EXHIBIT 3

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OPEN SOCIETY JUSTICE INITIATIVE,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, NATIONAL SECURITY AGENCY and OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In this lawsuit, Plaintiff seeks injunctive relief to compel defendants Central Intelligence Agency ("CIA"), the Department of Defense ("DOD"), the National Security Agency ("NSA"), and the Office of the Director of National Intelligence ("ODNI") (together, the "Defendants") to immediately release records related to the killing of U.S. resident Jamal Khashoggi in response to Plaintiff's properly filed FOIA requests.

2. Plaintiff is bringing this action because, to date, Defendants have not issued determinations on Plaintiff's requests within the statutorily-prescribed time limit nor disclosed any responsive records.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff's principal place of business is in this district.

PARTIES

4. The Open Society Justice Initiative ("OSJI") is an operating public interest law center dedicated to upholding human rights and the rule of law through litigation, advocacy, research, and technical assistance. It is part of the Open Society Institute, a tax-exempt, non-partisan, not-for-profit organization, headquartered in New York City. OSJI is a "person" within the meaning of 5 U.S.C. § 551(2). Disseminating information is among OSJI's core activities. To accomplish these goals, OSJI maintains a website, http://www.justiceinitiative.org, through which it disseminates publications, articles, and multimedia files relating to its mission. It also directly distributes hard copies of publications and disseminates information through quarterly email newsletters, blogs, Twitter, and Facebook.

5. Defendant CIA is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The CIA has possession and control over some or all of the requested records.

6. Defendant DOD is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The DOD has possession and control over some or all of the requested records.

7. Defendant NSA is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The NSA has possession and control over some or all of the requested records.

8. Defendant ODNI is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The ODNI has possession and control over some or all of the requested records.

STATEMENT OF FACTS

9. Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.[1] On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.[2] Since then, Mr. Khashoggi's disappearance has been the subject of intense Congressional and public debate.

10. On October 10, 2018, a bipartisan group of 22 senators (including Sen. Bob Corker (R-Tenn.) and Sen. Robert Menendez (D-N.J.), the chairperson and the ranking member of the Senate Foreign Relations Committee, respectively) wrote a letter to President Trump requesting that he make a determination on the imposition of sanctions pursuant to the Global Magnitsky Human Rights Accountability Act with respect to any foreign person responsible for a gross violation of internationally recognized human rights in relation to Mr. Khashoggi.[3] Because the letter was co-signed by the two leaders of the Committee, the President is required, within 120 days of receiving the request, to determine, in the context of

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[1] Donna Abu Nasr, *Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic*, Bloomberg (Oct. 20, 2018), https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129_story.html?utm_term=.b99447153753.

[2] *Id*.

[3] Press Release, Chairman of the Senate Comm. on Foreign Relations, Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi (Oct. 10, 2018), https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi.

Mr. Khashoggi's case, whether one or more foreign persons has engaged in or is responsible for "extrajudicial killings, torture, or other gross violations of internationally recognized human rights"; and to submit to the two leaders a classified or unclassified report that includes "a statement of whether or not the President imposed or intends to impose sanctions with respect to the person" along with a description of any such sanctions.[4]

11. After repeatedly saying that Mr. Khashoggi had left the Consulate alive, the Saudi government finally acknowledged on October 19, 2018 that he had been killed inside the Saudi Consulate in Istanbul.[5] CIA Director Gina Haspel reportedly traveled to Turkey to review the case and listened to audio recordings that the Turkish government claimed captured Mr. Khashoggi's murder.[6] On November 16, 2018, the *Washington Post* reported that the CIA had "concluded that Saudi Crown Prince Mohammed bin Salman ordered the assassination of journalist Jamal Khashoggi in Istanbul."[7]

12. On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.[8] He stated, "After great independent research, we now know many details of this horrible crime. . . . King Salman and Crown Prince Mohammad bin Salman vigorously deny any

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4 Global Magnitsky Human Rights Accountability Act, § 1263(d) (22 U.S.C. § 2656 note).

5 Kevin Sullivan et al., *Saudi Arabia fires 5 top officials, arrests 18 Saudis, saying Khashoggi was killed in fight at consulate*, Wash. Post (Oct. 19, 2018), https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm_term=.76d983cad529.

6 *Khashoggi murder: CIA director Gina Haspel briefs Trump*, BBC News (Oct. 26, 2018), https://www.bbc.com/news/world-us-canada-45977041.

7 Shane Harris et al., *CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination*, Wash. Post (Nov. 16, 2018), https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html?utm_term=.b940c2f30d5b.

8 Statement from President Donald J. Trump on Standing with Saudi Arabia (Nov. 20, 2018), https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-standing-saudi-arabia/.

knowledge of the planning or execution of the murder of Mr. Khashoggi. Our intelligence agencies continue to assess all information, but it could very well be that the Crown Prince had knowledge of this tragic event – maybe he did and maybe he didn't!"[9] On another occasion, citing the CIA report in his possession, President Trump noted that the CIA "did not come to a conclusion" about the Crown Prince's involvement in the murder, adding that "[t]hey have feelings certain ways, but they didn't – I have the report."[10]

13. The President's statement standing with Saudi Arabia has been the subject of extensive public debate. Senators have vigorously disputed the President's characterization of the CIA's report.[11] When asked if the President was lying about the CIA's conclusion, Senator Jack Reed (D-R.I.) said, "Yes. The CIA concluded that the crown prince of Saudi Arabia was directly involved in the assassination of Khashoggi."[12] A *Wall Street Journal* editorial wrote, "we are aware of no President, not even such ruthless pragmatists as Richard Nixon or Lyndon Johnson, who would have written a public statement like this without so much as a grace note about America's abiding values and principles," and that it was "startling to see a U.S. President brag [about commercial deals with Saudi Arabia] in a statement about a bloodthirsty murder."[13] A State Department official who had seen the CIA's assessment on Mr. Khashoggi's killing

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9 *Id*.

10 Kate Sullivan & Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html.

11 *Id*.; Karoun Dimirjian et al., *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story. html?utm_term=.4dde49d6aeeb.

12 Sullivan & Cohen, *supra* note 10.

13 Editorial, *Trump's Crude Realpolitik*, Wall St. J. (Nov. 20, 2018), https://www.wsj.com/articles/trumps-crude-realpolitik-1542763629.

reportedly told ABC News that it was "blindingly obvious" that Crown Prince Mohammad bin Salman had ordered the killing and that there was "overwhelming consensus that the [Saudi] leadership is involved – no one is debating it within the government."[14] On November 20, 2018, former CIA Director John Brennan called for Congress to declassify the report, tweeting, "Since Mr. Trump excels in dishonesty, it is now up to members of Congress to obtain & declassify the CIA findings on Jamal Khashoggi's death. No one in Saudi Arabia – most especially the Crown Prince – should escape accountability for such a heinous act."[15]

14. On November 28, 2018, Secretary of State Mike Pompeo and Defense Secretary James Mattis briefed Senators behind closed doors in relation to Saudi Arabia, Yemen and the Khashoggi case. Despite bipartisan frustration at not hearing directly from CIA Director Gina Haspel on the Khashoggi case, she did not attend.[16] After that briefing, Secretary Pompeo refused to answer reporters' questions about why Gina Haspel did not attend, and told them, "I do believe I've read every piece of intelligence . . . . There is no direct reporting connecting the crown prince to the order to murder Jamal Khashoggi."[17]

15. Subsequent news reports suggest that Secretary Pompeo's choice of words obscure the CIA's conclusion that Crown Prince Mohammad bin Salman is culpable. The *Wall Street Journal*, based on its review of excerpts of the CIA's assessment of the murder, has

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[14] Tara Palmeri, '*Blindingly obvious' that Saudi crown prince ordered Khashoggi murder: Source*, ABC News (Nov. 20, 2018), https://abcnews.go.com/Politics/blindingly-obvious-saudi-crown-prince-ordered-khashoggi-murder/story?id=59305430.

[15] John O. Brennan (@JohnBrennan), Twitter (Nov. 20, 2018, 10:31 AM), https://twitter.com/JohnBrennan/status/1064949331868954629.

[16] Dimirjian et al., *supra* note 11.

[17] Dierdre Shesgreen, *Lawmakers livid after CIA director Gina Haspel a no-show for closed-door briefing on Khashoggi murder*, USA Today (Nov. 28, 2018), https://www.usatoday.com/story/news/world/2018/11/28/mike-pompeo-blasts-lawmakers-over-jamal-khashoggis-murder-saudi-arabia-yemen/2136140002/.

reported that the excerpts "state that the CIA has 'medium-to-high confidence' that Prince Mohammed 'personally targeted' Khashoggi and 'probably ordered his death.'"[18] The CIA reportedly notes in its assessment that it "'lack[s] direct reporting of the Crown Prince issuing a kill order,'" but its "judgment on Prince Mohammed's likely culpability . . . is based on the crown prince's personal focus on Mr. Khashoggi, his tight control over the Saudi operatives sent to Istanbul to kill him, 'and his authorizing some of the same operators to violently target other opponents.'"[19] The CIA assessment reportedly states, "We assess it is highly unlikely this team of operators . . . carried out the operation without Muhammed bin Salman's authorization."[20]

16. In a December 4, 2018 editorial in the *Wall Street Journal*, Senator Lindsey Graham (R-S.C.) said, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness."[21]

17. On December 4, 2018, after CIA Director Gina Haspel briefed senators in a closed session on the Khashoggi killing, Senator Graham told reporters, "I think [Crown Prince Mohammad bin Salman is] complicit in the murder of Mr. Khashoggi to the highest level possible."[22] He said that it was clear that Secretary Pompeo and Secretary Mattis were being "good soldiers" for the White House when they briefed senators the previous week, but that their

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18 Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460.

19 *Id*. (quoting excerpts from the report).

20 *Id*.

21 Lindsey Graham, Editorial, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj. com/articles/congress-gets-tough-on-the-saudis-1543880186.

22 Eric Schmitt & Nicholas Fandos, *Saudi Prince 'Complicit' in Khashoggi's Murder, Senators Say After C.I.A. Briefing*, N.Y. Times (Dec. 4, 2018), https://www nytimes.com/2018/12/04/us/politics/cia-senate-khashoggi- html.

assessments had been misleading.[23] In reference to Secretary Mattis's insistence that American officials had seen "no smoking gun" to indicate Crown Prince Mohammad bin Salman was to blame in Mr. Khashoggi's killing, Senator Graham said, "There is not a smoking gun, there's a smoking saw . . . . You have to be willfully blind [not to see it]."[24]

18. Similarly, Senate Foreign Relations Committee Chairman Bob Corker (R.-Tenn.) told reporters, "I have zero question in my mind that the crown prince directed the murder and was kept apprised of the situation all the way through . . . . If he was in front of a jury, he would have a unanimous verdict in about 30 minutes – a guilty verdict."[25]

19. On December 13, 2018, a bipartisan group of senators unanimously approved a resolution holding Crown Prince Mohammad Bin Salman responsible for the murder of Jamal Khashoggi.[26] In late December 2018, further debate centered around a video broadcast on Turkish television showing men carrying large suitcases inside the Saudi Consul General's gated residence in Istanbul, not far from the Saudi Consulate.[27] Turkish officials had previously said that Saudi officials had dissembled Mr. Khashoggi's body with a bone saw and carried them out of the Consulate in suitcases.[28] In January 2019, public debate on Mr. Khashoggi's killing

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23 *Id.*

24 *Id.*

25 Kristina Peterson & Nancy A. Youssef, *Senators Conclude the Saudi Crown Prince Ordered Journalist's Killing*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/bolton-calls-khashoggi-death-a-heinous-crime-1543942052.

26 Clare Foran et al., *Senate rebukes Trump, condemns Saudi crown prince for Khashoggi murder*, CNN (Dec. 13, 2018), https://www.cnn.com/2018/12/13/politics/corker-saudi-crown-prince-khashoggi/index.html.

27 Alan Yuhas, *Video on Turkish TV Is Said to Show Khashoggi's Remains Being Moved*, N.Y. Times (Dec. 31, 2018), https://www.nytimes.com/2018/12/31/world/middleeast/khashoggi-video-turkey.html.

28 *Id.*

continued after Netflix blocked a comedy show in Saudi Arabia critical of Crown Prince Mohammad Bin Salman and his role in Mr. Khashoggi's murder.[29]

20. The question of accountability for Mr. Khashoggi's murder remains pressing and unresolved. On January 3, 2019, Saudi Arabia announced the opening of a criminal trial against 11 individuals accused of killing Mr. Khashoggi.[30] The initial court hearing on January 3, 2019 was not public and the suspects were not named. It is unclear whether high-level officials such as Saud-al Qahtani, a top aide to Crown Prince Mohammad bin Salman, who is the subject of U.S. sanctions for his suspected integral role in the murder, are among the accused.[31] A spokesperson from the Office of the United Nations High Commissioner for Human Rights stated that the trial was "not sufficient" and called for an independent investigation with international involvement.[32] The *Washington Post* Editorial Board has lambasted the trial as a "pathetically weak" measure that is a "travesty of justice."[33] As a result, the Editorial Board has called for Congressional action, urging "[t]he new Democratic leadership in the House [to]

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29 James Griffiths & Euan McKirdy, *Netflix pulls 'Patriot Act' episode in Saudi Arabia after it criticized official account of Khashoggi killing*, CNN (Jan. 2, 2019), https://www.cnn.com/2019/01/01/middleeast/netflix-patriot-act-hasan-minhaj-jamal-khashoggi-intl/index.html.

30 *Jamal Khashoggi murder trial opens in Saudi Arabia*, BBC News (Jan. 3, 2019), https://www.bbc.com/news/world-middle-east-46747332.

31 Kareem Fahim, *Named as a key Saudi suspect in Khashoggi killing, former top royal adviser drops out of sight*, Wash. Post (Jan. 7, 2019), https://www.washingtonpost.com/world/named-as-a-key-saudi-suspect-in-khashoggi-killing-top-royal-adviser-drops-out-of-sight/2019/01/06/2aed0cae-0790-11e9-8942-0ef442e59094_story html?utm_term=.81856e6c02c2.

32 *Khashoggi trial in Saudi Arabia falls short of independent, international probe needed: UN rights chief*, UN News (Jan. 4, 2019), https://news.un.org/en/story/2019/01/1029772.

33 Editorial Board, *Saudi Arabia's trial for Khashoggi's murder is a travesty. Congress must insist on justice*, Wash. Post (Jan. 6, 2019), https://www.washingtonpost.com/opinions/global-opinions/saudi-arabias-trial-for-khashoggis-murder-is-a-travesty-congress-must-insist-on-justice/2019/01/06/c76531a8-1053-11e9-8938-5898adc28fa2_story html?utm_term=.c34e0eb2d04b.

advance new measures requiring U.S. sanctions on all those responsible for the murder, including Mohammed bin Salman . . . ."[34]

21. Senator Patrick Leahy (D.-Vt.) has stated that Senate and House committees should examine the killing and call Secretary Pompeo to testify, and incoming chair of the Foreign Affairs Committee Eliot Engel (D.-N.Y. 16th District) has committed to conducting a "top to bottom" review of U.S. relations with Saudi Arabia.[35]

22. In a press briefing on January 4, 2019, a State Department official stated that Secretary Pompeo has "been consistent . . . to really push the two points of accountability and credibility" with Saudi Arabia but that neither "the narrative emerging from the Saudis or the legal process has yet hit that threshold of credibility and accountability."[36] The official further stated that the removal of senior Saudi officials from their posts due to their involvement in the killing did not amount to holding them responsible for the killing.[37]

23. According to the January 4, 2019 press briefing, Secretary Pompeo is planning to seek an update on Saudi Arabia's investigation into Mr. Khashoggi's murder, emphasize the need for a credible legal process, and press Saudi officials on diplomatic conclusions that the Kingdom has failed to sufficiently answer for the killing when he visits the country during a trip

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34 *Id*.

35 Colum Lynch, *Getting Away with Murder*, Foreign Affairs (Jan. 4, 2019), https://foreignpolicy.com/2019/01/04/getting-away-with-murder/.

36 Lesley Wroughton, *U.S. says has yet to see credible version of Khashoggi's killing from Saudis*, Reuters (Jan. 4, 2019), https://www.reuters.com/article/us-saudi-khashoggi-usa/u-s-says-has-yet-to-see-credible-version-of-khashoggis-killing-from-saudis-idUSKCN1OY19T.

37 Edward Wong, *Pompeo Plans to Press Saudi Leaders Over Killing of Jamal Khashoggi*, N.Y. Times (Jan. 4, 2019).

to the Middle East scheduled for January 8, 2019 to January 19, 2019.[38] However, on January 7, 2019, *Politico* reported that two people briefed on the plans for Secretary Pompeo's trip stated that Secretary Pompeo "is due to applaud Saudi Arabia" for bringing Mr. Khashoggi's killers to justice in an upcoming speech during the trip.[39]

24. The ongoing debate in the media and in Congress over the circumstances of Mr. Khashoggi's killing indicates that it remains a matter of urgent interest to the public. The immediate release of the requested records is imperative for the public to properly and timely evaluate Congressional and Executive responses to Mr. Khashoggi's killing, including, but not limited to, President Trump's sanctions determination that is due to be submitted to the chairperson and ranking member of the Senate Foreign Relations Committee by about February 8, 2019.

PLAINTIFF'S FOIA REQUESTS

25. On December 4, 2018, Plaintiff submitted FOIA requests to all Defendants seeking disclosure of "all records relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA's findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible."[40] Based on information and belief, all Defendants received the FOIA requests by December 6, 2018.

26. Plaintiff requested expedited processing of all of the requests on the ground that it is an organization "primarily engaged in disseminating information" and there is a "compelling

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38 *Pompeo to Seek Khashoggi Case Update on Middle East trip: Statement*, Reuters (Jan. 4, 2019), https://www.voanews.com/a/pompeo-to-seek-khashoggi-case-update-on-middle-east-trip-statement/4729006 html; Wroughton, *supra* note 36; Wong, *supra* note 37.

39 Nahal Toosi, *Pompeo, in Cairo speech, to rebuke Obama's Mideast vision*, Politico (Jan 7. 2019), https://www.politico.com/story/2019/01/07/pompeo-middle-east-speech-rebuke-obamas-1085570.

40 Copies of these requests are attached hereto as Exhibit A.

need" for the records sought because they contain information "urgent[ly]" needed to "inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

27. Plaintiff requested fee waivers for all of the requests on the grounds that it is a "representative of the news media" within the meaning of FOIA and that disclosure of the requested records is in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. §§ 552(a)(4)(A)(ii)(II); 552(a)(4)(A)(iii).

AGENCY RESPONSES

28. By letter dated December 7, 2018, Defendant CIA acknowledged receipt of Plaintiff's request and assigned it reference number F-2019-00604. In the same letter, the CIA informed Plaintiff that it had denied Plaintiff's request for expedited processing and that it had, as a matter of administrative discretion, waived the fees for the request. On December 26, 2018, Plaintiff called the CIA's FOIA requester service center and confirmed that the CIA's FOIA services remained operational despite the government shutdown. Defendant CIA has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

29. To date, Defendant DOD has not responded to Plaintiff's request. On December 26, 2018, Plaintiff called a DOD FOIA officer and confirmed that the DOD's FOIA services remained operational despite the government shutdown. Defendant DOD has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

30. By letter dated December 11, 2018, Defendant NSA acknowledged receipt of Plaintiff's request and assigned it case number 105847. In the same letter, the NSA informed Plaintiff that it had denied Plaintiff's request for expedited processing and that because there would be no processing fees, it had not addressed Plaintiff's request for a fee waiver. On December 26, 2018, Plaintiff called the NSA's FOIA requester service center and confirmed that the NSA's FOIA services remained operational despite the government shutdown. Defendant NSA has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

31. By letter dated December 13, 2018, Defendant ODNI acknowledged receipt of Plaintiff's request and assigned it reference number DF-2019-00078. In the same letter, the ODNI informed Plaintiff that it had denied Plaintiff's request for expedited processing and granted Plaintiff's request for a fee waiver.

32. By email dated December 21, 2018, Defendant ODNI, purporting to "perfect" Plaintiff's request, asked Plaintiff whether it was seeking disclosure of "any and all records that mention, either directly, or indirectly the killing of Khashoggi, such as emails, that may contain a news article, or non-substantive comments from one employee to another" or "specific reports or documents created by ODNI that directly describe the killing, and the circumstances associated with the killing." ODNI informed Plaintiff that it would hold the request in abeyance for 30 days, until midnight on January 20, 2019, waiting for Plaintiff to "clarify/narrow the scope" of its request and that if ODNI had not heard from Plaintiff by then, it would "close" the request. ODNI did not inform Plaintiff of any right to appeal. By email dated December 25, 2018, Plaintiff responded that the scope of its FOIA request was clear and that it was requesting, *inter alia*, both categories of information identified by ODNI in its email. By email dated December

26, 2018, Defendant ODNI responded that it had forwarded Plaintiff's email to the ODNI/FOIA Chief, who would "review and respond to . . . [Plaintiff] directly."

33. On December 26, 2018, Plaintiff called an ODNI FOIA officer and confirmed that the ODNI's FOIA services remained operational despite the government shutdown. Defendant ODNI has not made a determination on Plaintiff's request as required by FOIA and has not disclosed any responsive records.

34. Plaintiff has constructively exhausted administrative remedies on account of Defendants' failure to comply with the 20-day time limit for making a determination on Plaintiff's FOIA requests as required by FOIA.

CAUSES OF ACTION

Violation of the Freedom of Information Act for Improper Withholding of Agency Records

1. Plaintiff repeats, re-alleges, and incorporates the foregoing paragraphs as if set forth in full.

2. Defendants have improperly withheld the requested records from Plaintiff by failing to comply with the statutory time limit for rendering a determination on Plaintiff's FOIA requests in violation of 5 U.S.C. § 552(a)(6)(A)(i) and Defendants' corresponding regulations.

3. Defendants' failure to make reasonable efforts to search for records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendants' corresponding regulations.

4. Defendants' failure to promptly disclose records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

5. Defendants' failure to grant Plaintiff's requests for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

6. Defendant DOD's failure to grant Plaintiff's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), (iii) and Defendant's corresponding regulations.

7. Plaintiff has exhausted all applicable administrative remedies.

8. Plaintiff is entitled to injunctive relief with respect to the prompt disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Expedite its consideration of this action pursuant to 28 U.S.C. § 1657(a);

B. Order Defendants immediately to conduct a thorough search for records responsive to Plaintiff's requests;

C. Order Defendants immediately to process any responsive records for disclosure and produce such records to Plaintiff;

D. Enjoin Defendants from charging Plaintiff search, review, and duplication fees relating to the requests;

E. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and

F. Grant such other relief as the Court may deem just and proper.

Dated: January 9, 2019
New York, New York

Respectfully submitted,

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Exhibit A

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December 4, 2018

Via Facsimile and Federal Express
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505
(703) 613-3007 (facsimile)

Re: Freedom of Information Act Request for Records Relating to the killing of Jamal Khashoggi

Dear Sir or Madam:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA") and the Central Intelligence Agency ("CIA") implementing regulations, 32 C.F.R. § 1900.01 *et seq*. The Open Society Justice Initiative, an operating public interest law center that is part of the Open Society Foundations, submits this Request. Expedited processing is requested pursuant to 5 U.S.C. § 552(a)(6)(E)(i).

I. Background

Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.[1] On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.[2] On October 10, 2018, a bipartisan group of 22 senators wrote to President Trump, triggering an investigation and a sanctions determination in relation to Khashoggi's disappearance.[3]

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[3] Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi*, (Oct. 10, 2018), https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi.

After repeatedly saying that Khashoggi had left the consulate alive, the Saudi government finally acknowledged on October 19 that he had been killed inside the Saudi Consulate in Istanbul.[4] CIA Director Gina Haspel reportedly traveled to Turkey to review the case and listened to audio recordings that the Turkish government claimed captured Khashoggi's murder.[5] On November 16, 2018, the *Washington Post* reported that the CIA had "concluded that Saudi Crown Prince Mohammed bin Salman ordered the assassination of journalist Jamal Khashoggi in Istanbul."[6]

On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.[7] He stated, "After great independent research, we now know many details of this horrible crime. . . . King Salman and Crown Prince Mohammad bin Salman vigorously deny any knowledge of the planning or execution of the murder of Mr. Khashoggi. Our intelligence agencies continue to assess all information, but it could very well be that the Crown Prince had knowledge of this tragic event – maybe he did and maybe he didn't!"[8] On another occasion, citing the CIA report in his possession, President Trump noted that the CIA "did not come to a conclusion" about the crown prince's involvement in the murder, adding that "[t]hey have feelings certain ways, but they didn't -- I have the report."[9]

The President's statement standing with Saudi Arabia has been the subject of extensive public debate. Senators have vigorously disputed the President's characterization of the CIA's report.[10] When asked if the President was lying about the CIA's conclusion, Senator Jack Reed (D-R.I.) said, "Yes. The CIA concluded that the crown prince of Saudi Arabia was directly involved in the assassination of Khashoggi."[11] A Wall Street Journal editorial wrote, "we are aware of no President, not even such ruthless pragmatists as Richard Nixon or Lyndon Johnson, who would have written a public statement like this without so much as a grace note about America's abiding

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[4] Kevin Sullivan, Loveday Morris and Tamer el-Ghobashy, *Saudi Arabia fires 5 top officials, arrests 18 Saudis, saying Khashoggi was killed in fight at consulate*, Wash. Post (Oct. 19, 2018), https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm_term=.76d983cad529.

[5] *Khashoggi murder: CIA director Gina Haspel briefs Trump*, BBC News (Oct. 26, 2018), https://www.bbc.com/news/world-us-canada-45977041.

[6] Shane Harris, Greg Miller, and Josh Dawsey, *CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination*, Wash. Post (Nov. 16, 2018), https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story html?utm_term=.b940c2f30d5b.

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[8] *Id.*

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[10] *Id.*; Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb.

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values and principles," and that it was "startling to see a U.S. President brag [about commercial deals with the Saudis] in a statement about a bloodthirsty murder."[12] A State Department official who had seen the CIA's assessment on Khashoggi's killing reportedly told ABC News that it was "blindingly obvious" that the Crown Prince had ordered the killing and that there was "overwhelming consensus that the [Saudi] leadership is involved—no one is debating it within the government."[13] On November 20, 2018, former CIA Director John Brennan called for Congress to declassify the report, tweeting, "Since Mr. Trump excels in dishonesty, it is now up to members of Congress to obtain & declassify the CIA findings on Jamal Khashoggi's death. No one in Saudi Arabia—most especially the Crown Prince—should escape accountability for such a heinous act."[14]

On November 28, 2018, Secretary of State Mike Pompeo and Defense Secretary James Mattis briefed Senators behind closed doors in relation to Saudi Arabia, Yemen and the Khashoggi case. Despite bipartisan frustration at not hearing directly from CIA Director Gina Haspel on the Khashoggi case, she did not attend.[15] After that briefing, Secretary Pompeo refused to answer reporters' questions about why Gina Haspel did not attend, and told them, "I do believe I've read every piece of intelligence . . . There is no direct reporting connecting the crown prince to the order to murder of Jamal Khashoggi."[16]

Subsequent news reports suggest that Secretary Pompeo's choice of words obscure the CIA's conclusion that the Crown Prince is culpable. The *Wall Street Journal*, based on its review of excerpts of the CIA's assessment of the murder, has reported that the excerpts "state that the CIA has 'medium-to-high confidence' that Prince Mohammed 'personally targeted' Khashoggi and 'probably ordered his death.'" [17] The CIA reportedly notes in its assessment that it " 'lack[s] direct reporting of the Crown Prince issuing a kill order,' " but its "judgment on Prince Mohammed's likely culpability . . . is based on the crown prince's personal focus on Mr. Khashoggi, his tight control over the Saudi operatives sent to Istanbul to kill him, 'and his authorizing some of the same operators to violently target other opponents.' "[18] The CIA assessment reportedly states,

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[12] *Trump's Crude Realpolitik*, Wall St. J. (Nov. 20, 2018), https://www.wsj.com/articles/trumps-crude-realpolitik-1542763629.

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[14] John O. Brennan (@JohnBrennan), Twitter (Nov. 20, 2018, 10:31 AM), https://twitter.com/JohnBrennan/status/1064949331868954629.

[15] Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb.

[16] Dierdre Shesgreen, *Lawmakers livid after CIA director Gina Haspel a no-show for closed-door briefing on Khashoggi murder*, USA Today (Nov. 28, 2018), https://www.usatoday.com/story/news/world/2018/11/28/mike-pompeo-blasts-lawmakers-over-jamal-khashoggis-murder-saudi-arabia-yemen/2136140002/.

[17] Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460.

[18] *Id*. (quoting excerpts from the report).

"We assess it is highly unlikely this team of operators . . . carried out the operation without Muhammed bin Salman's authorization." [19]

In a December 4, 2018, editorial in the Wall Street Journal, Senator Lindsey Graham (R-S.C.) said, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness."[20]

II. Records Requested

The Open Society Justice Initiative requests disclosure of all records[21] relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA's findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible.

III. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c). There is a "compelling need" for the requested records because they are "relevant to a subject of public urgency concerning an actual or alleged Federal Government activity" and are requested by an organization "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2).

As reflected in the news today, information relating to the circumstances of Khashoggi's killing is the subject of urgent public debate.[22] The records requested herein are directly "relevant to a subject of public urgency concerning an actual or alleged Federal Government activity." They are urgently needed for a public evaluation of the Federal Government's efforts to investigate and hold accountable those responsible for Khashoggi's killing. Indeed, the public is unable meaningfully to evaluate the Federal Government's response to the Khashoggi killing without reliable information about the circumstances of the killing and documents currently in the Government's possession.

Mr. Khashoggi was a U.S. resident and a *Washington Post* journalist who was killed in a brutal manner, possibly for being a vocal critic of the Saudi government and the Saudi Crown Prince.

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[19] *Id*.

[20] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186.

[21] For the purpose of this request, the term "records" includes any and all reports, statements, examinations, memoranda, correspondence, notes, indices, audio or video recordings, digital files, or other records. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records.

[22] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186; *A New CIA Leak Adds to the Evidence Against MBS. Congress Must Act*, Wash. Post (Dec. 4, 2018), https://www.washingtonpost.com/opinions/global-opinions/the-trump-administration-is-denying-the-reality-of-saudi-arabias-role-in-khashoggis-death/2018/12/03/db2304ce-f724-11e8-8d64-4e79db33382f_story.html?utm_term=.321533852566.

The American public has a right to know what its government is doing to uphold human rights and the rule of law in this context. Indeed, as Senator Lindsey Graham has aptly noted, "In the long run, America's power as well as its principles depends on an international system in which strongmen can't act on their violent whims and the rule of law enables social stability and the free flow of trade." [23] He has observed, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness. Failing to censure him would give authoritarians a green light to murder their critics. To borrow a Churchill phrase, inaction wouldn't only give the disturbing impression the U.S. has a price, but also that its price is quite low." [24] Since October 2018, when news about Jamal Khashoggi's disappearance first broke, the subject of the United States' assessment of what happened to him and its response has been the subject of intense bipartisan Congressional concern and public debate.[25]

Furthermore, the Open Society Justice Initiative is "primarily engaged in disseminating information" within the meaning of the above-cited statute and regulations. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" within the meaning of the statute and regulations); *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was a representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (National Security Archive deemed a representative of the news media after publishing one book and indicating its intention to publish a set of documents on national and international politics and nuclear policy).

The Open Society Justice Initiative is an operational public interest law center dedicated to upholding human rights and the rule of law. It is part of the Open Society Foundations, a tax-exempt, not-for-profit organization. Disseminating information is among the Justice Initiative's core activities. To accomplish these goals, the Open Society Justice Initiative maintains a website, http://www.justiceinitiative.org, through which it disseminates publications, articles, and

[23] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186.

[24] *Id.*

[25] *Id.*; Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi* (Oct. 10, 2018), https://www foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi; *Can Donald Trump handle the truth about Jamal Khashoggi*? USA Today, (Oct. 15, 2018), https://www.usatoday.com/story/opinion/2018/10/15/can-donald-trump-handle-truth-jamal-khashoggis-fate-editorials-debates/1646308002/; *There can be no coverup of this act of pure evil*, Wash. Post, (Oct. 19 2018), https://www.washingtonpost.com/opinions/global-opinions/there-can-be-no-coverup-of-this-act-of-pure-evil/2018/10/19/415a662e-d308-11e8-83d6-291fcead2ab1_story.html?utm_term=.9bd21f340393; *Jamal Khashoggi, missing activist and writer, killed in fight, Saudi state media reports*, Fox News (Oct. 19, 2018), https://www foxnews.com/world/jamal-khashoggi-missing-activist-and-writer-killed-in-fight-saudi-state-media-reports; *Saudi Arabia after Khashoggi*, N.Y. Times (Nov. 15, 2018), https://www nytimes.com/2018/11/15/opinion/saudi-arabia-mohammed-bin-salman-trump-khashoggi.html; Lisa Mascaro, *Senators Set to Grill Trump Administration Officials Over the Response to Jamal Khashoggi's Killing*, Time.com (Nov. 28, 2018), http://time.com/5465388/senators-closed-door-briefing-jamal-khashoggi/.

multimedia files relating to its mission. It also directly distributes hard copies of publications. An index of Justice Initiative publications (currently 377 in number) on a broad range of human rights issues is available at https://osf.to/2zr15cP. In addition, the Justice Initiative disseminates information through quarterly email newsletters (*see, e.g.*, https://us1.campaign-archive.com/home/?u=52d98944f5466486ab8567329&id=80d33e3910), blogs (*see* https://www.opensocietyfoundations.org/voices), Twitter (*see* https://twitter.com/OSFJustice) and Facebook (*see* https://www.facebook.com/OpenSocietyFoundations). The Open Society Justice Initiative plans to analyze and disseminate to the public the information gathered through this Request.

For all of the aforementioned reasons, this request warrants expedited processing.

IV. Application for Fee Waiver

We request a waiver of search, review, and duplication fees on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 32 C.F.R. § 1900.13(b)(2) (same).

As set forth in Section III above, the records at issue will contribute significantly to public understanding of the government's assessment of and response to Khashoggi's killing. Moreover, the Open Society Justice Initiative, a non-profit entity, does not seek disclosure of these records for any commercial gain, and intends to make all disclosed records available at no cost on its website.

In addition, for the same reasons that render it "primarily engaged in disseminating information," *see* Section III *supra*, the Open Society Justice Initiative is also a "representative of the news media" within the meaning of the FOIA. As such, it is entitled to a fee waiver. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II) (providing that fees shall be limited to duplication fees when request made for noncommercial purpose by representative of the news media); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress's intent that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requesters.")

* * * * *

Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 U.S.C. § 552(a)(6)(A)(i) respectively, we look forward to your reply to the Request for expedited processing within 10 calendar days, and to the Request for disclosure within twenty days.

The Open Society Justice Initiative requests that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. *See* 5 U.S.C. § 552(b). We also reserve the right to appeal any decision in relation to this Request.

Thank you for your attention to this Request. Please furnish all applicable records to:

Amrit Singh
Director, Accountability, Liberty and
Transparency Division
Open Society Justice Initiative
224 West 57th Street
New York, New York 10019
Email: amrit.singh@opensocietyfoundations.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Amrit Singh
James Goldston
Open Society Justice Initiative
224 W. 57th St.
New York, New York 10019
Ph: 212-5480600
Fax: 212-5484662

OPEN SOCIETY JUSTICE INITIATIVE
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December 4, 2018

Via Federal Express
Defense Freedom of Information Division
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act Request for Records Relating to the killing of Jamal Khashoggi

Dear Sir or Madam:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA") and implementing regulations, 32 C.F.R. § 286.8 *et seq*. The Open Society Justice Initiative, an operating public interest law center that is part of the Open Society Foundations, submits this Request. Expedited processing is requested pursuant to 5 U.S.C. § 552(a)(6)(E)(i).

I. Background

Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.[1] On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.[2] On October 10, 2018, a bipartisan group of 22 senators wrote to President Trump, triggering an investigation and a sanctions determination in relation to Khashoggi's disappearance.[3]

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[13] Tara Palmeri, '*Blindingly obvious' that Saudi crown prince ordered Khashoggi murder: Source*, ABC News (Nov. 20, 2018), https://abcnews.go.com/Politics/blindingly-obvious-saudi-crown-prince-ordered-khashoggi-murder/story?id=59305430.

[14] John O. Brennan (@JohnBrennan), Twitter (Nov. 20, 2018, 10:31 AM), https://twitter.com/JohnBrennan/status/1064949331868954629.

[15] Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb.

[16] Dierdre Shesgreen, *Lawmakers livid after CIA director Gina Haspel a no-show for closed-door briefing on Khashoggi murder*, USA Today (Nov. 28, 2018), https://www.usatoday.com/story/news/world/2018/11/28/mike-pompeo-blasts-lawmakers-over-jamal-khashoggis-murder-saudi-arabia-yemen/2136140002/.

[17] Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460.

[18] *Id*. (quoting excerpts from the report).

[19] *Id*.

In a December 4, 2018, editorial in the Wall Street Journal, Senator Lindsey Graham (R-S.C.) said, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness."[20]

II. Records Requested

The Open Society Justice Initiative requests disclosure of all records[21] relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA's findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible.

III. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 286.8(e). There is a "compelling need" for the requested records because they are urgently needed to inform the public "concerning an actual or alleged Federal Government activity" and are requested by an organization "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 286.8(e).

As reflected in the news today, information relating to the circumstances of Khashoggi's killing is the subject of urgent public debate.[22] The records requested herein are urgently needed for a public evaluation of the Federal Government's efforts to investigate and hold accountable those responsible for Khashoggi's killing. Indeed, the public is unable meaningfully to evaluate the Federal Government's response to the Khashoggi killing without reliable information about the circumstances of the killing and documents currently in the Government's possession.

Mr. Khashoggi was a U.S. resident and a *Washington Post* journalist who was killed in a brutal manner, possibly for being a vocal critic of the Saudi government and the Saudi Crown Prince. The American public has a right to know what its government is doing to uphold human rights and the rule of law in this context. Indeed, as Senator Lindsey Graham has aptly noted, "In the long run, America's power as well as its principles depends on an international system in which strongmen can't act on their violent whims and the rule of law enables social stability and the free

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[20] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186.

[21] For the purpose of this request, the term "records" includes any and all reports, statements, examinations, memoranda, correspondence, notes, indices, audio or video recordings, digital files, or other records. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records.

[22] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186; *A New CIA Leak Adds to the Evidence Against MBS. Congress Must Act*, Wash. Post (Dec. 4, 2018), https://www.washingtonpost.com/opinions/global-opinions/the-trump-administration-is-denying-the-reality-of-saudi-arabias-role-in-khashoggis-death/2018/12/03/db2304ce-f724-11e8-8d64-4e79db33382f_story.html?utm_term=.321533852566.

flow of trade." [23] He has observed, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness. Failing to censure him would give authoritarians a green light to murder their critics. To borrow a Churchill phrase, inaction wouldn't only give the disturbing impression the U.S. has a price, but also that its price is quite low." [24] Since October 2018, when news about Jamal Khashoggi's disappearance first broke, the subject of the United States' assessment of what happened to him and its response has been the subject of intense bipartisan Congressional concern and public debate.[25]

Furthermore, the Open Society Justice Initiative is "primarily engaged in disseminating information" within the meaning of the above-cited statute and regulations. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" within the meaning of the statute and regulations); *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was a representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (National Security Archive deemed a representative of the news media after publishing one book and indicating its intention to publish a set of documents on national and international politics and nuclear policy).

The Open Society Justice Initiative is an operational public interest law center dedicated to upholding human rights and the rule of law. It is part of the Open Society Foundations, a tax-exempt, not-for-profit organization. Disseminating information is among the Justice Initiative's core activities. To accomplish these goals, the Open Society Justice Initiative maintains a website, http://www.justiceinitiative.org, through which it disseminates publications, articles, and multimedia files relating to its mission. It also directly distributes hard copies of publications. An index of Justice Initiative publications (currently 377 in number) on a broad range of human rights issues is available at https://osf.to/2zr15cP. In addition, the Justice Initiative disseminates information through quarterly email newsletters (*see, e.g.*, https://us1.campaign-

[23] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186.

[24] *Id.*

[25] *Id.*; Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi* (Oct. 10, 2018), https://www foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi; *Can Donald Trump handle the truth about Jamal Khashoggi*? USA Today, (Oct. 15, 2018), https://www.usatoday.com/story/opinion/2018/10/15/can-donald-trump-handle-truth-jamal-khashoggis-fate-editorials-debates/1646308002/; *There can be no coverup of this act of pure evil*, Wash. Post, (Oct. 19 2018), https://www.washingtonpost.com/opinions/global-opinions/there-can-be-no-coverup-of-this-act-of-pure-evil/2018/10/19/415a662e-d308-11e8-83d6-291fcead2ab1_story.html?utm_term=.9bd21f340393; *Jamal Khashoggi, missing activist and writer, killed in fight, Saudi state media reports*, Fox News (Oct. 19, 2018), https://www foxnews.com/world/jamal-khashoggi-missing-activist-and-writer-killed-in-fight-saudi-state-media-reports; *Saudi Arabia after Khashoggi*, N.Y. Times (Nov. 15, 2018), https://www nytimes.com/2018/11/15/opinion/saudi-arabia-mohammed-bin-salman-trump-khashoggi.html; Lisa Mascaro, *Senators Set to Grill Trump Administration Officials Over the Response to Jamal Khashoggi's Killing*, Time.com (Nov. 28, 2018), http://time.com/5465388/senators-closed-door-briefing-jamal-khashoggi/.

archive.com/home/?u=52d98944f5466486ab8567329&id=80d33e3910), blogs (*see* https://www.opensocietyfoundations.org/voices), Twitter (*see* https://twitter.com/OSFJustice) and Facebook (*see* https://www.facebook.com/OpenSocietyFoundations). The Open Society Justice Initiative plans to analyze and disseminate to the public the information gathered through this Request.

For all of the aforementioned reasons, this request warrants expedited processing.

IV. Application for Fee Waiver

We request a waiver of search, review, and duplication fees on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

As set forth in Section III above, the records at issue will contribute significantly to public understanding of the government's assessment of and response to Khashoggi's killing. Moreover, the Open Society Justice Initiative, a non-profit entity, does not seek disclosure of these records for any commercial gain, and intends to make all disclosed records available at no cost on its website.

In addition, for the same reasons that render it "primarily engaged in disseminating information," *see* Section III *supra*, the Open Society Justice Initiative is also a "representative of the news media" within the meaning of the FOIA. As such, it is entitled to a fee waiver. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II) (providing that fees shall be limited to duplication fees when request made for noncommercial purpose by representative of the news media); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress's intent that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requesters.")

* * * * *

Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 U.S.C. § 552(a)(6)(A)(i) respectively, we look forward to your reply to the Request for expedited processing within 10 calendar days, and to the Request for disclosure within twenty days.

The Open Society Justice Initiative requests that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. *See* 5 U.S.C. § 552(b). We also reserve the right to appeal any decision in relation to this Request.

Thank you for your attention to this Request. Please furnish all applicable records to:

Amrit Singh
Director, Accountability, Liberty and
Transparency Division
Open Society Justice Initiative
224 West 57th Street
New York, New York 10019
Email: amrit.singh@opensocietyfoundations.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Amrit Singh
James Goldston
Open Society Justice Initiative
224 W. 57th St.
New York, New York 10019
Ph: 212-5480600
Fax: 212-5484662

OPEN SOCIETY JUSTICE INITIATIVE

James A. Goldston
Executive Director

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December 4, 2018

Via Facsimile and Federal Express
National Security Agency
Attn: FOIA/PA Office, 9800 Savage Road,
Suite 6932 Ft. George G. Meade,
MD 20755 6932
(443) 479 3612 (facsimile)

Re: Freedom of Information Act Request for Records Relating to the killing of Jamal Khashoggi

Dear Sir or Madam:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA") and implementing regulations, 32 C.F.R. § 286.8 *et seq*. The Open Society Justice Initiative, an operating public interest law center that is part of the Open Society Foundations, submits this Request. Expedited processing is requested pursuant to 5 U.S.C. § 552(a)(6)(E)(i).

I. Background

Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.[1] On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.[2] On October 10, 2018, a bipartisan group of 22 senators wrote to President Trump, triggering an investigation and a sanctions determination in relation to Khashoggi's disappearance.[3]

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[1] Donna Abu Nasr, *Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic*, [Bloomberg] (Oct. 20, 2018), https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129_story html?utm_term=.b99447153753.

[2] *Id*.

[3] Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi*, (Oct. 10, 2018), https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi.

After repeatedly saying that Khashoggi had left the consulate alive, the Saudi government finally acknowledged on October 19 that he had been killed inside the Saudi Consulate in Istanbul.[4] CIA Director Gina Haspel reportedly traveled to Turkey to review the case and listened to audio recordings that the Turkish government claimed captured Khashoggi's murder.[5] On November 16, 2018, the *Washington Post* reported that the CIA had "concluded that Saudi Crown Prince Mohammed bin Salman ordered the assassination of journalist Jamal Khashoggi in Istanbul."[6]

On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.[7] He stated, "After great independent research, we now know many details of this horrible crime. . . . King Salman and Crown Prince Mohammad bin Salman vigorously deny any knowledge of the planning or execution of the murder of Mr. Khashoggi. Our intelligence agencies continue to assess all information, but it could very well be that the Crown Prince had knowledge of this tragic event – maybe he did and maybe he didn't!"[8] On another occasion, citing the CIA report in his possession, President Trump noted that the CIA "did not come to a conclusion" about the crown prince's involvement in the murder, adding that "[t]hey have feelings certain ways, but they didn't -- I have the report."[9]

The President's statement standing with Saudi Arabia has been the subject of extensive public debate. Senators have vigorously disputed the President's characterization of the CIA's report.[10] When asked if the President was lying about the CIA's conclusion, Senator Jack Reed (D-R.I.) said, "Yes. The CIA concluded that the crown prince of Saudi Arabia was directly involved in the assassination of Khashoggi."[11] A Wall Street Journal editorial wrote, "we are aware of no President, not even such ruthless pragmatists as Richard Nixon or Lyndon Johnson, who would

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[4] Kevin Sullivan, Loveday Morris and Tamer el-Ghobashy, *Saudi Arabia fires 5 top officials, arrests 18 Saudis, saying Khashoggi was killed in fight at consulate*, Wash. Post (Oct. 19, 2018), https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm_term=.76d983cad529.

[5] *Khashoggi murder: CIA director Gina Haspel briefs Trump*, BBC News (Oct. 26, 2018), https://www.bbc.com/news/world-us-canada-45977041.

[6] Shane Harris, Greg Miller, and Josh Dawsey, *CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination*, Wash. Post (Nov. 16, 2018), https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story html?utm_term=.b940c2f30d5b.

[7] Statement from President Donald J. Trump on Standing with Saudi Arabia (Nov. 20, 2018), https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-standing-saudi-arabia/.

[8] *Id.*

[9] Kate Sullivan and Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html.

[10] *Id.*; Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb.

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have written a public statement like this without so much as a grace note about America's abiding values and principles," and that it was "startling to see a U.S. President brag [about commercial deals with the Saudis] in a statement about a bloodthirsty murder."[12] A State Department official who had seen the CIA's assessment on Khashoggi's killing reportedly told ABC News that it was "blindingly obvious" that the Crown Prince had ordered the killing and that there was "overwhelming consensus that the [Saudi] leadership is involved—no one is debating it within the government."[13] On November 20, 2018, former CIA Director John Brennan called for Congress to declassify the report, tweeting, "Since Mr. Trump excels in dishonesty, it is now up to members of Congress to obtain & declassify the CIA findings on Jamal Khashoggi's death. No one in Saudi Arabia—most especially the Crown Prince—should escape accountability for such a heinous act."[14]

On November 28, 2018, Secretary of State Mike Pompeo and Defense Secretary James Mattis briefed Senators behind closed doors in relation to Saudi Arabia, Yemen and the Khashoggi case. Despite bipartisan frustration at not hearing directly from CIA Director Gina Haspel on the Khashoggi case, she did not attend.[15] After that briefing, Secretary Pompeo refused to answer reporters' questions about why Gina Haspel did not attend, and told them, "I do believe I've read every piece of intelligence . . . There is no direct reporting connecting the crown prince to the order to murder of Jamal Khashoggi."[16]

Subsequent news reports suggest that Secretary Pompeo's choice of words obscure the CIA's conclusion that the Crown Prince is culpable. The *Wall Street Journal*, based on its review of excerpts of the CIA's assessment of the murder, has reported that the excerpts "state that the CIA has 'medium-to-high confidence' that Prince Mohammed 'personally targeted' Khashoggi and 'probably ordered his death.'" [17] The CIA reportedly notes in its assessment that it " 'lack[s] direct reporting of the Crown Prince issuing a kill order,' " but its "judgment on Prince Mohammed's likely culpability . . . is based on the crown prince's personal focus on Mr. Khashoggi, his tight control over the Saudi operatives sent to Istanbul to kill him, 'and his authorizing some of the same operators to violently target other opponents.' "[18] The CIA assessment reportedly states,

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[12] *Trump's Crude Realpolitik*, Wall St. J. (Nov. 20, 2018), https://www.wsj.com/articles/trumps-crude-realpolitik-1542763629.

[13] Tara Palmeri, '*Blindingly obvious' that Saudi crown prince ordered Khashoggi murder: Source*, ABC News (Nov. 20, 2018), https://abcnews.go.com/Politics/blindingly-obvious-saudi-crown-prince-ordered-khashoggi-murder/story?id=59305430.

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[17] Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460.

[18] *Id*. (quoting excerpts from the report).

"We assess it is highly unlikely this team of operators . . . carried out the operation without Muhammed bin Salman's authorization." [19]

In a December 4, 2018, editorial in the Wall Street Journal, Senator Lindsey Graham (R-S.C.) said, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness."[20]

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long run, America's power as well as its principles depends on an international system in which strongmen can't act on their violent whims and the rule of law enables social stability and the free flow of trade." [23] He has observed, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness. Failing to censure him would give authoritarians a green light to murder their critics. To borrow a Churchill phrase, inaction wouldn't only give the disturbing impression the U.S. has a price, but also that its price is quite low." [24] Since October 2018, when news about Jamal Khashoggi's disappearance first broke, the subject of the United States' assessment of what happened to him and its response has been the subject of intense bipartisan Congressional concern and public debate.[25]

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The Open Society Justice Initiative is an operational public interest law center dedicated to upholding human rights and the rule of law. It is part of the Open Society Foundations, a tax-exempt, not-for-profit organization. Disseminating information is among the Justice Initiative's core activities. To accomplish these goals, the Open Society Justice Initiative maintains a website, http://www.justiceinitiative.org, through which it disseminates publications, articles, and multimedia files relating to its mission. It also directly distributes hard copies of publications. An index of Justice Initiative publications (currently 377 in number) on a broad range of human rights

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[23] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186.

[24] *Id.*

[25] *Id.*; Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi* (Oct. 10, 2018), https://www foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi; *Can Donald Trump handle the truth about Jamal Khashoggi*? USA Today, (Oct. 15, 2018), https://www.usatoday.com/story/opinion/2018/10/15/can-donald-trump-handle-truth-jamal-khashoggis-fate-editorials-debates/1646308002/; *There can be no coverup of this act of pure evil*, Wash. Post, (Oct. 19 2018), https://www.washingtonpost.com/opinions/global-opinions/there-can-be-no-coverup-of-this-act-of-pure-evil/2018/10/19/415a662e-d308-11e8-83d6-291fcead2ab1_story.html?utm_term=.9bd21f340393; *Jamal Khashoggi, missing activist and writer, killed in fight, Saudi state media reports*, Fox News (Oct. 19, 2018), https://www foxnews.com/world/jamal-khashoggi-missing-activist-and-writer-killed-in-fight-saudi-state-media-reports; *Saudi Arabia after Khashoggi*, N.Y. Times (Nov. 15, 2018), https://www nytimes.com/2018/11/15/opinion/saudi-arabia-mohammed-bin-salman-trump-khashoggi.html; Lisa Mascaro, *Senators Set to Grill Trump Administration Officials Over the Response to Jamal Khashoggi's Killing*, Time.com (Nov. 28, 2018), http://time.com/5465388/senators-closed-door-briefing-jamal-khashoggi/.

issues is available at https://osf.to/2zr15cP. In addition, the Justice Initiative disseminates information through quarterly email newsletters (*see, e.g.*, https://us1.campaign-archive.com/home/?u=52d98944f5466486ab8567329&id=80d33e3910), blogs (*see* https://www.opensocietyfoundations.org/voices), Twitter (*see* https://twitter.com/OSFJustice) and Facebook (*see* https://www.facebook.com/OpenSocietyFoundations). The Open Society Justice Initiative plans to analyze and disseminate to the public the information gathered through this Request.

For all of the aforementioned reasons, this request warrants expedited processing.

IV. Application for Fee Waiver

We request a waiver of search, review, and duplication fees on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

As set forth in Section III above, the records at issue will contribute significantly to public understanding of the government's assessment of and response to Khashoggi's killing. Moreover, the Open Society Justice Initiative, a non-profit entity, does not seek disclosure of these records for any commercial gain, and intends to make all disclosed records available at no cost on its website.

In addition, for the same reasons that render it "primarily engaged in disseminating information," *see* Section III *supra*, the Open Society Justice Initiative is also a "representative of the news media" within the meaning of the FOIA. As such, it is entitled to a fee waiver. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II) (providing that fees shall be limited to duplication fees when request made for noncommercial purpose by representative of the news media); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress's intent that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requesters.")

* * * * *

Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 U.S.C. § 552(a)(6)(A)(i) respectively, we look forward to your reply to the Request for expedited processing within 10 calendar days, and to the Request for disclosure within twenty days.

The Open Society Justice Initiative requests that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. *See* 5 U.S.C. § 552(b). We also reserve the right to appeal any decision in relation to this Request.

Thank you for your attention to this Request. Please furnish all applicable records to:

Amrit Singh
Director, Accountability, Liberty and
Transparency Division
Open Society Justice Initiative
224 West 57th Street
New York, New York 10019
Email: amrit.singh@opensocietyfoundations.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Amrit Singh
James Goldston
Open Society Justice Initiative
224 W. 57th St.
New York, New York 10019
Ph: 212-5480600
Fax: 212-5484662

OPEN SOCIETY JUSTICE INITIATIVE

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December 4, 2018

Via Email, Facsimile and Federal Express
Patricia Gaviria
Director, Information Management Division
ATTN: FOIA/PA
Office of the Director of National Intelligence
Washington, D.C. 20511
(703) 275-1299 (facsimile)
Email: dni-foia@dni.gov

Re: Freedom of Information Act Request for Records Relating to the killing of Jamal Khashoggi

Dear Sir or Madam:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA") and the Office of the Director of National Intelligence ("ODNI") implementing regulations, 32 C.F.R. § 1700.1 *et seq*. The Open Society Justice Initiative, an operating public interest law center that is part of the Open Society Foundations, submits this Request. Expedited processing is requested pursuant to 5 U.S.C. § 552(a)(6)(E)(i).

I. Background

Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.[1] On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.[2] On October 10, 2018, a bipartisan group of 22 senators wrote to President Trump, triggering an investigation and a sanctions determination in relation to Khashoggi's disappearance.[3]

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[1] Donna Abu Nasr, *Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic*, [Bloomberg] (Oct. 20, 2018), https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129_story html?utm_term=.b99447153753.

[2] *Id*.

[3] Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi*, (Oct. 10, 2018), https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi.

After repeatedly saying that Khashoggi had left the consulate alive, the Saudi government finally acknowledged on October 19 that he had been killed inside the Saudi Consulate in Istanbul.[4] CIA Director Gina Haspel reportedly traveled to Turkey to review the case and listened to audio recordings that the Turkish government claimed captured Khashoggi's murder.[5] On November 16, 2018, the *Washington Post* reported that the CIA had "concluded that Saudi Crown Prince Mohammed bin Salman ordered the assassination of journalist Jamal Khashoggi in Istanbul."[6]

On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.[7] He stated, "After great independent research, we now know many details of this horrible crime. . . . King Salman and Crown Prince Mohammad bin Salman vigorously deny any knowledge of the planning or execution of the murder of Mr. Khashoggi. Our intelligence agencies continue to assess all information, but it could very well be that the Crown Prince had knowledge of this tragic event – maybe he did and maybe he didn't!"[8] On another occasion, citing the CIA report in his possession, President Trump noted that the CIA "did not come to a conclusion" about the crown prince's involvement in the murder, adding that "[t]hey have feelings certain ways, but they didn't -- I have the report."[9]

The President's statement standing with Saudi Arabia has been the subject of extensive public debate. Senators have vigorously disputed the President's characterization of the CIA's report.[10] When asked if the President was lying about the CIA's conclusion, Senator Jack Reed (D-R.I.) said, "Yes. The CIA concluded that the crown prince of Saudi Arabia was directly involved in the assassination of Khashoggi."[11] A Wall Street Journal editorial wrote, "we are aware of no President, not even such ruthless pragmatists as Richard Nixon or Lyndon Johnson, who would

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[4] Kevin Sullivan, Loveday Morris and Tamer el-Ghobashy, *Saudi Arabia fires 5 top officials, arrests 18 Saudis, saying Khashoggi was killed in fight at consulate*, Wash. Post (Oct. 19, 2018), https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm_term=.76d983cad529.

[5] *Khashoggi murder: CIA director Gina Haspel briefs Trump*, BBC News (Oct. 26, 2018), https://www.bbc.com/news/world-us-canada-45977041.

[6] Shane Harris, Greg Miller, and Josh Dawsey, *CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination*, Wash. Post (Nov. 16, 2018), https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story html?utm_term=.b940c2f30d5b.

[7] Statement from President Donald J. Trump on Standing with Saudi Arabia (Nov. 20, 2018), https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-standing-saudi-arabia/.

[8] *Id.*

[9] Kate Sullivan and Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html.

[10] *Id.*; Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb.

[11] Kate Sullivan and Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html.

have written a public statement like this without so much as a grace note about America's abiding values and principles," and that it was "startling to see a U.S. President brag [about commercial deals with the Saudis] in a statement about a bloodthirsty murder."[12] A State Department official who had seen the CIA's assessment on Khashoggi's killing reportedly told ABC News that it was "blindingly obvious" that the Crown Prince had ordered the killing and that there was "overwhelming consensus that the [Saudi] leadership is involved—no one is debating it within the government."[13] On November 20, 2018, former CIA Director John Brennan called for Congress to declassify the report, tweeting, "Since Mr. Trump excels in dishonesty, it is now up to members of Congress to obtain & declassify the CIA findings on Jamal Khashoggi's death. No one in Saudi Arabia—most especially the Crown Prince—should escape accountability for such a heinous act."[14]

On November 28, 2018, Secretary of State Mike Pompeo and Defense Secretary James Mattis briefed Senators behind closed doors in relation to Saudi Arabia, Yemen and the Khashoggi case. Despite bipartisan frustration at not hearing directly from CIA Director Gina Haspel on the Khashoggi case, she did not attend.[15] After that briefing, Secretary Pompeo refused to answer reporters' questions about why Gina Haspel did not attend, and told them, "I do believe I've read every piece of intelligence . . . There is no direct reporting connecting the crown prince to the order to murder of Jamal Khashoggi."[16]

Subsequent news reports suggest that Secretary Pompeo's choice of words obscure the CIA's conclusion that the Crown Prince is culpable. The *Wall Street Journal*, based on its review of excerpts of the CIA's assessment of the murder, has reported that the excerpts "state that the CIA has 'medium-to-high confidence' that Prince Mohammed 'personally targeted' Khashoggi and 'probably ordered his death.'"[17] The CIA reportedly notes in its assessment that it " 'lack[s] direct reporting of the Crown Prince issuing a kill order,' " but its "judgment on Prince Mohammed's likely culpability . . . is based on the crown prince's personal focus on Mr. Khashoggi, his tight control over the Saudi operatives sent to Istanbul to kill him, 'and his authorizing some of the same operators to violently target other opponents.' "[18] The CIA assessment reportedly states,

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[12] *Trump's Crude Realpolitik*, Wall St. J. (Nov. 20, 2018), https://www.wsj.com/articles/trumps-crude-realpolitik-1542763629.

[13] Tara Palmeri, '*Blindingly obvious' that Saudi crown prince ordered Khashoggi murder: Source*, ABC News (Nov. 20, 2018), https://abcnews.go.com/Politics/blindingly-obvious-saudi-crown-prince-ordered-khashoggi-murder/story?id=59305430.

[14] John O. Brennan (@JohnBrennan), Twitter (Nov. 20, 2018, 10:31 AM), https://twitter.com/JohnBrennan/status/1064949331868954629.

[15] Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb.

[16] Dierdre Shesgreen, *Lawmakers livid after CIA director Gina Haspel a no-show for closed-door briefing on Khashoggi murder*, USA Today (Nov. 28, 2018), https://www.usatoday.com/story/news/world/2018/11/28/mike-pompeo-blasts-lawmakers-over-jamal-khashoggis-murder-saudi-arabia-yemen/2136140002/.

[17] Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460.

[18] *Id*. (quoting excerpts from the report).

"We assess it is highly unlikely this team of operators . . . carried out the operation without Muhammed bin Salman's authorization." [19]

In a December 4, 2018, editorial in the Wall Street Journal, Senator Lindsey Graham (R-S.C.) said, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness."[20]

II. Records Requested

The Open Society Justice Initiative requests disclosure of all records[21] relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA's findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible.

III. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1700.12. There is a "compelling need" for the requested records because they relate to an "urgency to inform the public concerning an actual or alleged Federal Government activity" and are requested by an organization "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1700.12.

As reflected in the news today, information relating to the circumstances of Khashoggi's killing is the subject of urgent public debate.[22] The records requested herein are directly "relevant to a subject of public urgency concerning an actual or alleged Federal Government activity." They are urgently needed for a public evaluation of the Federal Government's efforts to investigate and hold accountable those responsible for Khashoggi's killing. Indeed, the public is unable meaningfully to evaluate the Federal Government's response to the Khashoggi killing without reliable information about the circumstances of the killing and documents currently in the Government's possession.

Mr. Khashoggi was a U.S. resident and a *Washington Post* journalist who was killed in a brutal manner, possibly for being a vocal critic of the Saudi government and the Saudi Crown Prince.

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[19] *Id*.

[20] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186.

[21] For the purpose of this request, the term "records" includes any and all reports, statements, examinations, memoranda, correspondence, notes, indices, audio or video recordings, digital files, or other records. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records.

[22] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186; *A New CIA Leak Adds to the Evidence Against MBS. Congress Must Act*, Wash. Post (Dec. 4, 2018), https://www.washingtonpost.com/opinions/global-opinions/the-trump-administration-is-denying-the-reality-of-saudi-arabias-role-in-khashoggis-death/2018/12/03/db2304ce-f724-11e8-8d64-4e79db33382f_story.html?utm_term=.321533852566.

The American public has a right to know what its government is doing to uphold human rights and the rule of law in this context. Indeed, as Senator Lindsey Graham has aptly noted, "In the long run, America's power as well as its principles depends on an international system in which strongmen can't act on their violent whims and the rule of law enables social stability and the free flow of trade." [23] He has observed, "Given the evidence U.S. intelligence has gathered on Khashoggi's killing, denying the crown prince's involvement amounts to willful blindness. Failing to censure him would give authoritarians a green light to murder their critics. To borrow a Churchill phrase, inaction wouldn't only give the disturbing impression the U.S. has a price, but also that its price is quite low." [24] Since October 2018, when news about Jamal Khashoggi's disappearance first broke, the subject of the United States' assessment of what happened to him and its response has been the subject of intense bipartisan Congressional concern and public debate.[25]

Furthermore, the Open Society Justice Initiative is "primarily engaged in disseminating information" within the meaning of the above-cited statute and regulations. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" within the meaning of the statute and regulations); *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was a representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (National Security Archive deemed a representative of the news media after publishing one book and indicating its intention to publish a set of documents on national and international politics and nuclear policy).

The Open Society Justice Initiative is an operational public interest law center dedicated to upholding human rights and the rule of law. It is part of the Open Society Foundations, a tax-exempt, not-for-profit organization. Disseminating information is among the Justice Initiative's core activities. To accomplish these goals, the Open Society Justice Initiative maintains a website, http://www.justiceinitiative.org, through which it disseminates publications, articles, and

[23] Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186.

[24] *Id.*

[25] *Id.*; Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi* (Oct. 10, 2018), https://www foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi; *Can Donald Trump handle the truth about Jamal Khashoggi*? USA Today, (Oct. 15, 2018), https://www.usatoday.com/story/opinion/2018/10/15/can-donald-trump-handle-truth-jamal-khashoggis-fate-editorials-debates/1646308002/; *There can be no coverup of this act of pure evil*, Wash. Post, (Oct. 19 2018), https://www.washingtonpost.com/opinions/global-opinions/there-can-be-no-coverup-of-this-act-of-pure-evil/2018/10/19/415a662e-d308-11e8-83d6-291fcead2ab1_story.html?utm_term=.9bd21f340393; *Jamal Khashoggi, missing activist and writer, killed in fight, Saudi state media reports*, Fox News (Oct. 19, 2018), https://www foxnews.com/world/jamal-khashoggi-missing-activist-and-writer-killed-in-fight-saudi-state-media-reports; *Saudi Arabia after Khashoggi*, N.Y. Times (Nov. 15, 2018), https://www nytimes.com/2018/11/15/opinion/saudi-arabia-mohammed-bin-salman-trump-khashoggi.html; Lisa Mascaro, *Senators Set to Grill Trump Administration Officials Over the Response to Jamal Khashoggi's Killing*, Time.com (Nov. 28, 2018), http://time.com/5465388/senators-closed-door-briefing-jamal-khashoggi/.

multimedia files relating to its mission. It also directly distributes hard copies of publications. An index of Justice Initiative publications (currently 377 in number) on a broad range of human rights issues is available at https://osf.to/2zr15cP. In addition, the Justice Initiative disseminates information through quarterly email newsletters (*see, e.g.*, https://us1.campaign-archive.com/home/?u=52d98944f5466486ab8567329&id=80d33e3910), blogs (*see* https://www.opensocietyfoundations.org/voices), Twitter (*see* https://twitter.com/OSFJustice) and Facebook (*see* https://www.facebook.com/OpenSocietyFoundations). The Open Society Justice Initiative plans to analyze and disseminate to the public the information gathered through this Request.

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As set forth in Section III above, the records at issue will contribute significantly to public understanding of the government's assessment of and response to Khashoggi's killing. Moreover, the Open Society Justice Initiative, a non-profit entity, does not seek disclosure of these records for any commercial gain, and intends to make all disclosed records available at no cost on its website.

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* * * * *

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Thank you for your attention to this Request. Please furnish all applicable records to:

Amrit Singh
Director, Accountability, Liberty and
Transparency Division
Open Society Justice Initiative
224 West 57th Street
New York, New York 10019
Email: amrit.singh@opensocietyfoundations.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Amrit Singh
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224 W. 57th St.
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