The Honorable Dianne Feinstein
Chairwoman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Senator Feinstein:

I write in response to your letter to the President requesting declassification of the executive summary, findings, and conclusions of the Senate Select Committee on Intelligence's report regarding the Central Intelligence Agency's (CIA) former rendition, detention and interrogation (RDI) program.

As I have shared with you in prior letters, the President and this Administration are committed to working with you to ensure that the 500-plus page executive summary, findings, and conclusions of the report on the former RDI program undergo a declassification review as expeditiously as possible, consistent with our national security interests. The President supports making public the Committee's important review of the historical RDI program, as he believes that public scrutiny and debate will help to inform the public understanding of the program and to ensure that such a program will not be contemplated by a future administration.

The Committee's report reflects extraordinary effort, and we commend the Committee and its staff on the completion of this significant achievement. The Executive Branch has initiated its review of the executive summary, findings, and conclusions. As I know you appreciate, declassification decisions, even with respect to discontinued programs, are fact-based and must be made with the utmost sensitivity to our national security. As such, the CIA, in consultation with other agencies, will conduct the declassification review. In addition, the President has requested that the Director of National Intelligence oversee the declassification process and ensure that any declassification questions that may arise during interagency consultations are appropriately resolved.

Prior to the release of any information related to the former RDI program, the Administration will also need to take a series of security steps to prepare our personnel and facilities overseas. Based on our prior discussions, I know you share our view that the first order priority must be to ensure their safety and security.

Sincerely,



Kathryn H. Ruemmler
Counsel to the President

cc: The Honorable Saxby Chambliss, Vice Chairman
The Honorable James Clapper, Director of National Intelligence
The Honorable John Brennan, Director, Central Intelligence Agency
The Honorable Eric Holder, Attorney General
The Honorable Chuck Hagel, Secretary of Defense
The Honorable John Kerry, Secretary of State

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Kathryn H. Ruemmler
Counsel to the President

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The Honorable James Clapper, Director of National Intelligence
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