

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of April, two thousand fourteen.

PRESENT:

JON O. NEWMAN,
JOSÉ A. CABRANES,
ROSEMARY S. POOLER,
Circuit Judges.

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THE NEW YORK TIMES COMPANY, CHARLIE SAVAGE,
SCOTT SHANE, AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION FOUNDATION,
Plaintiffs-Appellants,

v. Docket Nos. 13-422(L), 13-445(Con)

UNITED STATES DEPARTMENT OF JUSTICE, UNITED
STATES DEPARTMENT OF DEFENSE, CENTRAL
INTELLIGENCE AGENCY,
Defendants-Appellees.

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ORDER

We have afforded the Government *ex parte* two opportunities to review *in camera* a proposed public opinion in these cases to advise whether the opinion might inadvertently disclose information that should remain secret. As a result of the Government's initial response, which sought redactions primarily to preserve opportunity for further appellate review, we made 34 redactions. In the Government's second response, several requests are made. First, the Government requests that one additional redaction, overlooked in its initial response, be made. That request is GRANTED. Second, the Government renews its request, made in its first response, that several statements by senior Government officials, all of which were publicly stated on television, in newspapers, or in

unclassified congressional hearings and remain publicly available, be redacted, or alternatively, moved to the "Background" section of the opinion to avoid arguable inferences. This request for redaction is GRANTED. Third, the Government requests that if either of its first two requests are denied, we administratively hold the filing of the public opinion for 30 days to permit an opportunity to seek further appellate review before disclosure of the public opinion. In view of the two rulings just noted, the request to hold the opinion administratively for 30 days is DENIED as moot. Fourth, the Government requests that its second response after an *ex parte* opportunity to review *in camera* the public opinion be filed under seal. That request is GRANTED. Fifth, the Government requests a third opportunity to review, *ex parte* and *in camera*, the public opinion before it is filed. That request is DENIED.

Accordingly, we will file today (1) a redacted public opinion and (2) a sealed opinion with all redactions from the public opinion double underlined for the convenience of those who may be asked to consider further appellate review; this sealed opinion contains in Appendix A a redacted version of the OLC-DOD Memorandum. In the event that the public opinion is not altered after an opportunity for further appellate review, the redacted public opinion will be replaced by a public opinion that will restore all redactions to the text and will include in Appendix A a redacted version of the OLC-DOD Memorandum. We note that, although the Government requests that even a redacted version of the OLC-DOD Memorandum be withheld from public disclosure pending the opportunity for further appellate review, a request we have GRANTED, the Government has not requested any additional redactions in the OLC-DOD Memorandum, beyond those we have agreed to make, in the event that the public opinion is not altered after an opportunity for further appellate review.

Finally, we note for the benefit of the District Court that, on remand, the Court will need to inspect the double underlined words at page 51, lines 11-22 of the sealed opinion, which convey an instruction.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

The seal of the United States Second Circuit Court of Appeals is circular. It features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom. There are small stars on either side of the central text.