

**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

THIRD 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 co-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 against the Department of State and Partial Summary Judgment against the Department of Defense, and in Opposition to Defendants’ Motion for Summary Judgment.

3. 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.

4. Attached hereto as Exhibit 2 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>.

5. Attached hereto as Exhibit 3 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>.

6. Attached hereto as Exhibit 4 is a true and correct copy of JS/038-39, produced to Plaintiffs by the Department of Defense on December 29, 2017.

7. Attached hereto as Exhibit 5 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.

8. Attached hereto as Exhibit 6 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.

9. Attached hereto as Exhibit 7 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 (“PPG”) (May 22, 2013), https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download.

10. Attached hereto as Exhibit 8 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.

11. Attached hereto as Exhibit 9 is a true and correct copy of C06432239, re-released to Plaintiffs by the Department of State on July 19, 2018.

12. Attached hereto as Exhibit 10 is a true and correct copy of C06432636, re-released to Plaintiffs by the Department of State on July 19, 2018.

13. Attached hereto as Exhibit 11 is a true and correct copy of C06432854, re-released to Plaintiffs by the Department of State on July 19, 2018.

14. Attached hereto as Exhibit 12 is a true and correct copy of C06432231, re-released to Plaintiffs by the Department of State on July 19, 2018.

15. Attached hereto as Exhibit 13 is a true and correct copy of CENTCOM/003-005, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

16. Attached hereto as Exhibit 14 is a true and correct copy of CENTCOM/020-026, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

17. Attached hereto as Exhibit 15 is a true and correct copy of CENTCOM/027-030, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

18. Attached hereto as Exhibit 16 is a true and correct copy of CENTCOM/036-038, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

19. Attached hereto as Exhibit 17 is a true and correct copy of CENTCOM/045-053, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

20. Attached hereto as Exhibit 18 is a true and correct copy of CENTCOM/164-166, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

21. Attached hereto as Exhibit 19 is a true and correct copy of CENTCOM/184-186, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

22. Attached hereto as Exhibit 20 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.

23. Attached hereto as Exhibit 21 is a true and correct copy of CENTCOM/304-307, produced to Plaintiffs by the Department of Defense on April 19, 2018.

24. Attached hereto as Exhibit 22 is a true and correct copy of CENTCOM/330-334, produced to Plaintiffs by the Department of Defense on April 19, 2018.

25. Attached hereto as Exhibit 23 is a true and correct copy of JS/009-011, produced to Plaintiffs by the Department of Defense on December 29, 2017.

26. Attached hereto as Exhibit 24 is a true and correct copy of JS/022-023, produced to Plaintiffs by the Department of Defense on December 29, 2017.

27. Attached hereto as Exhibit 25 is a true and correct copy of JS/048-053, produced to Plaintiffs by the Department of Defense on December 29, 2017.

28. Attached hereto as Exhibit 26 is a true and correct copy of JS/054-056, produced to Plaintiffs by the Department of Defense on December 29, 2017.

29. Attached hereto as Exhibit 27 is a true and correct copy of JS/057-058, produced to Plaintiffs by the Department of Defense on December 29, 2017.

30. Attached hereto as Exhibit 28 is a true and correct copy of JS/059-062, produced to Plaintiffs by the Department of Defense on December 29, 2017.

31. Attached hereto as Exhibit 29 is a true and correct copy of JS/188-191, produced to Plaintiffs by the Department of Defense on December 29, 2017.

32. Attached hereto as Exhibit 30 is a true and correct copy of JS/240-242, produced to Plaintiffs by the Department of Defense on December 29, 2017.

33. Attached hereto as Exhibit 31 is a true and correct copy of JS/261-266, produced to Plaintiffs by the Department of Defense on December 29, 2017.

34. Attached hereto as Exhibit 32 is a true and correct copy of JS/273-278, produced to Plaintiffs by the Department of Defense on December 29, 2017.

35. Attached hereto as Exhibit 33 is a true and correct copy of JS/279-282, produced to Plaintiffs by the Department of Defense on December 29, 2017.

36. Attached hereto as Exhibit 34 is a true and correct copy of JS/330-336, produced to Plaintiffs by the Department of Defense on January 31, 2018.

37. Attached hereto as Exhibit 35 is a true and correct copy of JS/339-345, produced to Plaintiffs by the Department of Defense on January 31, 2018.

38. Attached hereto as Exhibit 36 is a true and correct copy of STATE/034-035, produced to Plaintiffs by the Department of Defense on December 29, 2017.

39. Attached hereto as Exhibit 37 is a true and correct copy of STATE/036-038, produced to Plaintiffs by the Department of Defense on December 29, 2017.

40. Attached hereto as Exhibit 38 is a true and correct copy of STATE/039-044, produced to Plaintiffs by the Department of Defense on December 29, 2017.

41. Attached hereto as Exhibit 39 is a true and correct copy of CENTCOM/019, re-released to Plaintiffs by the Department of Defense on January 3, 2018.

42. Attached hereto as Exhibit 40 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>.

43. Attached hereto as Exhibit 41 is a true and correct copy of JS/400-401, produced

to Plaintiffs by the Department of Defense on January 31, 2018.


44. Attached hereto as Exhibit 42 is a true and correct copy of C06395621, produced to Plaintiffs by the Department of State on December 15, 2017.

45. Attached hereto as Exhibit 43 is a true and correct copy of White House Off. of Press Sec'y, Executive Order—United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force (July 1, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/07/01/executive-order-united-states-policy-pre-and-post-strike-measures>.

46. Attached hereto as Exhibit 44 is a true and correct copy of JS/161-164, produced to Plaintiffs by the Department of Defense on December 29, 2017.

47. Attached hereto as Exhibit 45 is a true and correct copy of JS/204-207, produced to Plaintiffs by the Department of Defense on December 29, 2017.

Dated: August 21, 2018
New York, New York



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