

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, CENTRAL
INTELLIGENCE AGENCY, DEPARTMENT
OF JUSTICE, and DEPARTMENT OF
STATE,

Defendants.

Oral Argument Requested

17 Civ. 3391 (PAE)

ECF CASE

FOURTH DECLARATION OF ANNA DIAKUN

I, Anna Diakun, pursuant to 28 U.S.C. § 1746, hereby declare and state under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an attorney at the American Civil Liberties Union Foundation and counsel for Plaintiffs the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) in the above-numbered action.

2. I submit this declaration in support of Plaintiffs’ Cross-Motion for Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment.

3. The Bates-stamped documents listed below reflect true and correct copies of pages produced by Defendants Department of State and Department of Defense on November 17, 2017; December 15, 2017; December 29, 2017; January 3, 2018; January 31, 2018; April 19, 2018; July 19, 2018; July 20, 2018; September 28, 2018; October 4, 2018; and October 12, 2018.

Because Defendants reprocessed individual pages from certain of these documents, some of these exhibits are compilations of pages produced on different dates. For those documents, Plaintiffs indicate the date on which the document was last “updated” by the agency, rather than the date on which the document was “produced.”

4. Attached hereto as Exhibit 1 is a true and correct copy of Press Release, U.S. Central Command, U.S. Central Command Statement on Yemen Raid (Feb. 1, 2017), <http://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/1068267/us-central-command-statement-on-yemen-raid> (“Feb. 1 Press Release”).

5. Attached hereto as Exhibit 2 is a true and correct copy of JS/038-039, produced to Plaintiffs by the Department of Defense on December 29, 2017.

6. Attached hereto as Exhibit 3 is a true and correct copy of JS/240-242, last updated by the Department of Defense on September 28, 2018.

7. Attached hereto as Exhibit 4 is a true and correct copy of Press Briefing, White House Off. of Press Sec’y, Press Briefing by Press Secretary Sean Spicer (Feb. 2, 2017), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sean-spicer-020217> (“Spicer Feb. 2 Press Briefing”).

8. Attached hereto as Exhibit 5 is a true and correct copy of Terri Moon Cronk, *U.S. Raid in Yemen Garners Intelligence*, U.S. Cent. Command (Jan. 30, 2017), <http://www.centcom.mil/MEDIA/NEWS-ARTICLES/News-Article-View/Article/1065112/us-raid-in-yemen-garners-intelligence> (“Jan. 30 CENTCOM Article”).

9. Attached hereto as Exhibit 6 is a true and correct copy of CENTCOM/330-334, produced to Plaintiffs by the Department of Defense on September 28, 2018.

10. Attached hereto as Exhibit 7 is a true and correct copy of JS/222-224, produced to

Plaintiffs by the Department of Defense on December 29, 2017.

11. Attached hereto as Exhibit 8 is a true and correct copy of *Hearing to Receive Testimony on United States Central Command and United States Africa Command: Hearing Before the S. Comm. on Armed Servs.*, 115th Cong. 89 (Mar. 9, 2017), https://www.armed-services.senate.gov/imo/media/doc/17-18_03-09-17.pdf (“Mar. 9 Senate Hearing”).

12. Attached hereto as Exhibit 9 is a true and correct copy of Alex Emmons, *Pentagon Says 35 Killed in Trump’s First Yemen Raid—More Than Twice As Many As Previously Reported*, Intercept, Dec. 20, 2018, <https://theintercept.com/2018/12/20/yemen-raid-investigation>.

13. Attached hereto as Exhibit 10 is a true and correct copy of Joseph Trevithick, *A USAF C-17 Flew a Secretive Mission Into Yemen to Rescue Wounded Emirati Troops in 2017*, Warzone, Dec. 13, 2018, <https://www.thedrive.com/the-war-zone/25484/a-usaf-c-17-flew-a-secretive-mission-into-yemen-to-rescue-wounded-emirati-troops-in-2017>.

14. Attached hereto as Exhibit 11 is a true and correct copy of Tara Copp, *US Puts Boots on the Ground in Yemen to Attack AQAP*, Military Times, Aug. 4, 2017, <https://www.militarytimes.com/flashpoints/2017/08/04/us-ground-forces-airstrikes-attack-aqap-in-yemen>.

15. Attached hereto as Exhibit 12 is a true and correct copy of Larry LeGree & Chick Rideout, *BATAAN Amphibious Ready Group 24th Marine Expeditionary Unit Post-Deployment Brief* at 5, Oct. 18, 2017, https://ndiastorage.blob.core.usgovcloudapi.net/ndia/2017/expwar/LeGree_Rideout.pdf.

16. Attached hereto as Exhibit 13 is a true and correct copy of JS/357-359, produced to Plaintiffs by the Department of Defense on January 31, 2018.

17. Attached hereto as Exhibit 14 is a true and correct copy of Cheryl Pellerin, *Pentagon Provides Updates on Support for Operations in Yemen, Somalia*, U.S. Dep't of Def., Aug. 4, 2017, <https://dod.defense.gov/News/Article/Article/1269091/pentagon-provides-updates-on-support-for-operations-in-yemen-somalia>.

18. Attached hereto as Exhibit 15 is a true and correct copy of Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations, White House (2018) ("2018 White House Report").

19. Attached hereto as Exhibit 16 is a true and correct copy of Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations, White House (2016) ("2016 White House Report").

20. Attached hereto as Exhibit 17 is a true and correct copy of Procedures for Approving Direct Action Against Terrorist Targets Located Outside of the United States and Areas of Active Hostilities (May 22, 2013), https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download ("PPG").

21. Attached hereto as Exhibit 18 is a true and correct copy of *United States Special Operations Command: Hearing Before the S. Comm. on Armed Servs.*, 115th Cong. 33 (May 4, 2017), https://www.armed-services.senate.gov/imo/media/doc/17-41_05-04-17.pdf.

22. Attached hereto as Exhibit 19 is a true and correct copy of Chairman of the Joint Chiefs of Staff, No-Strike and the Collateral Damage Estimation Methodology (Feb. 13, 2009), *available at* https://www.aclu.org/files/dronefoia/dod/drone_dod_3160_01.pdf.

23. Attached hereto as Exhibit 20 is a true and correct copy of Plaintiffs' March 15, 2017 Freedom of Information Act ("FOIA") request to Defendants Department of Defense, Central Intelligence Agency, Department of Justice, and Department of State.

24. Attached hereto as Exhibit 21 is a true and correct copy of Letter from Anna Diakun, Counsel for Plaintiffs, to Rebecca Tinio, Counsel for Defendants (June 14, 2018).

25. Attached hereto as Exhibit 22 is a true and correct copy of C06432231, produced to Plaintiffs by the Department of State on December 15, 2017.

26. Attached hereto as Exhibit 23 is a true and correct copy of C06432231, produced to Plaintiffs by the Department of State on July 19, 2018.

27. Attached hereto as Exhibit 24 is a true and correct copy of C06432239, produced to Plaintiffs by the Department of State on December 15, 2017.

28. Attached hereto as Exhibit 25 is a true and correct copy of C06432636, produced to Plaintiffs by the Department of State on December 15, 2017.

29. Attached hereto as Exhibit 26 is a true and correct copy of C06432854, produced to Plaintiffs by the Department of State on December 15, 2017.

30. Attached hereto as Exhibit 27 is a true and correct copy of JS/383-387, produced to Plaintiffs by the Department of Defense on July 20, 2018.

31. Attached hereto as Exhibit 28 is a true and correct copy of Letter from Anna Diakun, Counsel for Plaintiffs, to Rebecca Tinio, Counsel for Defendants (October 19, 2018).

32. Attached hereto as Exhibit 29 is a true and correct copy of C06432239, produced to Plaintiffs by the Department of State on July 19, 2018.

33. Attached hereto as Exhibit 30 is a true and correct copy of C06432636, produced to Plaintiffs by the Department of State on July 19, 2018.

34. Attached hereto as Exhibit 31 is a true and correct copy of C06432854, produced to Plaintiffs by the Department of State on July 19, 2018.

35. Attached hereto as Exhibit 32 is a true and correct copy of C06432231, produced

to Plaintiffs by the Department of State on September 28, 2018.

36. Attached hereto as Exhibit 33 is a true and correct copy of CENTCOM/020-026, last updated by the Department of Defense on September 28, 2018.

37. Attached hereto as Exhibit 34 is a true and correct copy of CENTCOM/027-030, last updated by the Department of Defense on October 12, 2018.

38. Attached hereto as Exhibit 35 is a true and correct copy of CENTCOM/045-047, produced by the Department of Defense on September 28, 2018.

39. Attached hereto as Exhibit 36 is a true and correct copy of CENTCOM/048-053, produced to Plaintiffs by the Department of Defense on November 17, 2017.

40. Attached hereto as Exhibit 37 is a true and correct copy of CENTCOM/245, the cover page to CENTCOM/246-268, re-released to Plaintiffs by the Department of Defense on January 3, 2018. CENTCOM/246-268 was withheld in full.

41. Attached hereto as Exhibit 38 is a true and correct copy of JS/009-011, produced to Plaintiffs by the Department of Defense on December 29, 2017.

42. Attached hereto as Exhibit 39 is a true and correct copy of JS/022-023, last updated by the Department of Defense on October 12, 2018.

43. Attached hereto as Exhibit 40 is a true and correct copy of JS/048-053, produced to Plaintiffs by the Department of Defense on December 29, 2017.

44. Attached hereto as Exhibit 41 is a true and correct copy of JS/054-056, produced to Plaintiffs by the Department of Defense on December 29, 2017.

45. Attached hereto as Exhibit 42 is a true and correct copy of JS/057-058, last updated by the Department of Defense on October 12, 2018.

46. Attached hereto as Exhibit 43 is a true and correct copy of JS/188-191, produced

to Plaintiffs by the Department of Defense on December 29, 2017.

47. Attached hereto as Exhibit 44 is a true and correct copy of JS/261-266, produced to Plaintiffs by the Department of Defense on December 29, 2017.

48. Attached hereto as Exhibit 45 is a true and correct copy of JS/273-278, produced to Plaintiffs by the Department of Defense on December 29, 2017.

49. Attached hereto as Exhibit 46 is a true and correct copy of JS/280-282, produced to Plaintiffs by the Department of Defense on December 29, 2017.

50. Attached hereto as Exhibit 47 is a true and correct copy of JS/330-336, produced to Plaintiffs by the Department of Defense on January 31, 2018.

51. Attached hereto as Exhibit 48 is a true and correct copy of JS/339-345, produced to Plaintiffs by the Department of Defense on January 31, 2018.

52. Attached hereto as Exhibit 49 is a true and correct copy of STATE/034-035, last updated by the Department of State on September 28, 2018.

53. Attached hereto as Exhibit 50 is a true and correct copy of STATE/036-038, produced to Plaintiffs by the Department of State on December 29, 2017.

54. Attached hereto as Exhibit 51 is a true and correct copy of STATE/039-044, produced to Plaintiffs by the Department of State on December 29, 2017.

55. Attached hereto as Exhibit 52 is a true and correct copy of C06395335, produced to Plaintiffs by the Department of State on December 15, 2017.

56. Attached hereto as Exhibit 53 is a true and correct copy of JS/400-404, produced to Plaintiffs by the Department of Defense on January 31, 2018.


57. Attached hereto as Exhibit 54 is a true and correct copy of Terri Moon Cronk, *Pentagon Spokesman Describes U.S. Raid in Yemen*, U.S. Cent. Command, May 23, 2017,

[http://www.centcom.mil/MEDIA/NEWS-ARTICLES/News-Article-View/Article/1191797/pentagon-spokesman-describes-us-raid-in-yemen.](http://www.centcom.mil/MEDIA/NEWS-ARTICLES/News-Article-View/Article/1191797/pentagon-spokesman-describes-us-raid-in-yemen)

58. Attached hereto as Exhibit 55 is a true and correct copy of JS/324-329, produced to Plaintiffs by the Department of Defense on January 31, 2018.

59. Attached hereto as Exhibit 56 is a true and correct copy of CENTCOM/036-038, last updated by the Department of Defense on September 28, 2018.

Dated: May 10, 2019
New York, New York



Anna Diakun
American Civil Liberties Union Foundation
125 Broad Street—18th Floor
New York, New York 10004
T: 212.549.2500
F: 212.549.2654
adiakun@aclu.org