



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*86 Chambers Street  
New York, New York 10007*

May 22, 2018

**Unredacted Version Submitted *Ex Parte*  
for the Court's *In Camera* Review**

**Redacted Version Filed Via ECF**



Hon. Catherine O'Hagan Wolfe  
Clerk of Court  
U.S. Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

(U) Re: *ACLU v. Department of Justice*, 17-157 (2d Cir.)  
Argued May 15, 2018

(U) Dear Ms. Wolfe:

(U) Defendants-appellants (collectively, the "Government") respectfully submit this letter in response to specific questions posed by the panel (Cabranes, Pooler, Newman, C.JJ.) during the oral argument of this appeal on May 15, 2018.

(U) The panel asked the Government to identify the specific passages that contain or refer to the ruling within the district court's Decision and Order that the Government seeks to have vacated. Attached hereto are the pages of the Decision and Order that contain or refer to the district court ruling at issue, with the relevant passages marked.<sup>1</sup> Although the Government initially asked this Court to direct that the ruling at issue be removed from the Decision and Order, upon further review, the Government has determined it would be preferable for the Court to vacate the district court's ruling and direct that all current redactions in the Decision and Order remain under seal. If the Court proceeds in this manner, the district court need not take any further action or issue an amended decision.

(U) The panel also asked the Government to review the district court's ruling to determine whether any public statements by U.S. government officials can be unredacted and released. The

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<sup>1</sup> (U) Only the passages relevant to the ruling at issue in this appeal are marked on the attached pages. Some of the attached pages also contain other classified information unrelated to the ruling at issue.



[REDACTED]

Government has undertaken that review and determined that all redactions in the Decision and Order remain necessary, for two reasons.

[REDACTED] First, [REDACTED]

[REDACTED] Second, in the ruling at issue, the district court did not provide a neutral or complete recitation of [REDACTED]. Rather, the district court selectively quoted, paraphrased, and added emphasis to [REDACTED] in such a way that revealing the references to [REDACTED], which are intertwined with the district court's analysis, would effectively reveal the district court's ruling. We address each of the district court's quotations (in bold text) of [REDACTED] below.

1. [REDACTED]

CA 22 (bracketed language and italics in Decision and Order). In this passage, the district court quoted selected excerpts of [REDACTED], and added bracketed language and emphasis, to provide the court's interpretation of what [REDACTED].

2. [REDACTED]

CA 23. This sentence directly reveals an aspect of the district court's ruling.

3. [REDACTED]

[REDACTED]

[REDACTED]

CA 23. This passage addresses the Government's argument in its reconsideration motion, and thereby reveals that the district court initially found that [REDACTED]

4.

[REDACTED]

CA 23-24. In this passage, the district court was also responding to the Government's argument on reconsideration. Again, the district court quoted selected excerpts of [REDACTED]

[REDACTED]

5.

[REDACTED]

CA 24 (alteration in Decision and Order). This passage directly reveals an aspect of the district court's ruling.

6.

[REDACTED]

CA 24-25. This passage directly reveals an aspect of the district court's ruling.

[REDACTED]



(U) For these reasons and the reasons stated in the Government's briefs, the Government respectfully requests that the Court vacate the district court's ruling and direct that all current redactions to the Decision and Order remain under seal.

(U) Respectfully,

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(U) Classified Attachments (letter only filed via ECF)

