

U.S. Department of Justice



USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
FILED: 4/22/16

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

MEMO ENDORSED

April 21, 2016

Hon. Colleen McMahon
United States District Judge
Daniel P. Moynihan United States Courthouse
500 Pearl Street, Room 1640
New York, NY 10007

Re: *ACLU v. Department of Justice*, 15 Civ. 1954 (CM)

Dear Judge McMahon:

We write respectfully on behalf of defendants (the "Government") in the above-referenced case, to advise the Court of the D.C. Circuit's decision today in *ACLU v. DOJ, et al*, No. 15-5217 (D.C. Circuit) (per curiam) (attached). The ACLU's FOIA request in that case sought records from the CIA concerning the United States' use of drones to conduct targeted lethal operations, including final legal memoranda and certain intelligence products containing charts or compilations about U.S. Government strikes sufficient to show the identity of the intended targets, assessed number of people killed, dates, status of people killed, agencies involved, location of each strike and identities of those killed if known. The D.C. Circuit affirmed the lower court's decision granting summary judgment on behalf of the government. The Court found that "the agency has satisfied its burden to show that the records are properly classified under Executive Order 13,526, and that they are, therefore, properly withheld under FOIA Exemption 1." Slip Op. at 3. The Court also held that, "the ACLU has failed to point to any officially acknowledged information that appears to duplicate or match that being withheld." *Id.*

4/22/2016
Free by Her
Time I should
be done with
the decision re
Part I and II

Colleen McMahon

As the Court is aware, parts (3) and (4) of the ACLU's FOIA request in this case substantially overlap with the FOIA request at issue in the District of Columbia case. Accordingly, the Court stayed parts (3) and (4) of the ACLU's FOIA request pending the decision in the District of Columbia case. The Court noted in its stay order that, "[a]s soon as the stay is lifted, I expect the Government to move to dismiss this lawsuit insofar as it duplicated the ACLU's lawsuit, because it appears the ACLU has already litigated much of what seems to be at issue in this case." *See* Order, dated July 9, 2015, p. 2. Although the Government is prepared to proceed with such a motion, we propose that the parties meet and confer within thirty days, and report back to the Court as to appropriate next steps.

Respectfully,

BENJAMIN C. MIZER
Principal Deputy Assistant
Attorney General

PREET BHARARA
United States Attorney for the
Southern District of New York

By: /s/ Elizabeth J. Shapiro
ELIZABETH J. SHAPIRO
AMY POWELL
STEPHEN ELLIOTT
Attorneys, Federal Programs Branch
Civil Division, U.S. Dept. of Justice
Telephone: (202) 514-5302
elizabeth.shapiro@usdoj.gov

By: /s Sarah S. Normand
SARAH S. NORMAND
Assistant United States Attorney
Telephone: (212) 637-2709
sarah.normand@usdoj.gov

Attachment