

JAMEEL JAFFER
DEPUTY LEGAL DIRECTOR



March 14, 2016

BY ECF

Mark Langer, Clerk
U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., N.W.
Washington, DC 20001

Re: *ACLU v. CIA*, 15-5217 (argued Feb. 17, 2016)

Dear Mr. Langer:

This case was argued on February 17 before Circuit Judges Tatel and Griffith and Senior Circuit Judge Sentelle. Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs–Appellants the American Civil Liberties Union and American Civil Liberties Union Foundation (together, “ACLU”) write to call the Court’s attention to remarks made last week by Lisa Monaco, Assistant to the President for Homeland Security and Counterterrorism, at the Council for Foreign Relations. Ms. Monaco’s remarks indicate that the government intends to disclose some of the information whose withholding the government has defended in this appeal.

This appeal concerns the government’s withholding of two categories of information: first, certain legal memos; and, second, “summary strike data.” Pl. Br. 7. In her remarks (attached), Ms. Monaco stated that:

[I]n the coming weeks, the Administration will publicly release an assessment of combatant and non-combatant casualties resulting from strikes taken outside areas of active hostilities since 2009. Going forward, these figures will be provided annually.

The statistical information the government apparently intends to release is a subset of the summary strike data whose disclosure the ACLU has sought. Moreover, the disclosure of this statistical

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information will affect the strength of the government's argument that *other* subsets of the summary strike data may lawfully be withheld. *See* CIA Br. 43–44.

In light of the government's intent to disclose some of the summary strike data at issue in this appeal, the ACLU respectfully suggests that the Court resolve the portion of this case relating to the withholding of legal memos but then remand the case to the district court to allow the CIA to (i) re-review the summary strike data records in light of the anticipated disclosure of the statistical information referenced in Ms. Monaco's remarks; and (ii) file new public declarations justifying the withholding of summary strike data that it believes the FOIA still permits it to withhold.

Respectfully submitted,

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For Immediate Release

March 07, 2016

Remarks by Lisa O. Monaco at the Council on Foreign Relations - Kenneth A. Moskow Memorial Lecture

Lisa O. Monaco

Assistant to the President for Homeland Security and Counterterrorism

"Evolving to Meet the New Terrorist Threat"

Council on Foreign Relations

Monday, March 7, 2016

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Thank you, Ken, for that introduction. And thank you all for being here. It's great to be at the Council on Foreign Relations. I'm especially honored to be delivering the Kenneth Moskow Memorial Lecture. For those who aren't aware, Ken Moskow—in addition to being the kind of guy who liked to run with the bulls in Pamplona—was a talented CIA operative, who hailed from my hometown of Newton, Massachusetts. He died tragically and far too young near the summit of Mount Kilimanjaro. His life and work was like that of so many men and women of the intelligence, military, homeland security, diplomatic, and law enforcement communities who put their lives on the line every single day to keep our country safe.

Today, I want to talk about the preeminent security threat we face—the threat of terrorism, how ISIL represents a new evolution of that threat, and how we are waging an innovative campaign to counter ISIL and its barbaric ideology.

It was only three months ago that a married couple—Syed Rizwan Farook and Tashfeen Malik—walked into an office gathering in San Bernardino and opened fire. They had assault rifles, and a veritable armory in their home, including pipe bombs. They also had a six-month-old daughter, who they left with her grandmother before they began their murderous rampage. Fourteen people were killed and another 22 wounded. Syed Farook was an

American citizen.

Like recent attacks from Paris to Chattanooga, it was a stark reminder that, for all our vigilance, the specter of terrorism persists—both for Americans and for our allies. Instability, from Syria to Somalia, provides fertile ground for extremism. Sometimes, tragically, the attackers are homegrown. But I mention this horrific incident not just because it was the worst terrorist attack on the United States since 9/11, but because it was a starkly different kind of attack.

Simply put, the terrorist threat we confront today, almost 15 years after that terrible September day, has evolved dramatically. We have entered a new phase in our fight against terrorism. What distinguishes the threat today is that it is broader, more diffuse—and less predictable—than at any time since 9/11. Where we once spoke of hierarchal “networks” and “sleeper cells,” much of the threat today is online, distributed across the globe. While we continue to see planning for sophisticated and coordinated attacks, such as those in Paris, terrorism today is increasingly defined by small cells or lone actors, sometimes with little or no direct contact with terrorist organizations, who have succumbed to violent extremism. It’s what you might call opportunistic, “do-it-yourself” terrorism.

The primary example of this new type of terrorism is the cancer of ISIL. Originally an outgrowth of al Qaeda in Iraq, in the past two years ISIL has eclipsed core al Qaeda as the principal terrorist threat we face. The world has been shocked by the butchery and depravity of these twisted fanatics. From their stronghold in Raqqa, Syria, ISIL has displayed an apocalyptic ambition and an unprecedented brutality. They crucify victims and burn alive others. They enslave women and children, and teach that rape is an expression of God's will. They behead innocents and broadcast their barbarism to the world.

But it's not only ISIL's unconscionable brutality that troubles us. What keeps me up at night is that this threat is unlike what we've seen before. Al Qaeda focused on launching catastrophic attacks against the West—the "far enemy." They used the Internet to post grainy videos and propaganda in PDF form. ISIL is very different. A recent report on ISIL was subtitled, "From Retweets to Raqqa"—and that, I think, underscores the scale of our challenge. These fanatics are online and on the ground. They are terrorists, insurgents, and bureaucrats, attempting to control a territory that was at one point larger than the United Kingdom. ISIL supporters have shown an ability to engineer high-profile attacks, like blowing up a Russian airliner over the Sinai Peninsula. But they also direct foreign fighters to attack soft targets, as they did in Paris. They have deployed crude but deadly chemical weapons, which pose an imminent threat to Syrians and Iraqis. And through their use of

social media, ISIL has distributed the threat globally. They can inspire sympathizers and adherents anywhere, turning lost souls into soulless killers—whether in Bangladesh or San Bernardino.

But, even as we focus on ISIL, we cannot take our eye off al Qaeda, its affiliates, and its adherents. From North Africa to South Asia, their desire to strike at American interests and citizens warrants our continued vigilance. The most active of these affiliates remains al Qaeda in the Arabian Peninsula, which has attempted to attack the United States multiple times—though American airstrikes and international pressure have thwarted AQAP's external plots and targeted its leadership. We continue to disrupt plots from Al Qaeda's largest affiliate—the Nusra Front in Syria. And we are paying close attention to al Qaeda in the Islamic Maghreb, which has shown through brutal attacks in Mali and Burkina Faso that it remains dangerous.

Taken together, these threats are a toxic brew. And the different threat ISIL poses, in particular, is not a danger we can ignore or underestimate. This is not an entity we can accommodate. So I'll say it again: today, ISIL in all its manifestations—insurgent army, foreign fighter magnet, social media phenomenon, external operations cadre—is the principal counterterrorism threat we face as a nation.

Against this backdrop, we are applying the lessons learned in our fight against al Qaeda to a new and adaptive enemy. Thanks to our brave military and intelligence personnel, we've disrupted al Qaeda's finances and training camps. We've hunted down their leaders, including Osama bin Laden and many others. Core al Qaeda as we knew it 15 years ago has been decimated. Al Qaeda's remaining leaders in Afghanistan and Pakistan spend more time plotting how to survive than plotting attacks. And we will not let up our relentless pressure.

Our success against al Qaeda is the result of the transformation that our national security apparatus has undergone over the past 14 years. After 9/11, we implemented a series of legal, structural, and cultural reforms to break down the barriers that had grown up between law enforcement, the intelligence community, the military and the functions—not named at the time—that we now call Homeland Security. I have seen—first at the FBI, then at the Department of Justice, and now at the White House—how we brought intelligence and law enforcement tools together to confront this threat. We have adopted “new normals” in everything from airline travel to our interactions with partners overseas. And the courage and dedication of counterterrorism professionals -- across two Administrations -- has succeeded in averting further large-scale catastrophic attacks on our homeland.

Just as we're doing with al Qaeda, we will degrade and ultimately destroy ISIL. As President Obama told the nation, "We will prevail by being strong and smart, resilient and relentless, and by drawing upon every aspect of American power." As always—whether confronting al Qaeda, ISIL, or another threat—we are guided in our counterterrorism efforts by a few core principles. We will always take every appropriate lawful action to protect Americans at home and abroad from terrorist threats. We will protect our values by continuing to conduct our counterterrorism efforts as transparently as possible, with clear guidelines, strong oversight and accountability, and in full accordance with the rule of law. We will build and sustain effective multilateral coalitions, and collaborate with those partners to anticipate and annihilate terrorist organizations before they require an outsized military response. And we'll integrate our counterterrorism actions with existing efforts to undermine the forces that fuel terrorists, such as political oppression and lack of opportunity.

In recent years, we have taken clear and specific steps to institutionalize our counterterrorism approach so that our military, intelligence, and law enforcement communities have the tools and authorities they need to sustain the fight for years to come. This includes putting in place a durable legal and policy framework to guide our counterterrorism actions consistent with our values.

As it applies to ISIL specifically, our strategy consists of five pillars. First, we are protecting the homeland. Second, we are engaging our partners. Third, we are taking direct action to target ISIL on the battlefield. Fourth, we're disrupting the factors that enable ISIL, such as financing and foreign fighters. And fifth, we're taking creative steps to counter the violent extremism that swells ISIL's ranks.

Our first pillar is the first part of my job title and will always be our first responsibility as the United States government—protecting the homeland. Every day, I meet with the President to discuss the threats we face. Whether its terrorism, cyber attacks, or deadly viruses like Ebola, his first question is always, "Are we doing everything we can to protect the American people?" He does not take his eye off the ball. Ever. And I can tell you that the President and those of us on his national security team are focused on preventing future attacks at home and abroad, whether the terrorists are homegrown, ISIL-directed, or ISIL-inspired.

Destroying ISIL starts with going after ISIL abroad. And, as our second pillar recognizes, we can't do it alone. The United States has built a broad coalition of 66 international partners. We're sharing vital intelligence. We're training, equipping, and empowering partners on the ground in Syria and Iraq. Together with our international partners,

we're working through the political process to diminish the terrible violence in Syria. The current cessation of hostilities provides an opportunity to move that process forward, even as we continue to isolate and hammer ISIL.

And we are hammering ISIL on the ground through direct action, our third pillar. In Iraq and Syria, coalition forces have conducted almost 11,000 precision airstrikes on ISIL. Today, these terrorists have lost about 40 percent of the territory they once controlled in Iraq and 20 percent in Syria. Our operations are keeping ISIL guessing—for fear of capture or feeling the full weight of the mightiest military on earth. We estimate that our coalition is taking out one to two key ISIL leaders every day. That includes their second-in-command, their finance chief, and Mohamed Emwazi—also known as “Jihadi John”—who brutally murdered Americans and other victims.

Of course, ISIL cannot survive without the fighters and finances sustaining its barbaric enterprise. That's pillar number four. And that's why, working with partners, we are slowing the flow of foreign fighters in and out of Iraq and Syria. ISIL has lost 10,000 or more frontline fighters. At the same time, we are choking off ISIL's ability to fund its terror—striking their oil infrastructure and making it harder for them to extort local populations. Inflation is up in ISIL-controlled areas. And if you're an ISIL fighter today, chances are you're being paid far less than you were last year.

There must be no safe haven for these killers. We continue to go after ISIL wherever it tries to take root. In Libya, for instance, we've removed ISIL's leader there and recently struck a training camp. In all of these strikes, our operators do everything in their power to avoid civilian casualties. And in keeping with the President's commitment to transparency, I can announce that, in the coming weeks, the Administration will publicly release an assessment of combatant and non-combatant casualties resulting from strikes taken outside areas of active hostilities since 2009. Going forward, these figures will be provided annually. Because we know that not only is greater transparency the right thing to do, it is the best way to maintain the legitimacy of our counterterrorism actions and the broad support of our allies.

But no amount of airstrikes—no amount of military power alone—can defeat these fanatics and their warped worldview once and for all. Our approach—initially tailored after 9/11 to fight a top-down terrorist network that operated more like a corporation than a secret army—is adapting to fit today's diverse, dynamic, and decentralized threat environment. The only lasting answer to hateful ideologies are better ideas. So, even as we target ISIL's men and money, our final pillar recognizes that we must also confront—and defeat—their twisted message.

ISIL is trying to occupy digital territory as well. They're on Facebook. They're on YouTube. There are something like 90,000 Twitter accounts associated with or sympathetic to ISIL, sometimes with 50,000 followers each. Last year, ISIL produced nearly 7,000 slick pieces of propaganda, disseminated by 43 distinct ISIL media offices. I remember only a few years ago, the counterterrorism community was worried about an al Qaeda affiliate distributing an online magazine via PDF file. That looks like the eight-track tape version compared to what we're seeing now.

With the click of a mouse, these Internet-savvy extremists are poisoning the minds of people an ocean away. Many of these recruits have been middle-class and seemingly well-adjusted in their communities. The FBI has investigated ISIL-inspired suspects in all 50 states. And this is not just an American or a Western problem—as we've seen from Nigeria to Indonesia, this is a global problem.

With allies and partners, we are working hard to expose ISIL's true nature and highlight their hypocrisy—a group that claims to be defending Muslims is actually killing countless innocent Muslim men, women, and children. But we know that the U.S. government is often not the best or most compelling voice for this message. That's why we're working to enable partners around the globe and in our communities who can convincingly speak against extremism. We've seen

the United Arab Emirates, Saudi Arabia, and Malaysia stepping up their efforts to discredit ISIL's claim to represent Islam. The State Department has created a new Global Engagement Center, which will amplify and empower the voices of our international partners, from religious leaders to ISIL defectors. Our CVE Task Force, co-led by the Departments of Homeland Security and Justice, is coordinating these efforts across the U.S. government.

But ultimately, one of our most potent weapons against terrorist narratives is the power of our ideas and the innovation that has made this country great. For the past year, we've been working to partner with some of our nation's most imaginative companies. Tech firms like Facebook, Google, YouTube, and Instagram have made significant strides—removing terrorist content that violate their terms of service and denying ISIL a digital safe haven. Already, Twitter has suspended roughly 125,000 ISIL-linked accounts in just the past six months. I want to commend these companies for the actions they've taken to date in removing ISIL's murderous online message.

Our engagement with Silicon Valley on countering ISIL online has actually been more positive than you'd think from reading the news. Last year, I went to Silicon Valley to initiate the White House's focus on innovating our way through this problem. I sat down with key tech leaders, social entrepreneurs, philanthropists, and students at the

Stanford “D” school—the design school. It may seem an odd choice for someone who has spent almost two decades in government—but the setting was instructive and almost as important as the discussions themselves. In a space more akin to an ad agency or a creative design studio, we brainstormed how to prevent ISIL’s use of technology to recruit, radicalize, and mobilize. I’ve held similar sessions in Boston and in New York. And just a few weeks ago, we brought these worlds together—Madison Avenue, Silicon Valley, and Hollywood, as well as NGOs and civil society—to develop private-sector approaches for countering violent extremism online. We call it the Madison Valleywood Project. These companies are exploring cutting-edge ways to amplify credible voices to counter ISIL’s destructive narrative. They’re just getting started, but we think that the collaborations that could spring from this project are quite promising.

This cannot be a top-down effort. It must come from empowered voices like those I heard last September at a Global Youth Summit in New York, co-hosted by the White House and the Counter Extremism Project. Hundreds of young people, from 45 countries, came together to build digital platforms designed to help keep people off the dark road of radicalization. They came up with incredible ideas—from supporting aspiring entrepreneurs to anti-extremist rap music.

Even with all these creative and determined efforts,

even with our constant vigilance, there will always be those who try to exploit our openness in an attempt to cause chaos and destruction. Homeland security must be about more than taking our shoes off when we fly. Whether we're confronting terrorism or a tornado, we have to continue creating a culture of resilience—to refuse to be terrorized, to rebuild when we get knocked down. To embrace one truth unequivocally: that a hateful and barbarous group like ISIL will never overcome our strength as Americans.

A few months ago, I gathered at Arlington Cemetery with the families of those lost in the bombing of Pan Am 103 over Lockerbie, Scotland. For more than 25 years, the families of the fallen have mourned their friends and family. But they've also celebrated weddings and births. They've lost loved ones, but they haven't lost hope. That's what makes this country stronger than any terrorist bomb or bullet.

We see it in San Bernardino—in the employees who returned to work in January, shaken but determined; in the woman wearing hijab who bowed her head to remember the victims; in the disabled man, a client of the center, who held up a sign reading, "I love you IRC." We see it in Boston, after the marathon bombings—an attack on my hometown—where next month, 30,000 wicked-determined runners will lace up their shoes for the 120th Boston Marathon, crest Heartbreak Hill, and show the true meaning of Boston Strong.

We face a cruel and cunning adversary in ISIL. The tactics of terror have transformed. We have entered a new era. And as President Obama has made clear, this will be a generational struggle. But with the dedication of our brave men and women in uniform, our diplomats, intelligence and law enforcement officers; the support of our partners; the innovation of the private sector; and the strength and resilience of the American people, we will meet this threat as we have others before it.

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USCA Case #15-5217

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Filed: 03/14/2016

Page 18 of 18

[Press Briefings](#)
[Statements & Releases](#)
[White House Schedule](#)
[Presidential Actions](#)
[Legislation](#)
[Nominations & Appointments](#)
[Disclosures](#)

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