UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMNESTY INTERNATIONAL USA, CENTER FOR CONSTITUTIONAL RIGHTS, INC., and WASHINGTON SQUARE LEGAL SERVICES, INC.,	**ECF CASE**
Plaintiffs,	07 CV 5435 (LAP)
v.	**DECLARATION OF DIONE JACKSON STEARNS**
CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF HOMELAND SECURITY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, and THEIR COMPONENTS,	
Defendants.	

I, Dione J. Stearns, declare the following, under the penalty of perjury:

1. I am an Attorney Advisor in the Department of Justice (the "Department") currently assigned to the Executive Office for United States Attorneys ("EOUSA"), Freedom of Information and Privacy Staff (the "FOIA/Privacy Staff"). The FOIA/Privacy Staff processes all requests received by EOUSA and by all United States Attorneys' Offices nationwide under the Freedom of Information and Privacy Acts ("FOIA/PA") and related regulations. 5 U.S.C. §§ 552-552a; 28 CFR § 16.1, et seq. I submit this declaration in support of the motion of the Central Intelligence Agency (the "CIA") for summary judgment in the above-captioned action. The statements I make in this declaration are made on the basis of my review of the official files and records of EOUSA, my own personal knowledge, or on the basis of knowledge acquired by me through the performance of my official duties.

2. My duties on the FOIA/Privacy Staff include acting as liaison with other Departmental components and overseeing the processing of FOIA/PA requests for records maintained by EOUSA or any of the United States Attorneys' Offices nationwide, including searches for responsive records, determining processing and fee issues, and making determinations regarding release, redaction, or withholding of agency records pursuant to the access and exemption provisions of the Freedom of Information and Privacy Acts. Due to the nature of my official duties, I am familiar with the procedures followed by EOUSA in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

3. The CIA asked EOUSA to review five documents that contain information relating to EOUSA. In this litigation, I understand that the CIA has assigned to those documents the numbers 18, 127, 269, 274, and 284, and that the CIA has included descriptions of each document in a Vaughn index attached as Exhibit A to the declaration of Wendy M. Hilton, Information Review Officer for the National Clandestine Service, CIA.

4. I further understand that the CIA determined that Document 18 is exempt from disclosure under FOIA Exemptions 1, 2, 3, and 5; that Document 127 is exempt in part from disclosure under Exemptions 3, 6, and 7(C); that Document 269 is exempt in part from disclosure under Exemptions 3, 6, and 7(C); that Document 274 is exempt in part from disclosure under Exemptions 3, 6, and 7(C); and that Document 284 is exempt in part from disclosure under Exemptions 1, 3, and 5. I further understand that the CIA has prepared a declaration supporting the withholding of such information under these exemptions.

5. I submit this declaration to explain why information relating to EOUSA within documents numbered 18, 127, 269, 274, and 284 must be withheld under various exemptions. As described more fully below, Document 18 should be withheld in full under Exemption 7(A) because it contains information compiled for law enforcement purposes, relating to pending or prospective law enforcement investigations. Documents 127, 269, and 274 should be withheld in part under Exemption 6 because the disclosure of the privacy information contained in those documents would constitute a clearly unwarranted invasion of personal privacy, and portions of those documents should also be withheld under Exemption 7(C) because they contain information compiled for law enforcement purposes, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Finally, Document 284 should be withheld in full under Exemption 5 because it contains information protected by the deliberative process privilege and the attorney work product doctrine.

PART I
DOCUMENTS AT ISSUE

6. Document 18 is an eight-page document, which includes a classified two-page letter that originated with the CIA. This declaration only addresses the two-page letter within Document 18 and does not address the remaining six pages of the document. The letter is undated and is addressed to the Chief of the United States Attorney's Office for the Eastern District of Virginia Criminal Division from an employee of the CIA's Office of Inspector General discussing possible violations of federal law by the subject of an ongoing criminal investigation. The CIA provided a copy of this document to Assistant United States Attorney ("AUSA") Neil Hammerstrom, the Chief of the Terrorism and National Security Unit of the

United States Attorney's Office for the Eastern District of Virginia ("USAO EDVA"). I have consulted with AUSA Hammerstrom and others within the Department regarding this matter. They informed me that the letter relates to possible criminal violations of federal law, which remain the subject of review within the Department, and that the release of the letter could reasonably be expected to interfere with that ongoing review. Document 18 is therefore withheld in full under Exemption 7(A), as further explained below.

7. Document 127 is a three-paragraph, one-page memorandum dated September 6, 2005. A redacted copy of Document 127 is attached to this declaration as Exhibit A. The memorandum is entitled "Memorandum for the Record" and is authored by a Special Agent of the CIA's Office of the Inspector General. The memorandum records a conversation, regarding ongoing criminal matters, between the Special Agent and an AUSA in the United States Attorney's Office for the Eastern District of Virginia. EOUSA withheld, due to privacy interests, the specific name of the AUSA, the identities of and personal information associated with third party individuals such as special agents, and other attorneys who participated in the investigation and prosecution of this case. These redactions have been made under Exemptions 6 and 7(C), as further explained below.

8. Documents 269 and 274 each consist of two pages, the first of which is a serial inner envelope and the second of which is a notice of receipt originating with the CIA. Redacted copies of Documents 269 and 274 are attached to this declaration as Exhibit B and Exhibit C, respectively. In each document, the specific names of the federal employees have been withheld due to their privacy interests. These redactions have been made under Exemptions 6 and 7(C), as further explained below.

9. Document 284 is a one-page, one-paragraph classified document that originated with the CIA. The letter is an undated memorandum for the record authored by an employee of the CIA's Office of Inspector General reflecting on discussions regarding potential criminal investigations. Specifically, this letter discusses pre-decisional recommendations and expresses opinions on legal and policy matters. The document is withheld in full pursuant to the deliberative process privilege and attorney work product protection under Exemption 5, as further explained below.

PART II
EXEMPTION 5

10. Exemption 5 exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." This exemption protects information privileged in the civil discovery context, including information protected by the deliberative process privilege and the attorney work product doctrine.

A. Deliberative Process Privilege

11. The deliberative process privilege protects the internal deliberations of the Government by exempting from release, among other things, pre-decisional documents that reflect advisory opinions, recommendations, analysis, opinions, speculation, non-factual information prepared to assist policymakers in arriving at decisions, or factual information that is inextricably connected to the deliberative material that its disclosure would expose or cause harm to the agency's deliberations.

12. Document 284 should be withheld in full under the deliberative process privilege. This document reflects discussions between a Special Agent and an AUSA regarding the progress of an administrative matter, and reveal the opinions and recommendations of AUSAs with respect to an inquiry from the Special Agent regarding, inter alia, any potential criminal prosecution of the matter. This document is pre-decisional because it records deliberations between the Special Agent and the AUSA prior to a final decision regarding the issues under discussion in a prospective criminal matter. This document is therefore protected from disclosure under the deliberative process privilege.

B. Attorney Work Product Doctrine

13. In addition to the deliberative process privilege, Document 284 should be withheld in its entirety as protected by the attorney work product doctrine. That doctrine protects from disclosure, inter alia, documents which reflect impressions, conclusions, opinions, or legal theories of a government attorney about ongoing or anticipated litigation. Document 284 contains the impressions, conclusions, and opinions of the AUSA with respect to an inquiry from a law enforcement agent regarding, inter alia, whether a particular administrative matter rose to the level of criminal violations. Document 284 was drafted because of anticipated criminal litigation. This document is therefore protected from disclosure under the attorney work product doctrine.

PART III
EXEMPTION 7(A)

14. Exemption 7(A) exempts from disclosure "records or information compiled for law enforcement purposes . . . to the extent that the production of such law enforcement records

or information . . . could reasonably be expected to interfere with enforcement proceedings." This exemption protects against the disclosure of law enforcement records, where disclosure could reasonably be expected to harm a pending or prospective law enforcement investigation.

15. The two-page letter within Document 18 should be withheld in full pursuant to Exemption 7(A). The letter was compiled for the law enforcement purpose of discussing possible violations of federal law by the subject of a criminal investigation. These possible violations of federal law are being reviewed as part of a process by the Department to determine whether a criminal prosecution will be commenced.

16. Any release of information from the letter would be premature due to the harm which could ensue. The Department official conducting the review of the possible violations of federal law referenced above has informed me that release of any information within the letter would likely interfere with further review. If a document, like this letter, were released into the public domain, the information concerning the review could reach individuals, including the referenced subject. This would allow the subject to critically analyze the documents pertinent to the investigation of himself or herself. Such an individual possesses the unique advantage of knowing the details surrounding the investigation, the identities of the potential witnesses, direct and circumstantial evidence, and could use the released information to his or her advantage.

17. For these reasons, the two-page letter within Document 18 is exempt from disclosure pursuant to Exemption 7(A).

PART IV
EXEMPTIONS 6 AND 7(C)

18. Exemption 6 exempts from disclosure records or information in "personnel and

medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The exemption protects individuals from injury that would result from the unnecessary disclosure of personal information, including individual's names, addresses, and other personal identifying information.

19. Exemption 7(C) exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552 § (b)(7)(C). All of the information at issue in the cases referenced in Documents 127, 269, and 274 was originally compiled in connection with criminal investigations and/or prosecutions.

20. EOUSA has applied Exemptions 6 and 7(C) to withhold identities of individuals, such as government employees, who participated in the investigation and prosecution of the cases relating to Documents 127, 269, and 274. As is required by Exemptions 6 and 7(C), EOUSA balanced the privacy interests of the federal employees and determined that the federal employees privacy interests outweigh the minimal FOIA-related public interest in disclosure.

21. EOUSA determined that the release of any identifying information involving these federal employees could reasonably constitute an unwarranted invasion of their personal privacy, and would constitute a clearly unwarranted invasion of personal privacy, because it could result in unwanted and even unlawful efforts to gain further access to such persons or personal information about them. It could also lead to harassment, harm, or exposure to unwanted and/or derogatory publicity and lead to inferences arising from their connection to the case. Moreover, an individual's association with a criminal investigation could be damaging to his or her reputation

or have a stigmatizing effect. EOUSA also considered the passage of time and its effect on the privacy interests of the federal employees and determined that the privacy interests are at least as strong now as when the records were initially created. In short, disclosure would be detrimental to the persons protected and, accordingly, the privacy interests at stake in these records are significant.

22. After identifying the privacy interests at stake, EOUSA then identified any relevant public interest, namely, whether the requested information would reveal the operation and activities of United State Attorney Office for the Eastern District of Virginia and/or any federal law enforcement agencies. Plaintiffs have not asserted, and EOUSA could not discern, any qualifying public interest. Moreover, any public interest in knowing the names redacted from the requested records could not be sufficient to outweigh the substantial privacy interests of the individuals mentioned in the records. For these reasons, the names of the federal employees in Documents 127, 269 and 274 are exempt from disclosure pursuant to Exemptions 6 and 7(C).

PART IV
SEGREGABILITY

23. Each document was evaluated to determine if any information could be segregated and released. Portions of Documents 127, 269 and 274 are only being withheld in part, and all segregable portions have been released. Document 284 and the two-page letter within Document 18 are being withheld in their entirety, and they contain no meaningful portions that could be released without destroying the integrity of the text, identifying a third party individual, or interfering with an ongoing investigation.

CONCLUSION

24. EOUSA handled each step in this matter in a manner entirely consistent with EOUSA procedures and Department of Justice regulations. These procedures and regulations were developed to comply with the access and exemption provisions of the Freedom of Information and Privacy Acts and to ensure an equitable response to all persons seeking access to records under those statutes. In addition, EOUSA has reviewed all records for discretionary release under the terms of the Attorney General's March 19, 2009 Memorandum on the FOIA. EOUSA reviewed these records to determine if it is reasonably foreseeable that disclosure would harm an interest protected by one of the FOIA's statutory exemptions or the disclosure is prohibited by law, and has determined that the withheld information is not appropriate for discretionary disclosure.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of September, 2009

Dione Jackson Stearns

Dione Jackson Stearns
Attorney Advisor
EOUSA FOIA/PA Staff

(b)(3)

6 September 2005

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation With U.S. Attorney [redacted]

REF: Case [redacted]
Case [redacted]

1. On 6 September 2005, I told [redacted] Assistant U.S. Attorney, Eastern District of Virginia (EDVA), that defense counsel Frank Spinner is scheduled to visit the Washington area this week in order to review selected materials, especially interview reports, from the case file for case [redacted]. I told [redacted] that I was letting him know this because of the overlap (for example, many interview reports) between the two cases ([redacted]). I also told [redacted] that if he wanted more information about which materials CIA's Office of General Counsel (OGC) intends to show Spinner, he should contact OGC attorneys [redacted]. I let [redacted] know, too, that Ft. Carson prosecutor Major Tiernan Dolan will visit here this week in order to review the materials that OGC intends to show to Spinner.

2. [redacted] said that showing case materials to defense counsel is not uncommon, but he said he would prefer that the defense counsel not be given hardcopies of the interview reports.

3. [redacted] is reviewing the contents of the [redacted] case file and expects to consult with Major Dolan later this week about them. I told her about my conversation with [redacted] and she said OGC would contact him to discuss his concerns.

[redacted]
Special Agent

GOVERNMENT EXHIBIT A
PENGAD-Bayonne, N. J.

C05409409

DOC 269

00001

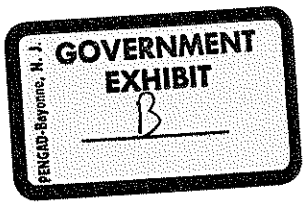
(b)(3)

SERIAL INNER ENVELOPE

TITLE OF CASE:	DATE ACQUIRED: 7/1/05
Allegations of Abuse at Guantanamo	DATE FILED: 7/1/05
	SERIAL NUMBER: 6
	INVESTIGATOR NAME:
	FILE NUMBER:

DESCRIPTION OF CONTENTS:

All receipt confirming documents were received by [redacted] 7/1/05



C05409409

CENTRAL INTELLIGENCE AGENCY DOCUMENT RECEIPT	NOTICE TO RECIPIENT Sign and Return as Shown on Reverse Side	COURIER REC. NO.	DATE SENT 12 Jul '05

SENDER OF DOCUMENT(S)	ROOM	BLDG.	DATE DOCUMENT(S) SENT
Office of Inspector General/INV			12 July 2005

DESCRIPTION OF DOCUMENT(S) SENT

CIA NO.	DOCUMENT DATE	COPIES	DOCUMENT TITLE (IN BRIEF)	ATTACHMENTS	CLASS
	7/12/05	1 cy ea	10 SITREPS (Army Docs)	Hand carried	

RECIPIENT

ADDRESS OF RECIPIENT

Assistant United States Attorney
Eastern District of Virginia
Alexandria, VA 22314

DOCUMENT(S)

OF RECEIPT

FORM 615B 6-86 USE PREVIOUS EDITIONS

133

DOC 274

(b)(3)

SERIAL INNER ENVELOPE

TITLE OF CASE:	DATE ACQUIRED: 5/2/05
Allegation of Abuse of Detainee	DATE FILED: 5/2/05
	SERIAL NUMBER: [redacted]
	INVESTIGATOR NAME:
	FILE NUMBER:

DESCRIPTION OF CONTENTS

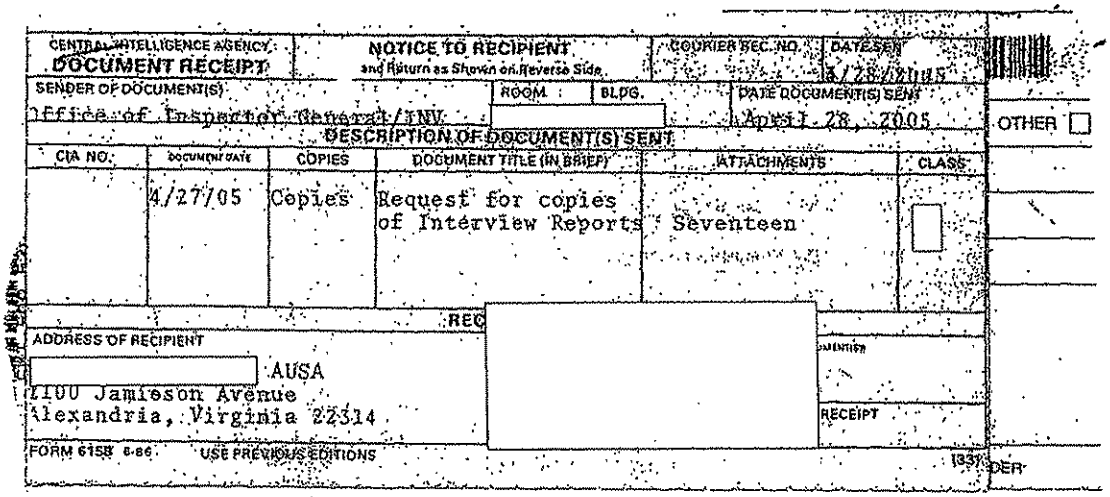
Receipt for packet of documents provided on 5/2/05 by Host

Receipt for packet of documents provided on 5/2/05 by Host

00231

GOVERNMENT EXHIBIT

PENGAD-Bayonne, N. J.



CENTRAL INTELLIGENCE AGENCY
DOCUMENT RECEIPT

NOTICE TO RECIPIENT
and Return as Shown on Reverse Side

COURIER REC. NO.

DATE SENT
4/28/2005

SENDER OF DOCUMENT(S)
Office of Inspector General/INV

ROOM

BLDG.

DATE DOCUMENT(S) SENT
April 28, 2005

OTHER ☐

DESCRIPTION OF DOCUMENT(S) SENT

CIA NO.	DOCUMENT DATE	COPIES	DOCUMENT TITLE (IN BRIEF)	ATTACHMENTS	CLASS.
	4/27/05	Copies	Request for copies of Interview Reports	Seventeen	

REC

ADDRESS OF RECIPIENT

AUSA
2100 Jamieson Avenue
Alexandria, Virginia 22314

ATTENTION

RECEIPT

FORM 615R 8-86 USE PREVIOUS EDITIONS

1331 DER