UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AMNESTY INTERNATIONAL USA, et al.,	
Plaintiffs,	Civil Action No. 07-cv-5435 (LAP)
v.	
CENTRAL INTELLIGENCE AGENCY, et al.,	
Defendants.	

DECLARATION OF MARK A. BRADLEY

I, Mark A. Bradley, do hereby state and declare as follows:

1. I am the Acting Chief of the Oversight Section within the Office of Intelligence ("OI") in the National Security Division ("NSD") of the United States Department of Justice ("DOJ" or "Department"). NSD is a new component of the Department which formally began operations on October 2, 2006 by, inter alia, consolidating the resources of the Office of Intelligence Policy and Review ("OIPR") and the Criminal Division's Counterterrorism Section ("CTS") and Counterespionage Section ("CES"). OIPR is now known as OI.

2. At all times relevant to the matters set forth in this declaration, I was the Deputy Counsel for Intelligence Policy at OIPR, a position I had held since November 2003. As Deputy Counsel, I had oversight and operational responsibilities for Foreign Intelligence Surveillance Act ("FISA") operations, fielded emergency surveillance requests from the intelligence community, briefed the Attorney General and Deputy Attorney General on FISA operations, and managed

certain policy and operational matters within the office. My employment at OIPR commenced in 2000, and I joined the OIPR senior management in early 2002.

3. In addition, as Deputy Counsel I also supervised Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 administration at OIPR. The Counsel for Intelligence Policy (the head of OIPR), the Deputy Counsel for Operations, and I were the three final decision-making authorities at OIPR regarding FOIA requests. The statements herein are based on personal knowledge and on information I acquired while performing my official duties.

4. The former OIPR had three primary functions. First, it provided legal advice to the Attorney General and the United States intelligence agencies regarding questions of law and procedure that relate to U.S. intelligence surveillance and physical search activities. Second, it reviewed certain intelligence activities relating to surveillance and physical search. Third, OIPR prepared and presented applications for electronic surveillance and physical search to the United States Foreign Intelligence Surveillance Court ("FISC").

PLAINTIFFS' FOIA REQUESTS

5. By letter dated December 21, 2004, plaintiff, the Center for Constitutional Rights ("CCR"), through Barbara Olshansky, Rachel Meeropol, and Michael Ratner, requested access under FOIA to records relating to, inter alia, "Unregistered, CIA, and/or 'Ghost' Detainees." A copy of plaintiff CCR's FOIA request (the "CCR Request") is attached hereto as Exhibit A. OIPR received the CCR Request on December 23, 2004 and assigned the request tracking number OIPR 05-008.

6. By letter dated April 25, 2006, plaintiffs Amnesty International ("AI") and Washington Square Legal Services, Inc. ("WSLS"), through their attorney Catherine Kane Ronis, filed two separate FOIA requests. The first request was entitled "Request Submitted Under the

Freedom of Information Act for Records Concerning Detainees, including 'Ghost Detainees/Prisoners,' 'Unregistered Detainees/Prisoners,' and 'CIA Detainees/Prisoners.'" It stated that plaintiffs sought records regarding "individuals who were, have been, or continue to be deprived of their liberty by or with the involvement of the United States and about whom the United States has not provided public information." A copy of this FOIA request (the "First Amnesty Request") is attached hereto as Exhibit B. OIPR received the First Amnesty Request on April 26, 2006 and assigned it tracking number OIPR 06-032.

7. The second FOIA request was entitled "Request Submitted Under the Freedom of Information Act for Records Concerning Ghost Detainee Memoranda, Department of Defense Detainee Reporting, Reports to Certain U.N. Committees, and the Draft Convention on Enforced Disappearance." A copy of this FOIA request (the "Second Amnesty Request") is attached hereto as Exhibit C. OIPR received the Second Amnesty Request on April 26, 2006 and assigned it tracking number OIPR 06-033.

OIPR'S SEARCHES IN RESPONSE TO THE REQUESTS

A. The Secret Detention Requests

8. To assist the Court in understanding OIPR's search in response to the CCR Request and the First Amnesty Request (collectively, the "Secret Detention Requests"), I will describe the types of records maintained by OIPR. OIPR maintained three general categories of records: (1) policy records, including legal advice to government agencies relating to surveillance and physical search activities, and records regarding congressional inquiries and reports; (2) litigation records; and (3) operations records relating to proceedings before the FISC under FISA, including applications for authority to conduct electronic surveillance, physical searches, and pen register and

trap and trace surveillance.

Searches by Senior Management

9. To begin the OIPR search for any records responsive to the Secret Detention Requests, OIPR's FOIA Coordinator reviewed each request and then consulted with the Counsel for Intelligence Policy to determine which files within OIPR might reasonably be likely to contain responsive records. Based on his knowledge and familiarity with the records and activities of OIPR and the personnel within the component, and after consulting with FOIA personnel, the Counsel for Intelligence Policy decided that each member of the senior management should be tasked with searching for records responsive to the Secret Detention Requests because senior management would be most likely either to have responsive records, if any existed, or to know which subordinates would be most likely to have responsive records. For the reasons stated below, no one searched OIPR's operations files.

10. At all relevant times, the OIPR senior management was comprised of employees holding the following positions: Counsel for Intelligence Policy, Deputy Counsel for Intelligence Policy, Deputy Counsel for Operations, Deputy Counsel for Litigation, Assistant Counsel, and the Chief of Staff. All of the employees holding these positions received a copy of each of the Secret Detention Requests and personally conducted a search of his or her files, including his or her electronic communications (i.e., e-mail), for any records responsive to the requests. These searches included both classified and unclassified files.

11. No responsive records were found.

OIPR Policy Records

12. OIPR policy records consisted of legal advice regarding U.S. surveillance and

physical search activities and records pertaining to Congressional action. Therefore, there was no reasonable likelihood that OIPR's policy records would contain records responsive to the Secret Detention Requests. Nevertheless, in an abundance of caution, and in addition to the searches conducted by senior management, OIPR FOIA personnel searched the OIPR policy files. OIPR's policy files were stored electronically, and OIPR FOIA personnel were able to query them. The following terms were used to search OIPR's policy files: "unregistered detainee," "CIA detainee," "ghost detainee" and "detainee reporting."

13. No responsive records were found.

OIPR Litigation Records

14. OIPR litigation records are comprised of documents pertaining to criminal, civil, or administrative matters. As a general matter, OIPR FOIA personnel would not have searched OIPR litigation records in response to a FOIA request unless they believed that those records could have contained responsive documents. In the instant case, plaintiffs' requests did not ask for records pertaining to any particular criminal prosecution, civil case, or administrative matter. Further, OIPR FOIA personnel who had substantive knowledge of the contents of the litigation records were not aware of any criminal, civil, or administrative matters pertaining to the subject matter of the secret detention requests. Thus, OIPR did not search its litigation records because those records would not have contained responsive material.

OIPR Operations Files

15. OIPR did not conduct a search of its operations records for the reasons described below in paragraphs 17 through 32.

B. The Second Amnesty Request

16. In my capacity as Deputy Counsel for Intelligence Policy, I was not aware of any OIPR involvement in the preparation of United Nations reports or OIPR involvement in the other matters referenced in the Second Amnesty Request. As noted above, OIPR's senior management consisted of a small group of people, and this group met several times a week. As a result, each member of senior management was aware of the office's activities. I, as a member of OIPR senior management, was not aware that OIPR had any involvement with United Nations reports or any of the other matters referenced in the Second Amnesty Request. Furthermore, if OIPR had been involved in preparing United Nations reports or been involved in any of the other matters referenced in the Second Amnesty Request, I, as a Deputy Counsel and a member of senior management, would have been aware of this. Because I determined that there was no reasonable likelihood that any OIPR files would have contained any records responsive to the Second Amnesty Request, OIPR did not conduct a search for records responsive to the Second Amnesty Request.

OIPR'S GLOMAR RESPONSE TO THE SECRET DETENTION REQUESTS WITH RESPECT TO OIPR'S OPERATIONS FILES

17. OIPR did not search its operations files – i.e., files relating to applications before the FISC – with respect to the Secret Detention Requests because the results of any such search would be classified. The Attorney General has delegated original classification authority to me pursuant to Executive Order 12958 and 28 C.F.R. § 17.21(a). Pursuant to such authority, I am authorized to conduct classification reviews and to make original classification decisions. Based on my experience and authority as an original classifying authority, I have determined that information

regarding the existence or non-existence of OIPR operations files responsive to the Secret Detention Requests is properly classified at the SECRET level.

18. OIPR's response with respect to its operations files is known as a "Glomar response." Its Glomar response is consistent with the FISA, and authorized by Executive Order 12958, as amended. The FISA specifies that the record of proceedings "including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of [National] Intelligence." 50 U.S.C. § 1803(c). The FISA further provides that persons rendering assistance under the Act do so "in such a manner as will protect its secrecy." As discussed below, OIPR cannot maintain the secrecy of its operations files, as mandated by FISA, without issuing a Glomar response.

19. OIPR's Glomar response is also expressly authorized by Executive Order 12958, § 3.6, which states:

> In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974. . . (a) An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

Exec. Order 12958, § 3.6.

A. Section 1.4(c) of Executive Order 12958

20. I am familiar with the categories of information that may be classified pursuant to Executive Order 12958. See Exec. Order 12958, § 1.4. I have determined that information within OIPR's operations files comes within the scope of Section 1.4 of Executive Order 12958. If OIPR were to disclose the existence or non-existence of records within its operations files responsive to the Secret Detention Requests, OIPR would provide information that comes within the scope of

Section 1.4 of the Executive Order.

21. Specifically, OIPR's operations files consist of records relating to applications for electronic surveillance, physical search, and other foreign intelligence, foreign counterintelligence, and international terrorism investigations authorized by the FISC pursuant to the FISA and other applicable executive orders governing foreign intelligence. These files consist of information that concerns "intelligence activities (including special activities), intelligence sources or methods, or cryptology" under Section 1.4(c) of the Executive Order. If OIPR were to disclose the existence or non-existence of records within OIPR's operations files responsive to the Secret Detention Requests, such a disclosure would provide information about OIPR's intelligence activities, sources, and methods, within Section 1.4(c) of the Executive Order.

B. Damage to National Security

22. Disclosing the existence or non-existence of records within OIPR's operations files responsive to the Secret Detention Requests could reasonably be expected to result in serious damage to the national security.

23. As a general matter, OIPR (when it existed) could neither admit nor deny the existence of operations files pertaining to particular individuals or groups of individuals without disclosing classified information. Particular individuals or groups of individuals appearing in such files may include targets, witnesses, sources, and other subjects of interest that reflect the nature of such investigations. As further explained below, either confirming or denying that OIPR maintained information in its operations files responsive to such requests for access would result in disclosure of information that could reasonably be expected to cause serious damage to the national security. Thus, the only response OIPR could make to a request for information concerning particular

individuals or groups of individuals from within its operations files was neither to confirm nor deny the existence of responsive information, as authorized under section 3.6(a) of Executive Order 12958. No responsible alternative existed to this procedure.

24. Disclosure of the existence of information within OIPR's operations files relating to particular individuals or groups of individuals could be reasonably expected to cause serious damage to the national security of the United States. As explained above, particular individuals or groups of individuals appearing in OIPR's operations files may include targets, witnesses, sources, and other subjects of interest that reflect the nature of such investigations. Assuming that OIPR maintained information in its operations files relating to particular individuals or groups of individuals, acknowledgment of that fact would disclose that persons within the scope of the request were pertinent to the approval of one or more specific uses of the investigatory techniques employed by OIPR (e.g., electronic surveillance, physical search, and other foreign intelligence, foreign counterintelligence, and international terrorism investigations authorized by the FISC). Such disclosures would be recognized and exploited for the immense intelligence and counterintelligence value they would yield to trained intelligence analysts, such as those employed by hostile intelligence services. By its terms, FOIA permits requests to be filed by "any person," including officials of foreign governments and other foreign nationals. Moreover, intelligence organizations are expert at acquiring and analyzing information in the public domain. It therefore must be expected that any information given to one FOIA requester will be available, not only to subsequent requesters, but also to hostile foreign powers and their intelligence services. If it were the policy of OIPR to indicate routinely that it maintains responsive information in its operations files, these responses would provide trained intelligence analysts with individual pieces of information that

could be compiled into a catalog of, inter alia, FISA activities, overseas electronic surveillance, and physical searches. Such a policy would reveal OIPR intelligence interests and instances where OIPR-employed investigatory techniques have been used to obtain intelligence information. From such disclosures, hostile intelligence services could discover, among other things, which intelligence agents operating in this country were known to the U.S. Government and which were not. This information could be used by a hostile intelligence service to deploy counterintelligence assets against the U.S. Government more effectively, increasing the risk that U.S. intelligence collection would be neutralized or impaired.

25. Likewise, disclosure of the nonexistence of information within OIPR's operations files relating to particular individuals or groups of individuals could be reasonably expected to cause serious damage to the national security of the United States. Assuming, arguendo, that OIPR did not maintain operations files relating to any particular individual or group of individuals, acknowledgment of this fact would indicate, for instance, that OIPR had not prepared an application under the FISA relating to particular intelligence interests. If OIPR were to indicate routinely that it does not maintain responsive records, these responses would also be of immense value to trained intelligence analysts and foreign powers. This information would reveal that the U.S. Government's counterintelligence elements had not used particular techniques employed by OIPR to focus on intelligence or international terrorism activities in which a specific intelligence interest may be involved. Thus, a hostile intelligence service or international terrorist organization could easily and surreptitiously assess the extent of the U.S. Government's awareness of its activities, as well as whether OIPR-employed investigatory techniques were being used in connection with particular targets, witnesses, sources, or other subjects of interest.

26. For these reasons, if OIPR were not permitted to make a Glomar response to all requests for information in its operations files concerning a particular individual or group of individuals, OIPR would be in an insoluble dilemma. Let it be assumed, for the sake of argument, that OIPR did maintain operations files concerning a particular individual or group of individuals identified in a FOIA request. If OIPR were not permitted to make a Glomar response to such a request, only two possible courses of action would be available:

a. OIPR could deny that it maintains any responsive information. In this hypothetical case, such a response would be false and, therefore impermissible.

b. OIPR could admit that it maintains responsive information but decline to produce it on the ground it is classified. This response is not acceptable because it would disclose the very heart of what must be protected: the fact that particular individuals or groups were discussed in OIPR's operations files (i.e., records pertaining to approval of specific FISA surveillance, physical searches, or overseas electronic surveillance).

Only by permitting OIPR to make a Glomar response (i.e., declining, even where OIPR has responsive records, either to confirm or to deny that it maintains records concerning particular individuals or groups), can OIPR protect the security of the electronic surveillance or physical search.

27. A Glomar responsive is effective, however, only if it is applied consistently to every request that seeks information from OIPR's operations files regarding individuals or groups of individuals. If OIPR denied that it maintains responsive information only in cases in which it in fact does not, while refusing to confirm or deny that it maintains responsive information only in those instances in which it does maintain such information, every refusal to confirm or deny would be a tacit admission that OIPR in fact has responsive information in that case, thereby linking the subjects of those requests to the U.S. foreign intelligence gathering by one or more of the above-

described OIPR-employed techniques.

28. For the reasons set forth in paragraphs 24 through 27 above, only the consistent application of the Glomar response could protect the security of information relating to particular individuals or groups of individuals, which information, if disclosed to exist or not exist within OIPR's operations files, could reasonably be expected to cause serious harm to the national security of the United States.

29. Accordingly, as a matter of policy, OIPR would never confirm or deny the existence or nonexistence of information relating to particular individuals or groups of individuals within its operations files. For example, since September 11, 2001, OIPR has received approximately 600 FOIA requests, many of which have sought information in OIPR's operations files relating to particular individuals or groups of individuals. OIPR has consistently issued a Glomar response to protect the disclosure of classified information regarding the existence or non-existence of information within OIPR's operations files relating to particular individuals or groups of individuals.

30. Here, OIPR could neither confirm nor deny the existence of information within its operations files responsive to the Secret Detention Requests without disclosing classified information. Those requests relate to a particular group of individuals, consisting of a limited number of terrorist suspects detained by the United States. Specifically, these requests seek information relating to individuals whom the requesters refer to as "ghost detainees," "secret detainees," "unregistered detainees," or "CIA detainees." The requests explain that this group of individuals is limited to "persons apprehended since September 11, 2001." See First Amnesty Request at 3; see also CCR Request at 1 (describing allegations regarding "individuals apprehended

after September 11, 2001" and operations commencing "after the attacks of September 11, 2001"). For the reasons stated above, OIPR could neither confirm nor deny whether it has information within its operations files related to the particular group of individuals described in the Secret Detention Requests without disclosing information that reasonably could be expected to cause serious damage to the national security of the United States.

31. For instance, if OIPR disclosed that responsive records existed – assuming, arguendo, that they did exist – OIPR would reveal information regarding its intelligence interests (e.g., individuals within the class of persons described in the requests) and that investigatory techniques particular to OIPR had been used to obtain intelligence information. If, by contrast, OIPR disclosed that no responsive records existed – assuming, arguendo, none did exist – OIPR would reveal that the Government had not used particular techniques to focus on intelligence or terrorism activities involving particular intelligence interests (e.g., individuals within the class of persons described in the requests). Moreover, if no records responsive to the Secret Detention Requests exist within OIPR's operations files, OIPR's acknowledgment of that fact in this case would cause any OIPR Glomar response in other cases to be seen as tantamount to a confirmation that responsive records existed; such a response would thus undermine OIPR's consistent approach to requests for information within its operations files regarding individuals and groups.

32. Accordingly, information regarding the existence or non-existence of OIPR operations files responsive to the Secret Detention Requests is properly classified at the SECRET level.

* * * * *

33. Each step in handling plaintiffs' FOIA requests was consistent with OIPR procedures for responding to FOIA requests. All files likely to contain responsive materials (excluding operations files, as set forth in paragraphs 17 through 32) were searched.

I declare under penalty of perjury that the foregoing is true and correct.

Mark A. Bradley
Acting Chief, Oversight Section
Office of Intelligence
National Security Division

Executed on this 14th day of Nov, 2008.