IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CHUR I IDERTICO IRRIONI)
AMERICAN CIVIL LIBERTIES UNION, et al.,)
Plaintiffs,)
v.) Civil Action No.) 17 Civ. 3391 (PAE)
DEPARTMENT OF DEFENSE, et al.,)
Defendants.)))

DECLARATION OF MARK H. HERRINGTON

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

- 1. I am an Associate Deputy General Counsel in the Office of General Counsel ("OGC") (Office of Litigation Counsel) of the United States Department of Defense ("DoD"). OGC provides legal advice to the Secretary of Defense ("OSD") and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act ("FOIA") litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency.
- 2. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. Specifically, I am the OGC counsel assigned to this case.
- 3. On July 20, 2018, in support of a motion for summary judgment filed in this case by DoD, the Department of State, and the Department of Justice, DoD filed a *Vaughn* index attached as Exhibit B to the Declaration of Rear Admiral James J. Malloy (the "DoD Declaration"). *See*

Dkt. No. 76-2. The *Vaughn* index provided information about certain information withheld, pursuant to FOIA exemptions, from 46 documents that Plaintiffs indicated they intended to challenge in this litigation. The *Vaughn* index did not contain certain other information that had been previously provided to Plaintiffs for the purpose of potentially narrowing the scope of Plaintiffs' challenges in this case, including information about attachments to the challenged documents, and information about other documents that Plaintiffs have indicated they are challenging only as to the adequacy of the agency's search, not the agency's withholding of

4. At Plaintiffs' request, attached hereto is a revised *Vaughn* index identical in all respects to the index attached as Exhibit B to the previously-filed DoD Declaration, except that it reflects information about attachments to the challenged DoD documents, and also includes information about CENTCOM/019, which is one of the documents that Plaintiffs have indicated they are challenging only with respect to the adequacy of the agency's search, not the agency's withholding of information pursuant to FOIA exemptions.

I declare under penalty of perjury that the foregoing is true and correct.

information pursuant to FOIA exemptions.

Executed this 20th day of August 2018, at Arlington, Virginia.

Mark H. Herrington, Esq.

Associate Deputy General Counsel