

September 1, 2009

So ordered
Sep 1, 2009
Alvin K. Hellerstein

Via Facsimile and Fedex

The Hon. Alvin K. Hellerstein
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 1050
New York, NY 10007

Re: *Am. Civil Liberties Union v. Dep't of Def.*, No. 1:04-CV-4151

Dear Judge Hellerstein,

On July 14, 2009, the parties notified the Court that the parties would confer by August 31, 2009 as to how to proceed with respect to the thirty-five Department of Defense ("DOD") documents remanded for consideration to this Court by the Second Circuit Court of Appeals on May 18, 2009. *See* Letter from Amrit Singh to Hon. Alvin K. Hellerstein (July 14, 2009). The parties noted that any further briefing with respect to these thirty-five documents would be abbreviated in light of the DOD's position that the factual record before the Court has not changed since the Court last ruled on the withholding of these documents. The parties have conferred, and Plaintiffs propose as follows with the government's consent.¹

Plaintiffs intend to submit additional argument with respect to the DOD's withholding of the thirty-five documents, based upon the recent release of documents by the Central Intelligence Agency ("CIA") and the Department of Justice. In the interest of efficiency, however, the parties believe that any further briefing with respect to the DOD remand documents should be consolidated with any further briefing with respect to the CIA remand documents. In other words, all remanded documents should be considered together, so that any decision by this Court and any subsequent appeal also consider the documents together.

The CIA remand documents were fully reprocessed and produced along with accompanying *Vaughn* declarations, with the exception of a *Vaughn* declaration for certain OLC documents, on August 31, 2009,² the

¹ The parties apologize for the late submission of this joint proposal.

² The government recently requested a three-week extension to file its *Vaughn* declaration in support of its withholding of a subset of the remand documents. *See* Letter from Preet

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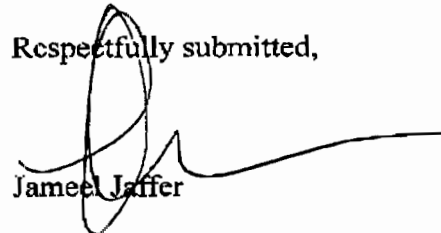
RICHARD ZACKS
TREASURER

date upon which the parties committed to reporting to the Court their intentions with respect to the DOD remand documents. Plaintiffs submit that they will need until September 25, 2009 to review the hundreds of pages of newly released documents to determine whether they will challenge continued withholdings and the precise withholdings they might challenge. The additional time is necessary to determine whether any of the recent disclosures impact the legal arguments advanced by the CIA and the DOD to withhold the still-secret portions of the remand documents.

Therefore, Plaintiffs request an extension until September 25, 2009 to confer with the government regarding any further proceedings related to the remanded documents. On that date, Plaintiffs will notify the government which CIA and DOD remand documents they continue to pursue, and the parties will file with the Court a proposed three-brief schedule for the presentation of additional argument regarding the full or partial withholding of those documents. The government consents to this request.

AMERICAN CIVIL LIBERTIES
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Respectfully submitted,



Jameel Jaffer

Counsel for Plaintiffs

cc: Sean Lane
Peter Skinner
Heather McShain

Bharara to Hon. Alvin K. Hellerstein (Aug. 28, 2009). If granted, that extension would not affect the schedule proposed herein.