ORAL ARGUMENT NOT YET SCHEDULED

No. 20-5045

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY

Plaintiff,

COMMITTEE TO PROTECT JOURNALISTS,

Plaintiff-Appellant,

-against-

CENTRAL INTELLIGENCE AGENCY, FEDERAL BUREAU OF INVESTIGATION, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,

Defendants-Appellees,

UNITED STATES DEPARTMENT OF STATE

Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

VOLUME 1 OF 1

Jeremy Feigelson
Timothy K. Beeken
Alexandra P. Swain
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July 6, 2020

TABLE OF CONTENTS

RECORD	DATE	DOCUMENT DESCRIPTION	APPENDIX PAGE
N/A	N/A	Docket Report	JA - 001
Dkt. 17	01/17/19	Amended Complaint	JA - 010
Dkt. 17-1	01/17/19	Exhibit A, Knight First Amendment Institute FOIA Requests	JA - 020
Dkt. 17-2	01/17/19	Exhibit B, CPJ FOIA Request Cover Letter; Redline of Amended Complaint	JA - 037
Dkt. 24	02/11/19	Answer to Amended Complaint	JA - 050
Dkt. 30	07/25/19	Consent Motion to Dismiss Defendant U.S. Department of State	JA - 056
Dkt. 34	08/28/19	Defendants' Motion for Summary Judgment	JA - 059
Dkt. 34-2	08/28/19	Exhibit 2, Declaration of Patricia Gaviria (ODNI Declaration)	JA - 061
Dkt. 34-3	08/28/19	Exhibit 3, Declaration of Linda M. Kiyosaki (NSA Declaration)	JA - 084
Dkt. 34-4	08/28/19	Exhibit 4, Declaration of Antoinette B. Shiner (CIA Declaration)	JA - 107
Dkt. 34-5	08/28/19	Exhibit 5, Declaration of David M. Hardy (FBI Declaration)	JA - 150
Dkt. 34-7	08/28/19	Defendants' Statement of Material Facts	JA - 177
Dkt. 35	09/26/19	Plaintiff's Motion for Summary Judgment and Opposition to the Defendants' Motion for Summary Judgment	JA - 185
Dkt. 35	09/26/19	Plaintiff's Statement of Material Facts	JA - 187

TABLE OF CONTENTS

RECORD	DATE	DOCUMENT DESCRIPTION	APPENDIX PAGE
Dkt. 35-1	09/26/19	Declaration of Alexandra P. Swain	JA - 197
Dkt. 35-1.2	09/26/19	Exhibit 2, Bethan McKernan, *Jamal Khashoggi Was Worried About Consulate Visit, Says Fiancée*, The Guardian (Oct. 26, 2018, 10:22 PM)	JA - 201
Dkt. 35-1	09/26/19	Exhibit 8, Warren Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018, 1:33 AM)	JA - 205
Dkt. 35-1	09/26/19	Exhibit 9, Abdurrahman Şimşek & Nazif Karaman, *Saudi Hit Squad's Gruesome Conversations During Khashoggi's Murder Revealed*, Daily Sabah (Sept. 9, 2019, 2:49 PM).	JA - 210
Dkt. 35-2	09/26/19	Exhibit 11, Intelligence Community Directive 191	JA - 217
Dkt. 35-2	09/26/19	Exhibit 12, Press Release, U.S. Sen. Comm. on Foreign Relations, Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi (Oct. 10, 2018)	JA - 222
Dkt. 35-2	09/26/19	Exhibit 13, Letter from Richard Blumenthal et al., U.S. Senators, to Daniel Coats, Dir. Of Nat'l Intelligence (Oct. 30, 2018)	JA - 226
Dkt. 35-2	09/26/19	Exhibit 14, Julie Hirschfeld Davis & Eric Schmitt, *Senate Votes to End Aidfor Yemen Fight Over Khashoggi Killing and Saudis' War Aims*, N.Y. Times (Dec. 13, 2018)	JA - 230
Dkt. 35-2	09/26/19	Exhibit 15, Olivia Gazis, Bo Erickson, Camilo Montoya-Galvez, *Lindsey Graham After CIA Briefing on Jamal Khashoggi Murder: "There's a Smoking Saw,"* CBS News (Dec. 4, 2018, 12:19 PM)	JA - 234

TABLE OF CONTENTS

RECORD	DATE	DOCUMENT DESCRIPTION	APPENDIX PAGE
Dkt. 35-2	09/26/19	Exhibit 16, Press Release, Senators Coons, Wyden, Heinrich, Reed, Harris Reintroduce Bill Requiring Public Report on Khashoggi Murder by Saudi Arabia (Feb. 26, 2019)	JA - 255
Dkt. 35-2	09/26/19	Exhibit 18, Chuck Todd, *President Trump's Full, Unedited Interview with Meet the Press*, NBC News (June 23, 2019)	JA - 257
Dkt. 35-2	09/26/19	Exhibit 19, Opinion and Order, *Open Soc'y Justice Initiative v. CIA*, 399 F. Supp. 3d 161, 19-cv-00234-PAE, ECF No. 90 (S.D.N.Y. Aug. 6, 2019)	JA - 309
Dkt. 35-2	09/26/19	Exhibit 20, Joint Status Letter, *Open Soc'y Justice Initiative v. CIA*, 19-cv-00234-PAE, ECF No. 99 (S.D.N.Y. Sept. 24, 2019)	JA - 324
Dkt. 39-1	10/17/19	Defendants' Response to Plaintiff's Statement of Material Facts	JA - 328
Dkt. 39-2	10/17/19	Exhibit 2, Letter from Susan C. Weetman, U.S. Department of State, to Kathleen Carroll, Committee to Protect Journalists (Apr. 5, 2019)	JA - 332
Dkt. 39-4	10/17/19	Exhibit 4, Joint Letter, *Open Soc'y Justice Initiative v. CIA*, 19- cv-00234-PAE, ECF No. 27 (S.D.N.Y. Apr. 15, 2019)	JA - 334
Dkt. 42	01/06/20	Memorandum Opinion	JA - 339
Dkt. 43	01/06/20	Order	JA - 352
Dkt. 44	03/04/20	Notice of Appeal	JA - 353

APPEAL,CLOSED,TYPE I−FOIA

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18−cv−02709−TNM

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY et al v. CENTRAL INTELLIGENCE AGENCY et al
Assigned to: Judge Trevor N. McFadden
Case in other court: USCA, 20−05045
Cause: 05:552 Freedom of Information Act

Date Filed: 11/20/2018
Date Terminated: 01/06/2020
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY

represented by

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Plaintiff

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Defendant

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Defendant

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE represented by **Antonia Marie Konkoly**
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Defendant

DEPARTMENT OF STATE
TERMINATED: 07/30/2019
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Date Filed	#	Docket Text
11/20/2018	1	COMPLAINT *Knight First Amendment Institute at Columbia University* against All Defendants *Central Intelligence Agency et al* (Filing fee $ 400 receipt number 0090−5802792) filed by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY. (Attachments: # 1 Exhibit A, # 2 Civil Cover Sheet, # 3 Supplement Corporate Disclosure Form, # 4 Summons CIA, # 5 Summons DOJ, # 6 Summons NSA, # 7 Summons ODNI, # 8 Summons DOS)(Jaffer, Jameel) (Entered: 11/20/2018)
11/20/2018		Case Assigned to Judge Trevor N. McFadden. (zmd) (Entered: 11/21/2018)
11/21/2018	2	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY. (zmd) (Entered: 11/21/2018)
11/26/2018	3	SUMMONS (5) Issued Electronically as to CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Attachment: # 1 Notice and Consent)(zsb) (Entered: 11/26/2018)
11/26/2018	4	STANDING ORDER Establishing Procedures for Cases Before Judge Trevor N. McFadden. The parties are hereby ORDERED to read and comply with the directives in the attached standing order. Signed by Judge Trevor N. McFadden on 11/26/2018. (lctnm2) (Entered: 11/26/2018)
12/10/2018	5	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 12/10/2018. (Attachments: # 1 Tracking numbers, # 2 Delivery confirmation)(Jaffer, Jameel) (Entered: 12/10/2018)
12/10/2018	6	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. CENTRAL INTELLIGENCE AGENCY served on 12/10/2018 (Attachments: # 1 Tracking numbers, # 2 Delivery confirmation)(Jaffer, Jameel) (Entered: 12/10/2018)
12/10/2018	7	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF JUSTICE served on 12/10/2018 (Attachments: # 1 Tracking numbers, # 2 Delivery confirmation)(Jaffer, Jameel) (Entered: 12/10/2018)
12/10/2018	8	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF STATE served on 12/10/2018 (Attachments: # 1 Tracking numbers, # 2 Delivery confirmation)(Jaffer, Jameel) (Entered: 12/10/2018)
12/10/2018	9	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. NATIONAL SECURITY AGENCY served on 12/10/2018 (Attachments: # 1 Tracking numbers, # 2 Delivery confirmation)(Jaffer, Jameel) (Entered: 12/10/2018)

12/10/2018	10	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE served on 12/10/2018 (Attachments: # 1 Tracking numbers, # 2 Delivery confirmation)(Jaffer, Jameel) (Entered: 12/10/2018)
12/10/2018	11	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 12/10/2018. Answer due for ALL FEDERAL DEFENDANTS by 1/9/2019. (Attachments: # 1 Tracking numbers, # 2 Delivery confirmation)(Jaffer, Jameel) (Entered: 12/10/2018)
12/14/2018	12	MOTION for Leave to Appear Pro Hac Vice :Attorney Name− Alex Abdo, :Firm− Knight First Amendment Institute at Columbia University, :Address− 475 Riverside Drive, Suite 302, New York, NY 10115. Phone No. − 6467458500. Filing fee $ 100, receipt number 0090−5839963. Fee Status: Fee Paid. by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY (Attachments: # 1 Declaration, # 2 Text of Proposed Order)(Jaffer, Jameel) (Entered: 12/14/2018)
12/14/2018	13	MOTION for Leave to Appear Pro Hac Vice :Attorney Name− Ramya Krishnan, :Firm− Knight First Amendment Institute at Columbia University, :Address− 475 Riverside Drive, Suite 302, New York, NY 10115. Phone No. − 6467458500. Filing fee $ 100, receipt number 0090−5840037. Fee Status: Fee Paid. by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY (Attachments: # 1 Declaration, # 2 Text of Proposed Order)(Jaffer, Jameel) (Entered: 12/14/2018)
12/17/2018		MINUTE ORDER granting the 12 and 13 Motions for Leave to Appear Pro Hac Vice. Attorneys Alex Abdo and Ramya Krishnan shall promptly register for this Court's CM/ECF system. Signed by Judge Trevor N. McFadden on 12/17/2018. (lctnm3) (Entered: 12/17/2018)
01/02/2019	14	NOTICE of Appearance by Antonia Marie Konkoly on behalf of CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (Konkoly, Antonia) (Entered: 01/02/2019)
01/02/2019	15	MOTION to Stay *All Proceedings* by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (Attachments: # 1 Text of Proposed Order)(Konkoly, Antonia) (Entered: 01/02/2019)
01/02/2019		MINUTE ORDER granting 15 Motion to Stay. Upon considering the Defendants' 40 Motion to Stay, it is hereby ordered that this matter shall be stayed until Congress has restored appropriations to the Department of Justice. It is further ordered that Defendants will notify the Court immediately upon resumption of appropriations. Signed by Judge Trevor N. McFadden on 1/2/2019. (lctnm1) (Entered: 01/02/2019)
01/17/2019	16	Unopposed MOTION to Lift Stay *Temporarily* by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY (Attachments: # 1 Exhibit A − Amended Complaint, # 2 Exhibit B − Corporate Disclosure Form for Committee to Protect Journalists, # 3 Exhibit C − Pro hac vice motion for Adi Kamdar, # 4 Exhibit D − Pro hac vice motion for Jeremy Feigelson, # 5 Exhibit E − Pro hac vice motion for Alexandra P. Swain, # 6 Text of Proposed Order for Motion to Temporarily Lift Stay)(Abdo, Alexander) (Entered: 01/17/2019)
01/17/2019		MINUTE ORDER: Upon consideration of the Plaintiff's 16 Unopposed Motion, it is hereby ORDERED that (1) the proposed Amended Complaint attached to the 16 Motion is deemed filed as of January 17, 2019; (2) the Disclosure Statement attached to the 16 Motion is deemed filed as of January 17, 2019; and (3) the motions to appear pro hac vice of Adi Kamdar, Jeremy Feigelson, and Alexandra P. Swain are granted. The attorneys shall promptly register with this Court's CM/ECF system. Signed by Judge Trevor N. McFadden on 1/17/2019. (lctnm3) (Entered: 01/17/2019)
01/17/2019	17	AMENDED COMPLAINT against CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE filed by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, COMMITTEE TO PROJECT JOURNALISTS. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (tth); Modified text on 1/22/2019 (tth).

		(Entered: 01/18/2019)
01/17/2019	18	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by COMMITTEE TO PROJECT JOURNALIST. (tth) (Entered: 01/18/2019)
01/17/2019	19	MOTION for Leave to Appear Pro Hac Vice : Attorney Name − Adi Kamdar, :Firm− Knight First Amendment Institute at Columbia University: Address − 475 Riverside Drive, Suite 302, New York, NY 10115. Phone No. − (646) 745−8500. Fee Status: No Fee Paid. by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY (tth) (Entered: 01/18/2019)
01/17/2019	20	MOTION for Leave to Appear Pro Hac Vice: Attorney Name − Jeremy Feigelson, :Firm − Debevoise & Plimpton LLP : Address − 919 Third Avenue, New York, NY 10022. Phone No. − (212) 909−6000. Fee Status: No Fee Paid. by COMMITTEE TO PROJECT JOURNALISTS (tth); Modified text on 1/22/2019 (tth). (Entered: 01/18/2019)
01/17/2019	21	MOTION for Leave to Appear Pro Hac Vice: Attorney Name − Alexandra P. Swain : Firm − Debevoise & Plimpton LLP: Address − 919 Third Avenue, New York, NY 10022. Phone No. − (212) 909−6000. Fee Status: No Fee Paid. by COMMITTEE TO PROJECT JOURNALISTS. (tth); Modified text on 1/22/2019 (tth). (Entered: 01/18/2019)
01/23/2019		Filing fee received: $ 100.00, receipt number: 4616096407; pro hoc vice fee for Alexandra Swain. (tth) (Entered: 01/24/2019)
01/23/2019		Filing fee received: $ 100.00, receipt number: 4616096406, pro hoc vice fee for Jeremy Feigelson. (tth) (Entered: 01/24/2019)
01/28/2019	22	NOTICE *to the Court of Restoration of Appropriations* by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (Konkoly, Antonia) (Entered: 01/28/2019)
01/29/2019		MINUTE ORDER: Upon consideration of the Defendants' 22 Notice, the Court hereby lifts the stay in this case. The parties are ORDERED to file a status report on or before February 1, 2019. This Report shall propose a schedule for the filing of Defendants' Answer. SO ORDERED. Signed by Judge Trevor N. McFadden on 1/29/19. (lctnm3) (Entered: 01/29/2019)
01/29/2019		Set/Reset Deadlines: Joint Status Report due by 2/1/2019. (hmc) (Entered: 01/29/2019)
01/31/2019		Filing fee received: $ 100.00, receipt number: 4616096517; pro hoc vice fee for Aditya Kamdar. (tth) (Entered: 01/31/2019)
02/01/2019	23	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Konkoly, Antonia) (Entered: 02/01/2019)
02/01/2019		MINUTE ORDER: Upon consideration of the parties' 23 Joint Status Report, it is hereby ORDERED that the Defendants' shall submit an Answer or response to the Amended Complaint on or before February 11, 2019. Signed by Judge Trevor N. McFadden on 2/1/2019. (lctnm3) (Entered: 02/01/2019)
02/01/2019		Set/Reset Deadlines: Defendants' answer or response to the Amended Complaint due by 2/11/2019. (hmc) (Entered: 02/01/2019)
02/11/2019	24	ANSWER to 17 Amended Complaint, by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.(Konkoly, Antonia) (Entered: 02/11/2019)
02/11/2019		MINUTE ORDER. Before the Court are a complaint and an answer in this FOIA case. It is hereby ORDERED that the parties shall meet and confer and file a Joint Status Report proposing a schedule for proceeding in this matter. The schedule should address, among other things, the status of the Plaintiffs' FOIA request, the anticipated number of documents responsive to the request, the anticipated date(s) for release of the documents requested by the Plaintiffs, whether a motion for an Open America stay

		is likely in this case, whether a Vaughn index will be required in this case, and a briefing schedule for dispositive motions, if required. The parties shall file the Report on or before March 8, 2019. Signed by Judge Trevor N. McFadden on 2/11/2019. (lctnm3) (Entered: 02/11/2019)
02/12/2019		Set/Reset Deadlines: Joint Status Report due by 3/8/2019. (hmc) (Entered: 02/12/2019)
03/01/2019	25	Joint STATUS REPORT *and Proposed Order* by COMMITTEE TO PROTECT JOURNALISTS, KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY. (Attachments: # 1 Text of Proposed Order)(Krishnan, Ramya) (Entered: 03/01/2019)
03/04/2019		MINUTE ORDER. Upon consideration of the parties' 25 Joint Status Report, it is hereby ORDERED that: (1) the Central Intelligence Agency and the National Security Agency shall provide a final response to the Plaintiffs' FOIA requests on or before March 15, 2019; (2) the Federal Bureau of Investigation and the Department of State shall provide a final response to the Plaintiffs' FOIA requests on or before March 29, 2019; and (3) the parties shall file a Joint Status Report on or before April 12, 2019. This Report shall propose a schedule for dispositive motions if necessary. Signed by Judge Trevor N. McFadden on 3/4/2019. (lctnm3) (Entered: 03/04/2019)
03/05/2019		Set/Reset Deadlines: Central Intelligence Agency and National Security Agency responses due by 3/15/2019. Federal Bureau of Investigation and Department of State responses due by 3/29/2019. Joint Status Report due by 4/12/2019. (hmc) Modified on 3/5/2019 (hmc). (Entered: 03/05/2019)
04/12/2019	26	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Attachments: # 1 Text of Proposed Order)(Konkoly, Antonia) (Entered: 04/12/2019)
04/13/2019		MINUTE ORDER: Upon consideration of the parties' 26 Joint Status Report, the following schedule is hereby ordered: (1) the Plaintiffs shall identify all issues and withholdings they plan to challenge to the Defendants on or before May 17, 2019; (2) the Defendants shall file any motion for summary judgment on or before June 21, 2019; (3) the Plaintiffs shall file any cross−motion for summary judgment and their opposition to the Defendants' motion on or before July 19, 2019; (4) the Defendants shall file their reply in support of their own motion and their opposition to the Plaintiffs' motion on or before August 16, 2019; and (5) the Plaintiffs shall file a reply in support of their motion on or before September 6, 2019. SO ORDERED. Signed by Judge Trevor N. McFadden on 4/13/2019. (lctnm3) (Entered: 04/13/2019)
04/15/2019		Set/Reset Deadlines: Plaintiffs' identification of issues and withholdings due by 5/17/2019. Defendants' motion for summary judgment due by 6/21/2019. Plaintiffs' cross−motion and opposition to Defendants' motion due by 7/19/2019. Defendants' reply in support of their own motion and opposition to Plaintiffs' cross−motion due by 8/16/2019. Plaintiffs' reply in support of their motion due by 9/6/2019. (hmc) (Entered: 04/15/2019)
05/31/2019	27	Joint STATUS REPORT by COMMITTEE TO PROTECT JOURNALISTS. (Attachments: # 1 Text of Proposed Order re Briefing Schedule)(Beeken, Timothy) (Entered: 05/31/2019)
06/03/2019		MINUTE ORDER: Upon consideration of the parties' 27 Joint Status Report, the April 13, 2019 Summary Judgment briefing deadlines are hereby STAYED. It is further ORDERED that (1) the Department of State shall complete the additional searches described in the parties' 27 Joint Status Report by June 14, 2019; (2) the Department of State shall produce any responsive, non−exempt records to the Plaintiffs upon the completion of this search; and (3) the parties shall file a joint status report on or before June 28, 2019. This Report shall propose a schedule for further proceedings as necessary. Signed by Judge Trevor N. McFadden on 6/3/2019. (lctnm3) (Entered: 06/03/2019)
06/04/2019		Set/Reset Deadlines: Department of State's additional searches due by 6/14/2019. Joint Status Report due by 6/28/2019. (hmc) (Entered: 06/04/2019)

06/28/2019	28	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Attachments: # 1 Text of Proposed Order)(Konkoly, Antonia) (Entered: 06/28/2019)
07/01/2019		MINUTE ORDER: Upon consideration of the parties' 28 Joint Status Report, the following briefing schedule is hereby ORDERED: (1) the Plaintiffs shall identify all issues and withholdings they plan to challenge, if any, to the Defendants on or before July 12, 2019; (2) the Defendants shall file a motion for summary judgment on or before August 28, 2019; (3) the Plaintiffs shall file any cross−motion for summary judgment and opposition to the Defendants' Motion on or before September 26, 2019; (4) the Defendants shall file any reply and opposition to the Plaintiffs' cross−motion on or before October 17, 2019; and (5) the Plaintiffs shall file any reply on or before November 7, 2019. Signed by Judge Trevor N. McFadden on 7/1/2019. (lctnm3) (Entered: 07/01/2019)
07/01/2019		Set/Reset Deadlines: Plaintiffs' challenges due by 7/12/2019. Defendants' Motion for Summary Judgment due by 8/28/2019. Plaintiffs' Cross−Motion and Opposition to the Defendants' Motion for Summary Judgment due by 9/26/2019. Defendants' Reply and Opposition to Plaintiff's Cross−Motion due by 10/17/2019. Plaintiffs' Reply due by 11/7/2019. (hmc) (Entered: 07/01/2019)
07/18/2019	29	STIPULATION of Dismissal *WITHOUT PREJUDICE AS TO KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY ONLY* by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY. (Jaffer, Jameel) (Entered: 07/18/2019)
07/19/2019		MINUTE ORDER: Upon consideration of the parties' 29 Stipulation of Dismissal, Plaintiff Knight Institute's claims are hereby DISMISSED without prejudice per the terms of the stipulation. This order shall have no effect on the claims of the remaining Plaintiff. This stipulation shall have no effect on Knight Institute's ability to seek an award of attorneys' fees and other litigation costs. Signed by Judge Trevor N. McFadden on July 19, 2019. (lctnm3) (Entered: 07/19/2019)
07/25/2019	30	Consent MOTION to Dismiss *Defendant U.S. Department of State* by COMMITTEE TO PROTECT JOURNALISTS (Attachments: # 1 Text of Proposed Order)(Beeken, Timothy) (Entered: 07/25/2019)
07/30/2019	31	MOTION for Extension of Time to *Deadline for Requesting Attorneys' Fees* by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY (Jaffer, Jameel) (Entered: 07/30/2019)
07/30/2019		MINUTE ORDER: Upon consideration of the Plaintiff's 30 unopposed Motion to Dismiss, the Plaintiff's claims against the United States Department of State are hereby DISMISSED. This order shall have no effect on the remaining claims. This order shall have no effect on the Plaintiff's ability to seek an award of attorneys' fees and other litigation costs from the United States Department of State or any of the remaining Defendants. Signed by Judge Trevor N. McFadden on 7/30/2019. (lctnm3) (Entered: 07/30/2019)
07/31/2019		MINUTE ORDER granting Plaintiff Knight Institute's 31 Motion for Extension. Plaintiff Knight Institute shall file any motion for attorney's fees and costs by September 10, 2019. SO ORDERED. Signed by Judge Trevor N. McFadden on 7/31/2019. (lctnm3) (Entered: 07/31/2019)
08/01/2019		Set/Reset Deadlines: Plaintiff's motion for attorney's fees and costs due by 9/10/2019. (hmc) (Entered: 08/01/2019)
08/06/2019	32	Joint MOTION to Stay *Deadline for Requesting Attorneys' Fees* by KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY (Jaffer, Jameel) (Entered: 08/06/2019)
08/06/2019		MINUTE ORDER granting Plaintiff Knight Institute's 32 Motion to Stay. Plaintiff Knight Institute shall file any motion for attorneys' fees within 14 days of final judgment in this case. SO ORDERED. Signed by Judge Trevor N. McFadden on 8/6/2019. (lctnm3) (Entered: 08/06/2019)

08/28/2019	33	NOTICE OF WITHDRAWAL OF APPEARANCE as to KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY. Attorney Adi Kamdar terminated. (Kamdar, Adi) (Entered: 08/28/2019)
08/28/2019	34	MOTION for Summary Judgment by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (Attachments: # 1 Memorandum in Support, # 2 Declaration of Patricia Gaviria, # 3 Declaration of Linda M. Kiyosaki, # 4 Declaration of Antoinette B. Shiner, # 5 Declaration of David M. Hardy, # 6 Exhibit 1, # 7 Statement of Facts, # 8 Text of Proposed Order)(Konkoly, Antonia) (Entered: 08/28/2019)
09/26/2019	35	MOTION for Summary Judgment */ Plaintiffs' Motion for Summary Judgment and Opposition to the Defendants' Motion for Summary Judgment, Memorandum of Points and Authorities, Statement of Material Facts* by COMMITTEE TO PROTECT JOURNALISTS (Attachments: # 1 Declaration of Alexandra P. Swain in Support (Part 1 of 2), # 2 Declaration of Alexandra P. Swain in Support (Part 2 of 2), # 3 Text of Proposed Order)(Beeken, Timothy) (Entered: 09/26/2019)
09/26/2019	36	Memorandum in opposition to re 34 MOTION for Summary Judgment */ Plaintiffs' Motion for Summary Judgment and Opposition to the Defendants' Motion for Summary Judgment, Memorandum of Points and Authorities, Statement of Material Facts* filed by COMMITTEE TO PROTECT JOURNALISTS. (Attachments: # 1 Declaration of Alexandra P. Swain (Part 1 of 2), # 2 Declaration of Alexandra P. Swain (Part 2 of 2), # 3 Text of Proposed Order)(Beeken, Timothy) (Entered: 09/26/2019)
09/30/2019	37	ERRATA by COMMITTEE TO PROTECT JOURNALISTS 35 MOTION for Summary Judgment */ Plaintiffs' Motion for Summary Judgment and Opposition to the Defendants' Motion for Summary Judgment, Memorandum of Points and Authorities, Statement of Material Facts* filed by COMMITTEE TO PROTECT JOURNALISTS. (Attachments: # 1 Memorandum in Support)(Beeken, Timothy) (Entered: 09/30/2019)
09/30/2019	38	ERRATA by COMMITTEE TO PROTECT JOURNALISTS 36 Memorandum in Opposition filed by DEPARTMENT OF JUSTICE, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, NATIONAL SECURITY AGENCY, CENTRAL INTELLIGENCE AGENCY. (Attachments: # 1 Memorandum in Support /IN OPPOSITION)(Beeken, Timothy) Modified link on 10/2/2019 (znmw). (Entered: 09/30/2019)
10/17/2019	39	RESPONSE re 35 MOTION for Summary Judgment */ Plaintiffs' Motion for Summary Judgment and Opposition to the Defendants' Motion for Summary Judgment, Memorandum of Points and Authorities, Statement of Material Facts* filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Attachments: # 1 Statement of Disputed Facts, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9)(Konkoly, Antonia) (Entered: 10/17/2019)
10/17/2019	40	REPLY to opposition to motion re 34 MOTION for Summary Judgment filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF JUSTICE, NATIONAL SECURITY AGENCY, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. (Attachments: # 1 Exhibit 2, # 2 Exhibit 3, # 3 Exhibit 4, # 4 Exhibit 5, # 5 Exhibit 6, # 6 Exhibit 7, # 7 Exhibit 8, # 8 Exhibit 9)(Konkoly, Antonia) (Entered: 10/17/2019)
11/07/2019	41	REPLY to opposition to motion re 35 MOTION for Summary Judgment */ Plaintiffs' Motion for Summary Judgment and Opposition to the Defendants' Motion for Summary Judgment, Memorandum of Points and Authorities, Statement of Material Facts / Reply of Plaintiff Committee to Protect Journalists in Support of Motion for Summary Judgment* filed by COMMITTEE TO PROTECT JOURNALISTS. (Beeken, Timothy) (Entered: 11/07/2019)
01/06/2020	42	MEMORANDUM OPINION re Defendants' 34 Motion for Summary Judgment and Plaintiff's 35 Cross−Motion for Summary Judgment. Signed by Judge Trevor N. McFadden on 1/6/2020. (lctnm3) (Entered: 01/06/2020)

01/06/2020	43	ORDER. For the reasons stated in 42 Memorandum Opinion, the Defendants' 34 Motion for Summary Judgment is GRANTED and the Plaintiff's 35 Cross−Motion for Summary Judgment is DENIED. SO ORDERED. The Clerk of the Court is directed to close the case. This is a final, appealable Order. Signed by Judge Trevor N. McFadden on 1/6/2020. (lctnm3) (Entered: 01/06/2020)
03/04/2020	44	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 42 Memorandum & Opinion, 43 Order, by COMMITTEE TO PROTECT JOURNALISTS. Filing fee $ 505, receipt number ADCDC−6888777. Fee Status: Fee Paid. Parties have been notified. (Attachments: # 1 Exhibit A − January 6, 2020 Order and Opinion)(Beeken, Timothy) (Entered: 03/04/2020)
03/05/2020	45	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 44 Notice of Appeal to DC Circuit Court,. (eg) (Entered: 03/05/2020)
03/09/2020		USCA Case Number 20−5045 for 44 Notice of Appeal to DC Circuit Court, filed by COMMITTEE TO PROTECT JOURNALISTS. (zrdj) (Entered: 03/09/2020)

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY
475 Riverside Drive, Suite 302
New York, NY 10115

COMMITTEE TO PROTECT JOURNALISTS
330 7th Avenue, 11th Floor
New York, NY 10001

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

DEPARTMENT OF JUSTICE
950 Pennsylvania Ave., NW
Washington, DC 20530

NATIONAL SECURITY AGENCY
Fort George G. Meade,
Maryland 20755-6000

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
Washington, DC 20511

DEPARTMENT OF STATE
2201 C St., NW
Washington, DC 20520

Defendants.

Civil Action No. 18-2709-TNM

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, concerns the recent killing of Jamal Khashoggi—a journalist, a U.S. resident, a Saudi national, and

a prominent critic of Saudi Arabia's current government—and seeks the immediate release of agency records concerning Defendants' compliance or non-compliance with the "duty to warn" set out in Intelligence Community Directive 191 ("Directive 191").

2. According to news reports, a team dispatched by the Saudi government killed Khashoggi in the Saudi consulate in Istanbul on October 2, 2018. Saudi prosecutors have said that Khashoggi was tied up, injected with an overdose of sedatives (or strangled, according to earlier accounts), and then dismembered. The CIA has reportedly concluded that Saudi Crown Prince Mohammed bin Salman personally ordered Khashoggi's killing.

3. Before the killing, U.S. intelligence agencies reportedly intercepted communications in which Saudi officials discussed a plan to capture Khashoggi. It is not publicly known precisely what the agencies learned from these communications, or what steps, if any, the agencies took to warn Khashoggi of the threat to him. However, Directive 191 provides that, when an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, the element must "warn the intended victim or those responsible for protecting the intended victim, as appropriate." Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § F.13.

4. To learn whether the Intelligence Community complied with its duty to warn, Plaintiffs submitted FOIA requests to the Central Intelligence Agency ("CIA"), the Federal Bureau of Investigation ("FBI"), the National Security Agency ("NSA"), the Office of the Director of National Intelligence ("ODNI"), and the Department of State ("DOS"), seeking records concerning whether the agencies learned of the threat to Khashoggi before the events of October 2, 2018, what they learned, whether they considered their obligations under Directive 191, and whether and how

they complied with those obligations. Plaintiff Knight First Amendment Institute at Columbia University submitted its FOIA requests on October 19, 2018, and Plaintiff Committee to Protect Journalists submitted substantively identical requests to the same agencies on November 20, 2018.

5. Plaintiffs have commenced this action because only one of the Defendants has granted a request for expedited processing, and because none of the Defendants has released records in response to the requests.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

8. The Knight First Amendment Institute at Columbia University ("Knight Institute") is a New York not-for-profit corporation based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education. Public education is essential to the Knight Institute's mission. Obtaining information about government activity, analyzing that information, and publishing and disseminating it to the press and public are among the core activities the Knight Institute was established to conduct. The Knight Institute is a "person" within the meaning of 5 U.S.C. § 551(2).

9. The Committee to Protect Journalists ("CPJ") is an independent, nonprofit organization that promotes press freedom worldwide. CPJ defends the right of journalists to report the news without fear of reprisal. CPJ regularly publishes news articles and special reports on journalists who are attacked, imprisoned, or killed. CPJ is a "person" within the meaning of 5 U.S.C. § 551(2).

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

11. The Department of Justice ("DOJ") is an "agency" within the meaning of 5 U.S.C. § 552(f). The FBI is a component of the DOJ. The DOJ and its component the FBI have possession and control over some or all of the requested records.

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

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

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

FACTUAL ALLEGATIONS

The FOIA Requests

15. On October 19, 2018, the Knight Institute submitted FOIA requests to the CIA, the FBI, the NSA, the ODNI, and the DOS, seeking records relating to Jamal Khashoggi and the IC's "duty to warn."[1] Directive 191.

16. On November 20, 2018, CPJ submitted substantially identical requests to the same agencies.[2]

17. The requests sought the following documents:

> (1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

[1] True and correct copies of these requests are attached hereto as Exhibit A.

[2] CPJ sent a form letter to each agency seeking "the same documents requested by the [Knight Institute] on October 19, 2018" and attaching as an exhibit the pertinent Knight Institute request. A true and correct copy of the form letter is attached hereto as Exhibit B.

> (2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;
>
> (3) All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

18. The request submitted to ODNI also sought the following documents:

> (4) All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.2.

19. Plaintiffs requested expedited processing of the requests on the ground that they are organizations "primarily engaged in disseminating information" and there is a "compelling 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).

20. The Knight Institute requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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); (b) the Knight Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II); and (c) the Knight Institute is an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

21. CPJ also requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Agency Responses

22. By letter dated October 23, 2018, the ODNI acknowledged receipt of the Knight Institute's request to it and assigned it reference number DF-2019-0032. The ODNI denied the Knight Institute's request for expedited processing but granted the Knight Institute's request for a fee waiver. On November 2, 2018, the Knight Institute submitted an administrative appeal to the ODNI challenging the agency's denial of expedited processing, but it has yet to receive a decision. To date, the ODNI has not released any records responsive to the Knight Institute's request.

23. By letter dated October 26, 2018, the CIA acknowledged receipt of the Knight Institute's request and assigned it reference number F-2019-00158. The CIA denied the Knight Institute's request for expedited processing but granted the Knight Institute's request for a fee waiver. On November 2, 2018, the Knight Institute submitted an administrative appeal to the CIA challenging the agency's denial of expedited processing on November 2, 2018, but it has yet to receive a decision. To date, the CIA has not released any records responsive to the Knight Institute's request.

24. By email dated October 19, 2018, the FBI acknowledged receipt of the Knight Institute's request. By letters dated October 30, 2018, the FBI assigned the Knight Institute's request reference number 1420624-000, denied the Knight Institute's request for expedited processing, and stated that it had not reached a decision regarding the Knight Institute's request for a fee waiver.

25. On November 2, 2018, the Knight Institute submitted an administrative appeal to the DOJ Office of Information Policy ("OIP") challenging the FBI's denial of expedited processing. By letter dated November 9, 2018, the OIP affirmed that denial. To date, the FBI has not released any records responsive to the Knight Institute's request.

26. By letter dated October 31, 2018, the DOS acknowledged receipt of the Knight Institute's request and assigned it reference number F-2019-00752. The DOS granted the Knight Institute's request for expedited processing and a fee waiver. To date, the DOS has not released any records responsive to the Knight Institute's request.

27. By letter dated November 8, 2018, the NSA acknowledged receipt of the Knight Institute's request and assigned it reference number 105522. The NSA denied the Knight Institute's request for expedited processing but did not address the Knight Institute's request for a fee waiver. To date, the NSA has not released any records responsive to the Knight Institute's request.

28. By email dated November 20, 2018, the FBI acknowledged receipt of CPJ's request. By letters dated November 28, 2018, the FBI assigned CPJ's request reference number 1422759-000, denied CPJ's request for expedited processing, and stated that it had not reached a decision regarding CPJ's request for a fee waiver. To date, the FBI has not released any records responsive to CPJ's request.

29. By email dated November 21, 2018, the ODNI acknowledged receipt of CPJ's request and assigned it reference number DF-2019-00066. The ODNI denied CPJ's request for expedited processing but granted CPJ's request for a fee waiver. To date, the ODNI has not released any records responsive to CPJ's request.

30. By letter dated November 28, 2018, the CIA acknowledged receipt of CPJ's request on November 21, 2018 and assigned it reference number F-2019-00522. The CIA denied CPJ's request for expedited processing and granted CPJ's request for a fee waiver. To date, the CIA has not released any records responsive to CPJ's request.

31. According to tracking information on the request sent to the NSA, that agency received CPJ's requests on November 21, 2018. By email dated November 29, 2018, the NSA acknowledged CPJ's request but did not address CPJ's requests for expedited processing and for a fee waiver. To date, the NSA has not released any records responsive to CPJ's request.

32. According to tracking information on the request sent to the DOS, that agency received CPJ's requests on November 21, 2018. To date, the DOS has not acknowledged receipt of CPJ's requests, has not addressed CPJ's requests for expedited processing and for a fee waiver, and has not released any records responsive to CPJ's requests.

33. By the date of this filing, twenty or more working days have passed since each agency first received the Knight Institute's and CPJ's requests.

34. Plaintiffs have exhausted all applicable administrative remedies.

CAUSES OF ACTION

35. Plaintiffs repeat, re-allege, and incorporate the foregoing paragraphs as if set forth in full.

36. Defendants' failure to make and communicate a determination whether to comply with Plaintiffs' requests within the statutory time limit violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and Defendants' corresponding regulations.

37. Defendants' failure to promptly make available records responsive to Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

38. Defendants' failure to process Plaintiffs' requests as soon as practicable violates FOIA, 5 U.S.C. § 552(a)(6)(E)(iii), and Defendants' corresponding regulations.

39. The failure of Defendants CIA, DOJ, NSA, and ODNI to grant the Knight Institute's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

40. The failure of all Defendants to grant CPJ's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

41. The failure of Defendants DOJ and NSA to grant the Knight Institute'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 Defendants' corresponding regulations.

42. The failure of Defendants DOJ, DOS, and NSA to grant CPJ'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 Defendants' corresponding regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Order Defendants to conduct a thorough search for records responsive to Plaintiffs' requests;

B. Order Defendants immediately to process any responsive records for release, and to release them to both Plaintiffs;

C. Enjoin Defendants from charging Plaintiffs search, review, and duplication fees relating to Plaintiffs' requests;

D. Award Plaintiffs their reasonable costs and attorney's fees incurred in this action; and

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

Respectfully submitted,

/s/ Jameel Jaffer

Jameel Jaffer (MI0067)
Ramya Krishnan (admitted *pro hac vice*)
Adi Kamdar (application for *pro hac vice* admission to be filed soon)
Alex Abdo (admitted *pro hac vice*)
Knight First Amendment Institute at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
(646) 745-8500
ramya.krishnan@knightcolumbia.org

Counsel for Plaintiff Knight First Amendment Institute at Columbia University



Timothy K. Beeken (NY0083)
Jeremy Feigelson (application for *pro hac vice* admission to be filed soon)
Alexandra P. Swain (application for *pro hac vice* admission to be filed soon)
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000
jfeigels@debevoise.com

Counsel for Plaintiff Committee to Protect Journalists

January 17, 2019

EXHIBIT A
TO
AMENDED
COMPLAINT

KNIGHT FIRST AMENDMENT INSTITUTE
at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

Re: Freedom of Information Act Request
Expedited Processing Requested

To whom it may concern,

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute")[1] submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 ("Directive 191") requires the element to "warn the intended victim or those responsible for protecting the intended victim, as appropriate."[2] Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.[3] The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to

[1] The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

[2] Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), https://perma.cc/49P8-J69X.

[3] *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), https://perma.cc/VD23-B3NX; David D. Kirkpatrick & Carlotta Gall, *Audio Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says*, N.Y. Times (Oct. 17, 2018), https://perma.cc/8RGV-7CVE.

capture Khashoggi.[4] It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;[5]

3. All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information

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[4] Loveday Morris, Souad Mekhennet & Kareem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), https://perma.cc/82WY-EUJT.

[5] "Duty to warn actions" include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

about government activity are among the Institute's core activities.[6] Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.[7]

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan

Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

[6] About the Knight Institute, https://perma.cc/S9PN-J4ZY.

[7] Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

KNIGHT FIRST AMENDMENT INSTITUTE
at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4483

Re: Freedom of Information Act Request
Expedited Processing Requested

To whom it may concern,

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute")[1] submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 ("Directive 191") requires the element to "warn the intended victim or those responsible for protecting the intended victim, as appropriate."[2] Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.[3]

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[1] The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

[2] Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), https://perma.cc/49P8-J69X.

[3] *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), https://perma.cc/VD23-B3NX; David D. Kirkpatrick & Carlotta Gall, *Audio*

The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to capture Khashoggi.[4] It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

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2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;[5]

3. All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to Jamal Khashoggi. *See* Directive 191, § G.1.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says, N.Y. Times (Oct. 17, 2018), https://perma.cc/8RGV-7CVE.

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The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information about government activity are among the Institute's core activities.[6] Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.[7]

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The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan

Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

[6] About the Knight Institute, https://perma.cc/S9PN-J4ZY.

[7] Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

KNIGHT FIRST AMENDMENT INSTITUTE
at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

FOIA Officer
National Security Agency
Attn: FOIA/PA Office
9800 Savage Road, Suite 6932
Ft. George G. Meade, MD 20755-6932

Re: Freedom of Information Act Request
Expedited Processing Requested

To whom it may concern,

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute")[1] submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 ("Directive 191") requires the element to "warn the intended victim or those responsible for protecting the intended victim, as appropriate."[2] Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.[3]

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The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to capture Khashoggi.[4] It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

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The Knight Institute seeks the following records:

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Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

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The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan

Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at
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KNIGHT FIRST AMENDMENT INSTITUTE
at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

Patricia Gaviria, Director
Information Management Division
ATTN: FOIA/PA
Office of the Director of National Intelligence
Washington, D.C. 20511

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Expedited Processing Requested

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KNIGHT FIRST AMENDMENT INSTITUTE
at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

FOIA Officer
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D.C. 20522-0208

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Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan

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EXHIBIT B
TO
AMENDED
COMPLAINT

Committee to Protect Journalists

To Whom It May Concern:

The Committee to Protect Journalists ("CPJ") submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi. CPJ seeks the same documents requested by the Knight First Amendment Institute at Columbia University ("Knight Institute") on October 19, 2018. The Knight Institute's request is attached as Exhibit A.

CPJ requests expedited processing for the same reasons laid out in the Knight Institute's request.

CPJ requests a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

330 7th Avenue, 11th Floor
New York, NY 10001 USA
PHONE: +1 (212) 465-1004
FAX: +1 (212) 465-9568
info@cpj.org

www.cpj.org

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY
475 Riverside Drive, Suite 302
New York, NY 10115

~~Plaintiff~~COMMITTEE TO PROTECT JOURNALISTS
330 7th Avenue, 11th Floor
New York, NY 10001

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

DEPARTMENT OF JUSTICE
950 Pennsylvania Ave., NW
Washington, DC 20530

NATIONAL SECURITY AGENCY
Fort George G. ~~Mead~~Meade,
Maryland ~~20755~~20755-6000

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
Washington, DC 20511

DEPARTMENT OF STATE
2201 C St., NW
Washington, DC 20520

Defendants.

Civil Action No. ~~_____~~18-2709-TNM

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, concerns the recent killing of Jamal Khashoggi—a journalist, a U.S. resident, a Saudi national, and

a prominent critic of Saudi Arabia's current government—and seeks the immediate release of agency records concerning Defendants' compliance or non-compliance with the "duty to warn" set out in Intelligence Community Directive 191 ("Directive 191").

2. According to news reports, a team dispatched by the Saudi government killed Khashoggi in the Saudi consulate in Istanbul on October 2, 2018. Saudi prosecutors have said that Khashoggi was tied up, injected with an overdose of sedatives (or strangled, according to earlier accounts), and then dismembered. The CIA has reportedly concluded that Saudi Crown Prince Mohammed bin Salman personally ordered Khashoggi's killing.

3. Before the killing, U.S. intelligence agencies ~~apparently~~reportedly intercepted communications in which Saudi officials discussed a plan to capture Khashoggi. It is not publicly known precisely what the agencies learned from these communications, or what steps, if any, the agencies took to warn Khashoggi of the threat to him. However, Directive 191 provides that, when an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, the element must "warn the intended victim or those responsible for protecting the intended victim, as appropriate." Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § F.13.

4. ~~Plaintiff Knight First Amendment Institute at Columbia University~~To learn whether the Intelligence Community complied with its duty to warn, Plaintiffs submitted FOIA requests ~~on October 19, 2018~~ to the Central Intelligence Agency ("CIA"), the Federal Bureau of Investigation ("FBI"), the National Security Agency ("NSA"), the Office of the Director of National Intelligence ("ODNI"), and the Department of State ("DOS~~"). The requests sought~~"), seeking records concerning whether the ~~Defendants~~agencies learned of the threat to Khashoggi

before the events of October 2, 2018, what they learned, whether they considered their obligations under Directive 191, and whether ~~they complied with those obligations.~~ and how they complied with those obligations. Plaintiff Knight First Amendment Institute at Columbia University submitted its FOIA requests on October 19, 2018, and Plaintiff Committee to Protect Journalists submitted substantively identical requests to the same agencies on November 20, 2018.

5. ~~Plaintiff has~~Plaintiffs have commenced this action because only one of the Defendants has granted ~~its~~a request for expedited processing, and because none of the Defendants has released records in response to the requests.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

8. The Knight First Amendment Institute at Columbia University ("Knight Institute") is a New York not-for-profit corporation based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education. Public education is essential to the Knight Institute's mission. Obtaining information about government activity, analyzing that information, and publishing and disseminating it to the press and public are among the core activities the Knight Institute was established to conduct. The Knight Institute is a "person" within the meaning of 5 U.S.C. §~~-~~ 551(2~~)~~).

9. The Committee to Protect Journalists ("CPJ") is an independent, nonprofit organization that promotes press freedom worldwide. CPJ defends the right of journalists to report the news without fear of reprisal. CPJ regularly publishes news articles and special reports on

journalists who are attacked, imprisoned, or killed. CPJ is a "person" within the meaning of 5 U.S.C. § 551(2).

~~9.~~10. The CIA is an "agency" within the meaning of 5 U.S.C. § 552(f). The CIA has possession and control over some or all of the requested records.

~~10.~~11. The Department of Justice ("DOJ") is an "agency" within the meaning of 5 U.S.C. § 552(f). The FBI is a component of the DOJ. The DOJ and its component the FBI have possession and control over some or all of the requested records.

~~11.~~12. The NSA is an "agency" within the meaning of 5 U.S.C. § 552(f). The NSA has possession and control over some or all of the requested records.

~~12.~~13. The ODNI is an "agency" within the meaning of 5 U.S.C. § 552(f). The ODNI has possession and control over some or all of the requested records.

~~13.~~14. The DOS is an "agency" within the meaning of 5 U.S.C. § 552(f). The DOS has possession and control over some or all of the requested records.

FACTUAL ALLEGATIONS

The FOIA Requests

~~14.~~15. On October 19, 2018, the Knight Institute submitted FOIA requests to ~~all Defendants~~the CIA, the FBI, the NSA, the ODNI, and the DOS, seeking records relating to Jamal Khashoggi and the IC's "duty to warn."[1] Directive 191.

16. On November 20, 2018, CPJ submitted substantially identical requests to the same agencies.[2]

~~15.~~17. The requests sought the following documents:

[1] True and correct copies of these requests are attached hereto as Exhibit A.

[2] CPJ sent a form letter to each agency seeking "the same documents requested by the [Knight Institute] on October 19, 2018" and attaching as an exhibit the pertinent Knight Institute request. A true and correct copy of the form letter is attached hereto as Exhibit B.

> (1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
>
> (2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;
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> (3) All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

~~16.~~18. The request submitted to ODNI also sought the following documents:

> (4) All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.2.

~~17.~~19. ~~The Knight Institute~~Plaintiffs requested expedited processing of the requests on the ground that ~~it is an organization~~they are organizations "primarily engaged in disseminating information" and there is a "compelling 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).

~~18.~~20. The Knight Institute requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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); (b) the Knight Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II); and (c) the Knight Institute is an "educational . . . institution" whose

purposes include "scholarly . . . research" and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

21. CPJ also requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Agency Responses

~~19.~~22. By letter dated October 23, 2018, the ODNI acknowledged receipt of the Knight Institute's request to it and assigned it reference number DF-2019-0032. The ODNI denied the Knight Institute's request for expedited processing but granted the Knight Institute's request for a fee waiver. ~~The~~On November 2, 2018, the Knight Institute submitted an administrative appeal to the ODNI challenging the agency's denial of expedited processing ~~on November 2, 2018~~, but it has yet to receive a decision. To date, the ODNI has not released any records responsive to the Knight Institute's request.

~~20.~~23. By letter dated October 26, 2018, the CIA acknowledged receipt of the Knight Institute's request and assigned it reference number F-2019-00158. The CIA denied the Knight Institute's request for expedited processing but granted the Knight Institute's request for a fee waiver. ~~The~~On November 2, 2018, the Knight Institute submitted an administrative appeal to the CIA challenging the agency's denial of expedited processing on November 2, 2018, but it has yet to receive a decision. To date, the CIA has not released any records responsive to the Knight Institute's request.

~~21.~~24. By ~~letters~~email dated October ~~30~~19, 2018, the FBI acknowledged receipt of the Knight Institute's request ~~and~~ . By letters dated October 30, 2018, the FBI assigned ~~it~~ the Knight Institute's request reference number 1420624-000~~. The FBI~~, denied the Knight Institute's request for expedited processing, and stated that it had not reached a decision regarding the Knight Institute's request for a fee waiver.

~~22.~~25. On November 2, 2018, the Knight Institute submitted an administrative appeal to the DOJ Office of Information Policy ("OIP") challenging the FBI's denial of expedited processing. By letter dated November 9, 2018, the OIP affirmed that denial. To date, the FBI has not released any records responsive to the Knight Institute's request.

~~23.~~26. By letter dated October 31, 2018, the DOS acknowledged receipt of the Knight Institute's request and assigned it reference number F-2019-00752. The DOS granted the Knight Institute's request for expedited processing and a fee waiver. To date, the DOS has not released any records responsive to the Knight Institute's request.

~~24.~~27. By letter dated November 8, 2018, the NSA acknowledged receipt of the Knight Institute's request and assigned it reference number 105522. The NSA denied the Knight Institute's request for expedited processing but did not address the Knight Institute's request for a fee waiver. To date, the NSA has not released any records responsive to the Knight Institute's request.

28. By email dated November 20, 2018, the FBI acknowledged receipt of CPJ's request. By letters dated November 28, 2018, the FBI assigned CPJ's request reference number 1422759-000, denied CPJ's request for expedited processing, and stated that it had not reached a decision regarding CPJ's request for a fee waiver. To date, the FBI has not released any records responsive to CPJ's request.

29. By email dated November 21, 2018, the ODNI acknowledged receipt of CPJ's request and assigned it reference number DF-2019-00066. The ODNI denied CPJ's request for expedited processing but granted CPJ's request for a fee waiver. To date, the ODNI has not released any records responsive to CPJ's request.

30. By letter dated November 28, 2018, the CIA acknowledged receipt of CPJ's request on November 21, 2018 and assigned it reference number F-2019-00522. The CIA denied CPJ's request for expedited processing and granted CPJ's request for a fee waiver. To date, the CIA has not released any records responsive to CPJ's request.

31. According to tracking information on the request sent to the NSA, that agency received CPJ's requests on November 21, 2018. By email dated November 29, 2018, the NSA acknowledged CPJ's request but did not address CPJ's requests for expedited processing and for a fee waiver. To date, the NSA has not released any records responsive to CPJ's request.

32. According to tracking information on the request sent to the DOS, that agency received CPJ's requests on November 21, 2018. To date, the DOS has not acknowledged receipt of CPJ's requests, has not addressed CPJ's requests for expedited processing and for a fee waiver, and has not released any records responsive to CPJ's requests.

33. By the date of this filing, twenty or more working days have passed since each agency first received the Knight Institute's and CPJ's requests.

34. Plaintiffs have exhausted all applicable administrative remedies.

CAUSES OF ACTION

35. Plaintiffs repeat, re-allege, and incorporate the foregoing paragraphs as if set forth in full.

36. Defendants' failure to make ~~records responsive to Plaintiff's~~and communicate a determination whether to comply with Plaintiffs' requests within the statutory time limit violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and Defendants' corresponding regulations.

~~25.~~37. Defendants' failure to promptly make available records responsive to Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

~~26.~~38. Defendants' failure to process ~~Plaintiff's~~Plaintiffs' requests as soon as practicable violates FOIA, 5 U.S.C. § 552(a)(6)(E)(iii), and Defendants' corresponding regulations.

~~27.~~39. The failure of Defendants CIA, DOJ, NSA, and ODNI to grant ~~Plaintiff's~~the Knight Institute's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

40. ~~Defendant DOJ's and Defendant NSA's failure to grant Plaintiff's~~The failure of all Defendants to grant CPJ's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

41. The failure of Defendants DOJ and NSA to grant the Knight Institute'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 Defendants' corresponding regulations.

~~28.~~42. The failure of Defendants DOJ, DOS, and NSA to grant CPJ'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 Defendants' corresponding regulations.

PRAYER FOR RELIEF

WHEREFORE, ~~Plaintiff~~Plaintiffs respectfully ~~requests~~request that this Court:

A. Order Defendants to conduct a thorough search for records responsive to ~~Plaintiff's~~Plaintiffs' requests;

B. Order Defendants immediately to process any responsive records for release, and to release them to both Plaintiffs;

C. Enjoin Defendants from charging ~~Plaintiff~~Plaintiffs search, review, and duplication fees relating to ~~the~~Plaintiffs' requests;

D. Award ~~Plaintiff its~~Plaintiffs their reasonable costs and attorney's fees incurred in this action; and

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

Respectfully submitted,

~~Respectfully submitted,~~

/s/ Jameel Jaffer
Jameel Jaffer (MI0067)
Ramya Krishnan (admitted *pro hac vice*)
~~Alex Abdo~~
Adi Kamdar (application for ~~bar~~*pro hac vice* admission ~~pending~~to be filed soon)
Alex Abdo (admitted *pro hac vice*)
Knight First Amendment Institute at Columbia University
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Counsel for ~~the plaintiff~~Plaintiff Knight First Amendment Institute at Columbia University

Timothy K. Beeken (NY0083)
Jeremy Feigelson (application for *pro hac vice* admission to be filed soon)
Alexandra P. Swain (application for *pro hac vice* admission to be filed soon)
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Counsel for Plaintiff Committee to Protect Journalists

January 17, 2019

~~November 20, 2018~~

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*, *Plaintiffs*, *v.* CENTRAL INTELLIGENCE AGENCY, *et al.*, *Defendants*.	Civil Action No. 1:18-cv-2709 (TNM)

ANSWER

Defendants hereby answer Plaintiffs' First Amended Complaint ("FAC"), Dkt. No. 17, as follows:

1. The allegations contained within this paragraph constitute the Plaintiffs' characterization of their suit to which no response is required.

2. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations concerning vague references to news reports and what those reports do or do not contain. In addition, the allegations in this paragraph do not set forth a claim for relief or aver facts in support of a claim to which an answer is required.

3. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations concerning vague references to news reports and what those reports do or do not contain. Defendants admit that Intelligence Community Directive 191 governs "Duty to Warn." Defendants respectfully refer the Court to that Directive for a full and accurate statement of its contents.

4. Defendants admit that Plaintiff Knight First Amendment Institute at Columbia University ("Knight Institute") submitted FOIA requests to Defendants on or about October 19, 2018, and that Plaintiff Committee to Protect Journalists ("CPJ") submitted substantively identical requests, to the same Defendant agencies, on or about November 20, 2018. Defendants respectfully refer the Court to the FOIA requests for a full and accurate statement of their contents. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

5. Defendants admit that as of the date of this filing, they have not released any records in response to the relevant requests. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

6. The allegations in this paragraph constitute a conclusion of law to which no response is required.

7. The allegations in this paragraph constitute a conclusion of law to which no response is required.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first three sentences of this paragraph. The allegations in the fourth sentence of this paragraph constitute conclusions of law to which no response is required.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first three sentences of this paragraph. The allegations in the fourth sentence of this paragraph constitute conclusions of law to which no response is required.

10. Admit that the Central Intelligence Agency ("CIA") is an agency. The allegations in the second sentence of this paragraph constitute conclusions of law to which no response is required.

11. Admit that the Department of Justice ("DOJ") is an agency. The allegations in the second sentence of this paragraph constitute conclusions of law to which no response is required.

12. Admit that the National Security Agency ("NSA") is an agency. The allegations in the second sentence of this paragraph constitute conclusions of law to which no response is required.

13. Admit that Office of the Director of National Intelligence ("ODNI") is an agency. The allegations in the second sentence of this paragraph constitute conclusions of law to which no response is required.

14. Admit that the Department of State ("DOS") is an agency. The allegations in the second sentence of this paragraph constitute conclusions of law to which no response is required.

15. Defendants admit that Plaintiff Knight Institute submitted its FOIA requests to Defendants on or about October 19, 2018. Defendants respectfully refer the Court to those requests for a full and accurate statement of their contents.

16. Admitted.

17. Admit. Defendants respectfully refer the Court to the FOIA requests for a full and accurate statement of their contents.

18. Admit. Defendants respectfully refer the Court to the FOIA requests for a full and accurate statement of their contents.

19. Defendants admit only that Plaintiffs requested expedited processing. The remainder the allegations in this paragraph constitute conclusions of law to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiffs satisfied the standard for expedited processing.

20. Defendants admit only that Plaintiff Knight Institute requested a waiver of fees. The remainder of the allegations in this paragraph constitute conclusions of law to which no response is required.

21. Defendants admit only that Plaintiff CPJ requested a waiver of fees. The remainder of the allegations in this paragraph constitute conclusions of law to which no response is required.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted, except to clarify that on December 6, 2018, NSA further responded to CPJ by letter, denying its request for expedited processing.

32. Admitted, except to clarify that on February 4, 2019, the Department of State responded to CPJ by letter, acknowledging its FOIA request and denying its request for expedited processing.

33. Admitted.

34. The allegations in this paragraph constitute conclusions of law to which no response is required.

35. Defendants assert and incorporate their responses to paragraphs 1 through 34 as if fully stated herein.

36. The allegations in this paragraph constitute conclusions of law to which no response is required.

37. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

38. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

39. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

40. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

41. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

42. The allegations contained within this paragraph constitute conclusions of law to which no response is required.

The remaining unnumbered paragraph constitutes a prayer for relief to which no response is required. To the extent a response is deemed necessary, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

Defendants further deny all allegations in Plaintiffs' First Amended Complaint not expressly admitted or denied.

AFFIRMATIVE DEFENSE

1. Some or all of the requested documents and information are exempt from disclosure. *See* 5 U.S.C. § 552(b).

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/
Antonia Konkoly
Trial Attorney
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Counsel for the Defendants

DATED: February 11, 2019

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY
475 Riverside Drive, Suite 302
New York, NY 10115

COMMITTEE TO PROTECT JOURNALISTS
330 7th Avenue, 11th Floor
New York, NY 10001

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

DEPARTMENT OF JUSTICE
950 Pennsylvania Ave., NW
Washington, DC 20530

NATIONAL SECURITY AGENCY
Fort George G. Meade,
Maryland 20755-6000

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
Washington, DC 20511

DEPARTMENT OF STATE
2201 C St., NW
Washington, DC 20520

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

CONSENT MOTION TO DISMISS DEFENDANT U.S. DEPARTMENT OF STATE

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiff Committee to Protect Journalists ("CPJ"), by and through its undersigned counsel, hereby request the dismissal of its claims against the United States Department of State ("DOS") in this action. All remaining

parties have consented to this limited dismissal. This dismissal shall not constitute a waiver of CPJ's ability to seek an assessment of attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i) from DOS or any of the remaining defendants.

Respectfully submitted,

/s/ Timothy K. Beeken

Timothy K. Beeken (NY0083)
Jeremy Feigelson (admitted *pro hac vice*)
Alexandra P. Swain (admitted *pro hac vice*)
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Counsel for Plaintiff Committee to Protect Journalists

JOSEPH H. HUNT
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MARCIA BERMAN
Assistant Branch Director

/s/ Antonia Konkoly

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Counsel for the Defendants

DATED: July 25, 2019

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY

COMMITTEE TO PROTECT JOURNALISTS

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY

DEPARTMENT OF JUSTICE

NATIONAL SECURITY AGENCY

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

DEPARTMENT OF STATE

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

[PROPOSED] ORDER

Upon consideration of the consent motion of the parties submitted on July __, 2019, to dismiss defendant Department of State,

It is, this __ day of July, 2019, ORDERED that the motion be and hereby is GRANTED.

_____

Hon. Trevor N. McFadden, U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*, *Plaintiffs*, *v.* CENTRAL INTELLIGENCE AGENCY, *et al.*, *Defendants*.	Civil Action No. 1:18-cv-2709 (TNM)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Central Intelligence Agency ("CIA" or "Agency"), Federal Bureau of Investigation ("FBI"), National Security Agency ("NSA"), and the Office of the Director of National Intelligence ("ODNI") respectfully move for summary judgment pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 7. The reasons supporting this motion are set forth in the concurrently filed memorandum, and supporting declarations and attachments. A proposed order is also attached for the convenience of the Court.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/
Antonia Konkoly
Trial Attorney

U.S. Department of Justice
Civil Division, Federal Programs Branch
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Counsel for the Defendants

DATED: August 28, 2019

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, et al.	)	
Plaintiffs,	)	Case No.: 18-cv-02709
v.	)	
CENTRAL INTELLIGENCE AGENCY, et al.	)	
Defendants.	)	

DECLARATION OF PATRICIA GAVIRIA,
DIRECTOR, INFORMATION MANAGEMENT DIVISION,
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

I, Patricia Gaviria, declare as follows:

1. I am the Director of the Information Management Division ("IMD"), under the Strategy and Engagement Directorate, for the Office of the Director of National Intelligence ("ODNI"). I have held this position since June 12, 2017. Prior to my current position, I held various senior and supervisory roles in the ODNI, including as a Senior Privacy Officer in the Civil Liberties, Privacy, and Transparency Office, as a Senior Adviser to the ODNI Partner Engagement Office, and as a Branch Chief at the National Counterterrorism Center. As part of my current duties, I develop, implement, and manage programs to provide guidance to ODNI on records and classification management, pre-publication review, and Freedom of Information Act ("FOIA") issues.

2. The IMD falls under the purview of ODNI's Strategy and Engagement Directorate. Its mission, among others, is to implement mandatory information management programs for ODNI and to provide guidance on consistent information management practices across the

Intelligence Community ("IC").[1] IMD's responsibilities include the facilitation and implementation of executive orders, laws, regulations, and ODNI polices related to information management. The IMD has primary responsibility for responding to FOIA requests for ODNI records. *See* 5 U.S.C. § 552. In my current position, I am the final decision-making authority regarding the initial processing of FOIA requests for ODNI.

3. Through the exercise of my official duties, I have become familiar with this civil action. I submit this declaration in support of Defendants' Motion for Summary Judgment in this proceeding. The purpose of this declaration is to explain and justify, to the extent possible on the public record, the reasoning behind ODNI's assertion of a "Glomar" response pursuant to FOIA Exemptions 1 and 3. 5 U.S.C. § 552(b)(1), (3). It is my understanding that plaintiff is not challenging ODNI's search for potentially responsive records in this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

I. RESPONSIBILITIES AND AUTHORITIES OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

4. Through the exercise of my official duties, I support the Director of National Intelligence ("DNI"). Congress created the position of the DNI in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638,

[1] The IC is comprised of ODNI; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the FBI, the Drug Enforcement Administration, and the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence and Analysis of the Department of the Treasury; the Office of Intelligence and Analysis of the Department of Homeland Security; and such other elements of any other department or agency as may be designated by the President, or jointly designated by the DNI and heads of the department or agency concerned, as an element of the IC. *See* 50 U.S.C. § 3003(4).

3643-62, 3698-99 (2004) (amending Sections 102 through 104 of Title 1 of the National Security Act of 1947). The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. 50 U.S.C. §§ 3001–3234 [hereinafter *National Security Act*]. Subject to the authority, direction, and control of the President, the DNI serves as the head of the IC, and as the principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to national security. 50 U.S.C. § 3023(b)(1), (2). The National Security Act also created the ODNI. 50 U.S.C. § 3025(a). The function of the ODNI is to assist the DNI in carrying out his or her duties and responsibilities under the Act and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law. 50 U.S.C. § 3025(b).

5. The responsibilities and authorities of the DNI include ensuring that national intelligence is provided to the President, heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and Congress. 50 U.S.C. § 3024(a)(1). The DNI is charged with establishing the objectives of; determining the requirements and priorities for; and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by IC elements. 50 U.S.C. § 3024(f)(1)(A).

II. PLAINTIFFS' FOIA REQUESTS AND ODNI'S RESPONSE.

6. By email dated October 19, 2018, plaintiff, the Knight First Amendment Institute sent a FOIA request to IMD seeking the following records:

> 1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;

3. All records concerning any "issue aris[ingl among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

4. All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

7. By letter dated October 23, 2018, IMD acknowledged receipt of the Knight First Amendment Institute's FOIA request, granted its request for a fee waiver, denied the request for expedited processing, and assigned the request IMD tracking number DF 2019-00032.

8. In an email dated November 20, 2018, plaintiff, the Committee to Protect Journalists, sent a FOIA request to IMD seeking the same records as requested by plaintiff Knight First Amendment Institute at Columbia University on October 19, 2018. In fact, plaintiff simply attached the Knight First Amendment Institute's FOIA request as plaintiff's own FOIA request. Additionally, plaintiff Committee to Protect Journalists requested a fee waiver and expedited processing. *See* Exhibit A.

9. By letter dated November 21, 2018, IMD acknowledged receipt of plaintiff Committee to Protect Journalists' FOIA request, granted plaintiff's request for a fee waiver, denied plaintiff's request for expedited processing, and assigned the request IMD tracking number DF 2019-00066. *See* Exhibit B.

10. The Knight First Amendment Institute filed its Complaint on November 20, 2018. On January 17, 2019, plaintiffs filed an Amended Complaint, at which time plaintiff Committee to Protect Journalists was added as a party. At the time the Amended Complaint was filed, IMD had not fully processed the FOIA requests.

11. IMD conducted a search for records responsive to part 1 of plaintiffs' requests. IMD identified and searched all ODNI components that were likely to possess records responsive to Part 1 of plaintiffs' FOIA request, and used search methods that were reasonably likely to identify all responsive records. IMD located two documents that originated with other agencies, namely the CIA and NSA. Accordingly, IMD referred the responsive records to the respective agencies for processing and direct response to the plaintiff. It is my understanding that plaintiff is not challenging ODNI's response to Part 1 of its request.

12. On February 14, 2019, IMD responded to plaintiffs' FOIA requests. IMD noted the two referrals mentioned previously, and raised a "Glomar" response to the remainder of plaintiffs' FOIA requests. IMD neither confirmed nor denied the existence or non-existence of records responsive to parts 2-4 of plaintiffs' FOIA requests, citing FOIA Exemptions 1 and 3. *See* Exhibit C.

13. It is my understanding that on July 19, 2019, the Court ordered the dismissal without prejudice of plaintiff the Knight First Amendment Institute. Accordingly, this declaration only addresses IMD's response to plaintiff Committee to Protect Journalists' FOIA request.

III. ODNI'S GLOMAR DETERMINATION PURSUANT TO FOIA EXEMPTION 1 AND FOIA EXEMPTION 3.

14. In a typical scenario, a FOIA requester submits a request to an agency for information on a particular subject, and the agency conducts a search for non-exempt records and advises where responsive records have been located. If responsive records are located, the agency provides the non-exempt records or reasonably segregable non-exempt portions of those records to the requester. In this typical circumstance, the agency's response (either to provide or not to provide records the requester sought) actually confirms the existence or nonexistence of the responsive records. This confirmation reveals neither classified information, nor intelligence sources or methods information, because the mere fact that the agency possesses records on a particular subject is often not a classified fact.

15. In other cases, the confirmation or denial of the existence or non-existence of responsive records would reveal a classified fact or intelligence sources or methods information – for example, whether the IC agency is conducting a particular intelligence activity, has an intelligence interest in a particular individual, or has access to a particular clandestine intelligence source or method. If a requester were to ask for records that would reveal whether the IC has access to a classified intelligence source or method, the mere act of acknowledging the existence of responsive records – even if those records were withheld in full – would in and of itself reveal a classified fact, namely, the existence of the classified source or method. Accordingly, the IC agency would provide what is commonly referred to as a "Glomar" response, wherein a government agency may assert that a particular FOIA statutory exemption covers the fact of the very existence or non-existence of responsive records. The IC agency's Glomar response would ensure that no classified information or intelligence source or method could be discerned by either confirmation or denial of the existence of responsive records.

Section 3.6(a) of Executive Order 13526 provides the authority for the IC to issue such a response, stating that "[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or non-existence is itself classified under this order or its predecessors." 75 Fed. Reg. at 718-719.

16. Plaintiff's request presents just such a circumstance, wherein the mere confirmation or denial of the existence or non-existence of responsive records would reveal a classified fact and intelligence sources or methods information – namely, whether the IC has an intelligence interest in a particular individual or entity, whether the IC is conducting particular intelligence activities, and whether the IC utilizes particular intelligence sources or methods.

17. Therefore, and as further described below, I have determined that ODNI can neither confirm nor deny the existence of the records sought in parts 2-4 of plaintiff's request. As an original classification authority, I have determined that providing a substantive response to plaintiff's request would cause harm to national security cognizable under two FOIA exemptions. First, providing a substantive response to the request would reveal properly classified information protected by Exemption one to FOIA, 5 U.S.C. § 552(b)(1). Second, providing a substantive response to the request would reveal intelligence sources and methods information protected by Exemption three to FOIA, 5 U.S.C. § 552(b)(3), pursuant to the National Security Act, 50 U.S.C. § 3024(i)(1).

A. ODNI's Glomar Response Under FOIA Exemption 1.

18. FOIA Exemption 1 provides that the FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly

classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). The current executive order, which establishes such classification criteria, is Executive Order 13526.

19. Section 1.1(a) of Executive Order 13526 states that information may be originally classified if: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in Section 1.4 of the Executive Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and is able to identify or describe the damage. 75 Fed. Reg. at 707.

20. Section 1.4 of Executive Order 13526 provides that information may not be considered for classification unless it falls within one or more of eight specifically enumerated categories of information, and its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security. Section 1.4 identifies intelligence activities (including covert action), intelligence sources or methods, cryptology, foreign government information, and foreign relations or foreign activities of the United States (including confidential sources) as categories of information that may be classified. 75 Fed. Reg. at 709. In addition, Section 3.6(a) specifically states that "[a]n agency may refuse to confirm or deny the existence or non-existence of requested records whenever the fact of their existence or non-existence is itself classified under this order or its predecessors." 75 Fed. Reg. at 718-719.

21. Consistent with Executive Order 13526, and in conjunction with FOIA Exemption 1, I have determined that acknowledging the existence or non-existence of records sought in parts 2-4 of plaintiff's request would require ODNI to reveal currently and properly classified facts that are classified at the SECRET level. The information withheld pursuant to

FOIA Exemption 1 satisfies the procedural and the substantive requirements of Executive Order 13526 governing classification. This information is owned by, and is under the control of, the United States Government. As described below, the information falls under the classification categories listed in section 1.4(c) of the executive order because it concerns intelligence activities or intelligence sources or methods. *See* 75 Fed. Reg. at 709. Further, unauthorized disclosure of this material could reasonably be expected to result in at least serious damage to national security. My determination that the existence or non-existence of the requested records is classified has not been made to conceal a violation of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

22. As stated above, the information sought by plaintiff in parts 2-4 of the request falls under the classification categories of Executive Order 13526 because it concerns intelligence activities and intelligence sources or methods information. The plaintiff's request seeks information concerning a particular individual, Jamal Khashoggi, and information about steps taken by the Intelligence Community pursuant to its directive on the duty to warn an individual of "intentional killing, serious bodily harm, or kidnapping." *See* ICD 191. The information sought would only exist if underlying information that would trigger actions under ICD 191 were collected by the IC through surveillance efforts targeted at particular individuals or entities that were discussing Mr. Khashoggi during a specific period of time. Likewise, the existence of records regarding any steps taken by the IC under the duty to warn policy would necessarily confirm the existence of records about Mr. Khashoggi. In other words, confirming the existence of any classified records on Mr. Khashoggi or whether steps were taken by the

Intelligence Community pursuant to the duty to warn policy, tends to reveal the ODNI and the IC's interest in particular individuals or entities, and could alert them that certain intelligence sources or methods are being employed by specific elements of the IC to collect information on them. For example, if a particular individual who is the target of IC surveillance mentioned Mr. Khashoggi and very specific information about him (e.g. an intent to harm Mr. Khashoggi) when that individual was using a particular method of communication, that individual would learn that they were being surveilled during a specific period of time and what method the IC was using to surveil them. Similarly, confirming the non-existence of classified records identifies an area in which ODNI and the IC may lack interest in particular individuals, entities, or subjects, or an inability to obtain information on the individuals or entities of interest, and potentially confirms the success of any evasive techniques.

23. Further, if ODNI disclosed interest in a person's activities on a case-by-case basis, this would harm national security by allowing our adversaries to accumulate information and draw conclusions regarding intelligence sources and methods. For example, if ODNI were to admit publicly that no information about Persons X, Y, and Z exists on a given subject, but in response to a separate but substantively identical request about Person A states that it cannot confirm or deny the existence of records, this would cause individuals to infer that records do exist about Person A. These inferences would disclose targets and capabilities of IC activities and inform our adversaries of the degree to which the ODNI and the wider IC is aware of some of their operations or activities. Therefore, ODNI cannot respond to each FOIA request in isolation, but must appreciate that our adversaries will examine all released information together and could take countermeasures to nullify the effectiveness of U.S. intelligence sources and

methods. This compilation of information, if disclosed, could reasonably be expected to cause serious and irreparable damage to the national security of the United States.

24. Likewise, if ODNI were to confirm the existence of records responsive to plaintiff's request, such confirmation would at the very least indicate that ODNI had a direct or ancillary intelligence interest in a particular person or persons, or entity or entities. On the other hand, if ODNI were to respond by admitting that it did not possess any responsive records, it would indicate that ODNI had no intelligence interest in any of these individuals or entities, and that the IC had no associated intelligence activities. Either confirmation would reveal sensitive information about intelligence activities, priorities, sources, and methods that are protected from disclosure by the National Security Act and Executive Order 13526.

25. Finally, I have reviewed the Amended Complaint and plaintiff's characterizations of news reports represented in the Amended Complaint, and I nonetheless maintain my assessment regarding the harm to national security that would result if ODNI confirmed the existence or non-existence of records responsive to parts 2-4 of plaintiff's request.

26. Accordingly, a Glomar response to parts 2-4 of plaintiff's FOIA request is appropriate because the existence or non-existence of ODNI records responsive to these parts of the request is a currently and properly classified fact, the disclosure of which could be expected to cause at least serious damage to national security. This classified fact is therefore exempt from disclosure under FOIA Exemption 1.

B. ODNI's Glomar Response Under FOIA Exemption 3.

27. FOIA Exemption 3 protects information that is specifically exempted from disclosure by statute. A withholding statute under FOIA Exemption 3 must: (A) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3).

28. Section 102A(i)(1) of the National Security Act provides that "the [DNI] shall protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 3024(i)(1). The sources and methods provision of the National Security Act has long been held to qualify as a withholding statute in accordance with FOIA Exemption 3. Agencies are not required to identify and describe the damage to national security that reasonably could be expected to result from the unauthorized disclosure of these sources and methods. Agencies are only required to establish that the withheld information constitutes intelligence sources and methods.

29. After careful review, and consistent with the National Security Act and FOIA Exemption 3, I have determined that disclosing whether or not the ODNI maintains records responsive to parts 2-4 of plaintiff's FOIA request would reveal the existence or non-existence of IC intelligence sources and methods information that the DNI is statutorily charged with protecting. The information withheld pursuant to FOIA Exemption 3 constitutes intelligence sources and methods information, and I find it to be properly exempt from disclosure under the National Security Act. And, although FOIA Exemption 3 does not require that agencies establish the harm in the disclosure of such information, the harms described above in relation to FOIA Exemption 1 apply with the same force in the FOIA Exemption 3 context. For example, acknowledging the existence or non-existence of records responsive to parts 2-4 of the request could reveal whether an intelligence method is being used against a particular individual or entity, thereby compromising national security.

CONCLUSION

30. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this _____ day of August 2019.

Patricia Gaviria
Director, Information Management Division

EXHIBIT A

DF-2019-00066

TERRIEAD

NOV 20 2018

From: Avi Asher Schapiro <aaschapiro@cpj.org>
Sent: Tuesday, November 20, 2018 8:41 AM
To: DNI-FOIA
Subject: FOIA Request from the Commmitee to Protect Journalists
Attachments: EXHIBIT_A.pdf

To Whom It May Concern:

The Committee to Protect Journalists ("CPJ") submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi. CPJ seeks the same documents requested by the Knight First Amendment Institute at Columbia University ("Knight Institute") on October 19, 2018. The Knight Institute's request is attached as Exhibit A.

CPJ requests expedited processing for the same reasons laid out in the Knight Institute's request.

CPJ requests a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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Avi Asher-Schapiro
North America Researcher, Committee to Protect Journalists
831 334 5688

DF-2019-00086

KNIGHT
FIRST AMENDMENT
INSTITUTE
at Columbia University

RAMYA KRISHNAN
Staff Attorney

NOV 20 2018

October 19, 2018

Patricia Gaviria, Director
Information Management Division
ATTN: FOIA/PA
Office of the Director of National
Intelligence
Washington, D.C. 20511

Re: Freedom of Information Act Request
Expedited Processing Requested

To whom it may concern,

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute")[1] submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 ("Directive 191") requires the element to "warn the intended victim or those responsible for protecting the intended victim, as appropriate."[2] Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.[3]

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[1] The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

[2] Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), https://perma.cc/49P8-J69X.

[3] *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), https://perma.cc/VD23-B3NX; David D. Kirkpatrick & Carlotta Gall, *Audio*

475 Riverside Drive, Suite 302, New York, NY 10115 | (646) 745-8500 ramya.krishnan@knightcolumbia.org

The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to capture Khashoggi.[4] It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;[5]

3. All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

4. All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.2.

Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says, N.Y. Times (Oct. 17, 2018), https://perma.cc/8RGV-7CVE.

[4] Loveday Morris, Souad Mekhennet & Karcem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), https://perma.cc/82WY-EUJT.

[5] "Duty to warn actions" include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation or the Central Intelligence Agency) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information about government activity are among the Institute's core activities.[6] Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.[7]

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan
Ramya Krishnan

[6] About the Knight Institute, https://perma.cc/S9PN-J4ZY.

[7] Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
646-745-8500

EXHIBIT B

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

Avi Asher-Schapiro
North America Research
Committee to Protect Journalists
330 7th Avenue, 11th Floor
New York, NY 10001

November 21, 2018

Reference: ODNI Case DF-2019-00066

Dear Mr. Asher-Schapiro:

This acknowledges receipt of your email dated 20 November 2018 (Enclosure), received in the Information Management Division of the Office of the Director of National Intelligence (ODNI) on 20 November 2018. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, you requested records relating to the journalist Jamal Khashoggi, as requested by the Knight First Amendment Institute at Columbia University ("Knight Institute") on 19 October 2018. Please see Enclosure for your entire request.

As indicated, your request duplicates another request (DF-2019-00032) that is currently being processed. We have initiated searches of our holdings and have received potentially responsive documents from one component of the ODNI. We are currently awaiting responses from the remaining components that were tasked. We will process your request along with the duplicate and a response will be sent to you upon completion. **Your request for a fee waiver has been granted. If there are any fees associated with the processing of this request, they will be waived.**

Your request for expedite is also being handled as in case DF-2019-00032. Please be advised that ODNI handles all requests in the order we received them on a "first-in, first-out" basis. We make exceptions to this rule only when a requester establishes a compelling need under the standards in our regulations. A "compelling need" exists: 1) when the matter involves an imminent threat to the life or physical safety of an individual, or 2) when a person primarily engaged in disseminating information makes the request and the information relevant to a subject of Public urgency concerning an actual or alleged Federal government activity. Your request does not demonstrate a "compelling need" under these criteria and, therefore, we deny your request for expedited processing.

Although you have 90 days from the date of this letter to appeal our denial of your request for expedite, **we would appreciate if you would allow us sufficient time to complete our processing of your request. You will have the right to appeal any denial of information at that time.**

If you have any questions, please feel free to email our Requester Service Center at DNI-FOIA@dni.gov or call us at (301) 243-1499. You can also contact ODNI's FOIA Liaison at DNI-FOIA-Liaison@dni.gov.

Sincerely,

Sally A. Nicholson

Sally A. Nicholson
Chief, FOIA Branch
Information Management Division

Enclosure

EXHIBIT C

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

Jameel Jaffer
Knight First Amendment Institute at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115

February 14, 2019

Avi Asher-Schapiro
Committee to Protect Journalists
330 7th Avenue, 11th Floor
New York, NY 10001

SUBJECT: FOIA Requests ODNI Case No: DF-2019-00032 & DF-2019-00066;
Civil Case No: 1:18-cv-02709

Dear Mr. Jaffer and Mr. Asher-Schapiro:

This letter responds to the Freedom of Information Act (FOIA) requests from Ramya Krishnan on behalf of the Knight First Amendment Institute at Columbia University dated October 19, 2018 (Enclosure 1) and Avi Asher Schapiro on behalf of the Committee to Protect Journalists dated November 20, 2018 (Enclosure 2).

Your requests were processed in accordance with the FOIA, 5 U.S.C. § 552, as amended. A search of our records located documents responsive to item 1 of your request. These documents originated with other agencies involved in this case. As a result, those agencies will process the responsive documents and respond directly to you.

Regarding items 2 through 4 of your respective requests, in accordance with Section 3.6(a) of Executive Order 13526, the ODNI can neither confirm nor deny the existence or nonexistence of the requested records. The fact of the existence or nonexistence of the requested records is itself currently and properly classified, and could reveal intelligence sources and methods information that is protected from disclosure pursuant to Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1). Therefore, pursuant to FOIA exemptions (b)(1) and (b)(3), the ODNI can neither confirm nor deny the existence or nonexistence of records responsive to these requests.

We have completed our processing of your FOIA requests. If you have any questions, you may contact Attorney Anotonia Konkoly of the Department of Justice at (202) 514-2395 or antonia.konkoly@usdoj.gov.

Sincerely,

Sally A. Nicholson

Sally A. Nicholson
Chief, FOIA Branch
Information Management Division

Enclosures

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:18-cv-2709 (TNM)
CENTRAL INTELLIGENCE AGENCY, *et al.*	)	
Defendants.	)	

DECLARATION OF LINDA M. KIYOSAKI

I, LINDA M. KIYOSAKI, hereby declare and state:

1. I am the Acting Chief of Policy, Information, Performance, and Exports at the National Security Agency ("NSA" or "Agency"). I am also the Deputy Chief of this organization. I have been employed with NSA since 1985. I am responsible for oversight of NSA's Freedom of Information Act Office ("NSA FOIA Office"). This office has primary responsibility for responding to requests for NSA records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552. Prior to this assignment, I have held various leadership positions throughout the Agency, and I have a detailed understanding of NSA's operations, management processes, and resources. My prior positions include serving as the Senior Intelligence Analysis Authority; the Associate Director for Strategy, Programs and Performance for the Mission Management Investment Portfolio; an NSA representative to CIA's

Counterterrorism Center; an NSA representative to the FBI; and the Enterprise Engagement and Mission Management Associate Director.

2. The Chief of Policy, Information, Performance, and Exports has TOP SECRET original classification authority ("OCA") pursuant to Section 1.3 of Executive Order ("E.O.") 13526, dated 29 December 2009 (75 Fed. Reg. 707). I am an OCA while acting in this position, and it is my responsibility to assert the applicable FOIA exemptions for NSA information in the course of litigation.

3. Through the exercise of my official duties, I have become familiar with the current litigation, which arose out of a complaint filed by the Knight First Amendment Institute at Columbia University[1] (hereinafter "Knight Institute") and the Committee to Protect Journalists (hereinafter "CPJ") alleging that, among other things, the Agency committed a violation of the FOIA by failing to make and communicate a determination within the statutory time limit, and failed to promptly make responsive records available to the Knight Institute and CPJ. The purpose of this declaration is to describe NSA's origin and mission, explain the role of signals intelligence in safeguarding national security, and explain why NSA could neither confirm nor deny the existence of some records sought, as doing either would reveal information that is both currently and properly classified in accordance with E.O. 13526 as well as protected from disclosure by statute.

I. NSA'S ORIGIN AND MISSIONS

4. The NSA was established by Presidential Directive in October 1952 as a separately-organized agency within the Department of Defense ("DoD") under the direction,

[1] The Knight Institute remains a party to this litigation but withdrew its claims via stipulation of dismissal, without prejudice to its ability to seek fees at a later point in the litigation. Its claims were dismissed 19 July 2019.

authority, and control of the Secretary of Defense. NSA has two primary missions: (1) to collect, process, analyze, produce, and disseminate signals intelligence ("SIGINT") information for foreign intelligence and counterintelligence purposes to provide support for national and departmental requirements and for the conduct of military operations; and (2) to conduct information assurance and cybersecurity activities.

5. NSA has developed a sophisticated worldwide SIGINT collection network that acquires foreign signals. In performing its SIGINT mission, NSA exploits foreign signals to obtain intelligence information necessary to the national defense, national security, and/or the conduct of foreign affairs. The technological infrastructure that supports NSA's SIGINT collection network has taken years to develop at a cost of billions of dollars and significant human effort. It relies on sophisticated collection and processing technologies designed to keep pace with challenging new technological developments.

II. IMPORTANCE OF SIGINT TO THE NATIONAL SECURITY

6. Intelligence information is primarily gathered and analyzed to provide key decision-makers with the information necessary to safeguard the national security of the United States. SIGINT information provided by NSA is routinely distributed to a wide variety of senior government officials, including the President; the President's National Security Advisor; the Director of National Intelligence; the Secretaries of Defense, State, Treasury, and Commerce; U.S. ambassadors serving in posts abroad; the Joint Chiefs of Staff; and the Unified and Specified Commanders. SIGINT information is also disseminated to several agencies and departments, including the Central Intelligence Agency; the Federal Bureau of Investigation; the Drug Enforcement Administration, the Departments of the Army, Navy, and Air Force; and various intelligence components of DoD. Information provided by NSA in a classified setting to

the military, other government agencies, and officials within the Intelligence Community ("IC") is relevant to a wide range of important issues including military order of battle, threat warnings and readiness, arms proliferation, terrorism, and foreign aspects of international narcotics trafficking. This sensitive information is often critical to the conduct of U.S. foreign policy and of U.S. military operations around the world. Moreover, intelligence produced by NSA is often unobtainable by other means.

7. NSA's ability to produce SIGINT depends on its ability to access foreign signals. The SIGINT capabilities used to access foreign signals are both expensive and fragile. Public disclosure of either the capability to collect specific signals or the substance of the SIGINT information itself can easily alert foreign adversaries to the vulnerability of their signals—potentially eliminating critical sources of information.

8. Communications intelligence ("COMINT") is the subset of SIGINT information obtained from intercepted foreign communications. As NSA's ability to exploit foreign communications is particularly fragile, secrecy is fundamental to the COMINT process. The identity of the specific communicants whose communications are intercepted, the degree of success in exploiting these communications, and the vulnerability of particular foreign communications are all maintained in strictest secrecy. Disclosure of this information would encourage countermeasures by the targets of NSA's COMINT efforts. Disclosure of a single intercepted communication—or even disclosure of the existence of a particular intercepted communication—could reveal intelligence collection techniques applied around the world. Such a disclosure could prompt adversaries to change the way they communicate, thus inhibiting access to their communications and denying the United States access to information crucial to the defense of the United States both at home and abroad. If an intercept operation is

successfully defeated, all intelligence from that source is lost unless and until NSA can establish new and equivalent exploitation of those communications. If a source becomes unavailable, the military, national policymakers, combatant commanders, and the IC must operate without the information the communications provided. Such losses are extremely harmful to the national security of the United States.

9. Congress has recognized the inherent sensitivity of the intelligence activities of the NSA and the larger IC, passing several statutes to protect these activities from disclosure, including statutes to protect NSA's activities and COMINT efforts specifically. These statutes recognize that intelligence collection is vulnerable to the countermeasures of a foreign power or terrorist organization, and that the loss of valuable foreign intelligence information needed by national policymakers, combatant commanders, and the IC would be of significant detriment to the security of the United States.

10. Three statutes in particular are relevant to this FOIA request. Section 102A(i)(1) of the National Security Act of 1947 authorizes the IC to protect from disclosure its sensitive intelligence activities and efforts.[2] Further, under 18 U.S.C. Section 798, the IC is authorized to protect from disclosure information about COMINT activities specifically. Finally, under Section 6 of the National Security Act of 1959 ("NSA Act"), NSA is broadly authorized to protect from disclosure information about its organization, functions, and activities.[3]

III. PROCEDURAL BACKGROUND

11. On 19 October 2018, the Knight Institute submitted a three part FOIA request to NSA (hereinafter "the request"). Part 1 sought "[a]ll procedures and guidance for determining

[2] Pub. L. No. 108-458 § 102A(i)(1), 118 Stat. 3651, 50 U.S.C. § 3024 (i)(1).

[3] 50 U.S.C. § 3605.

whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191." Part 2 sought "[a]ll records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him." Part 3 sought "[a]ll records concerning any 'issue aris[ing] among IC elements' regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him." NSA responded by letter on 8 November 2018, assigning the Knight Institute's request case number 105522. On 20 November 2018, CPJ submitted a FOIA request seeking the documents sought by the Knight Institute's request. NSA responded to CPJ's request on 6 December 2018, assigning it FOIA Case number 105832. A true and correct copy of this response letter is attached to my declaration as Exhibit A.

12. The Knight Institute filed a complaint on 20 November 2018 in the District Court for the District of Columbia. On 17 January 2019, the complaint was amended to include CPJ.

13. NSA processed and conducted searches to identify documents potentially responsive to Part 1 of the request. NSA identified and searched all NSA components that were likely to possess records responsive to Part 1 of the FOIA request and used search methods that were reasonably likely to identify all responsive NSA records. Two documents, totaling 21 pages, were identified as responsive.[4] These documents were released in part to the Knight Institute and CPJ on 11 March 2019. In that response letter, NSA also indicated that it could neither confirm nor deny the existence of records responsive to Parts 2 and 3 of the request. A true and correct copy of this response letter is attached to my declaration as Exhibit B. It is my

[4] NSA was informed by the Office of the Director of National Intelligence ("ODNI") that one of these two documents was located in the course its search related to this same request. As it had already been located in NSA's search, this document was not processed by NSA as a referral.

understanding that CPJ, the remaining plaintiff in this matter, is not challenging any aspect of NSA's response to Part 1 of its request.

14. Because I understand that former plaintiff Knight Institute has voluntarily dismissed its claims, without prejudice, this declaration addresses only NSA's response to remaining plaintiff CPJ.

IV. NSA'S *GLOMAR* DETERMINATION

15. Because Parts 2 and 3 of Plaintiff's request sought intelligence records, NSA can neither confirm nor deny that it has such records, as doing so could reveal whether or not NSA engaged in certain intelligence activities, or whether NSA did or did not target particular communications for collection. Accordingly, NSA asserted a "*Glomar*" response pursuant to FOIA Exemptions 1 and 3 in response to Parts 2 and 3 of the FOIA request.[5]

16. Based upon my position as the Acting Chief of Policy, Information, Performance, and Exports, the Agency official responsible for the processing of all requests made pursuant to FOIA, I am confident that NSA could not acknowledge the existence or non-existence of intelligence information in this case, as doing so in response to this request would reveal information that is currently and properly classified in accordance with E.O. 13526 as well as protected from disclosure by statute.

a. The Fact of the Existence or Non-Existence of the Records Requested is Classified and thus Protected from Disclosure per FOIA Exemption 1.

17. Confirming the existence or non-existence of responsive records would disclose information that is currently and properly classified and is therefore exempt from disclosure under the FOIA. Exemption 1 protects from disclosure information that has been deemed

[5] A decision neither to confirm nor deny the existence of information requested pursuant to the FOIA is commonly known as a "Glomar" response in reference to the subject of a FOIA request for records pertaining to a ship, the Hughes Glomar Explorer." *See Phillipi v. CIA*, 546 F.2d 1009 (D.C. 1976).

classified "under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and is "in fact properly classified pursuant to such Executive order."[6] The current Executive Order that establishes such criteria is E.O. 13526. Executive Order 13526 § 1.1(a) provides that information may be originally classified under the terms of this order if certain criteria are met. First, the information must owned by, produced by or for, or is under the control of the U.S. Government.[7] In this case, any records responsive to Plaintiffs' requests would necessarily be held by the NSA, and would therefore be "under the control of the United States Government." The information must also fall within one or more of the categories of information listed in Section 1.4 of the Executive Order, and an original classification authority, responsible for classifying the information, must determine that the unauthorized disclosure of the information reasonably could be expected to result in some level of articulable damage to the national security.[8] Section 3.6(a) of E.O. 13526 provides that "[a]n agency may refuse to confirm or deny the existence or non-existence of requested records whenever the fact of their existence or non-existence is itself classified under this order or its predecessors."[9]

18. Section 1.4 of E.O. 13526 provides that information may be considered for classification if it falls within at least one of eight specifically enumerated categories of information. The fact of the existence or non-existence of records responsive to Parts 2 and 3 of the request is currently and properly classified pursuant to Section 1.4(c) of E.O. 13526. Section

[6] 5 U.S.C. Section 552(b)(1).

[7] *See* E.O. 13526 § 1.1(a)(2).

[8] *See* E.O. 13526 § 1.1.

[9] E.O. 13526 § 3.6(a).

1.4(c) provides for the classification of "intelligence activities (including covert action), intelligence sources or methods, or cryptology."[10]

19. Parts 2 and 3 of the request sought records relating to the IC's duty to warn pursuant to ICD 191 as applied to a specific individual. NSA can neither confirm nor deny the existence of such records. Confirming the existence of responsive records would necessarily indicate the existence of underlying intelligence information relating to a threat to a particular individual (Jamal Khashoggi) during a particular time frame (the period preceding his death). Disclosing the existence of such records would tend to reveal information relating to NSA's SIGINT collection activities, sources, and methods, and/or (with respect to Part 3 of the request) the intelligence activities of other IC components, because the triggering of a duty to warn, as set forth in ICD 191 necessarily implies the existence of some underlying intelligence information. Confirming the existence of documents responsive to Parts 2 and 3 of CPJ's request would, at minimum, indicate that NSA or another IC element had collected or acquired intelligence related to a threat to Mr. Khashoggi. Such confirmation could, in turn, tend to reveal sources and methods that NSA or another IC element used to gather such information—thus threatening or undermining the future effectiveness or viability of these sources and methods. Conversely, denying the existence of responsive records would tend to indicate a lack or dearth of underlying intelligence information. Disclosing this information could reveal gaps in IC capabilities, the success of evasive tactics taken by adversaries, and/or IC intelligence collection priorities. Thus, the information that would be disclosed in either confirming or denying the existence of responsive records falls squarely within the category of information addressed by Section 1.4(c) of E.O. 13526.

[10] E.O. 13526, § 1.4(c).

20. The fact of the existence or non-existence of records responsive to Parts 2 and 3 is currently and properly classified TOP SECRET pursuant to Section 1.2(a)(1) of E.O. 13526.[11] This fact is classified TOP SECRET because either confirming or denying the existence of such records could reasonably be expected to cause "exceptionally grave damage"[12] to national security. This level of damage could reasonably be expected as disclosure would reveal NSA capabilities, activities, and intelligence priorities—as well as the capabilities, activities, and intelligence priorities of other IC agencies. Acknowledging the existence or non-existence of responsive records related to particular events or conversations could provide our adversaries with critical information about the IC's capabilities and limitations. Our adversaries could exploit this information in order to conduct their activities more securely—which in turn could inhibit future intelligence collection and affect the IC's ability to counter threats to the national security of the United States

21. Further, NSA must use the *Glomar* response consistently in all cases where the existence or non-existence of records responsive to a FOIA request is a classified fact. This includes instances in which the NSA does not possess records responsive to a particular request. NSA cannot decide on a on a case-by-case basis to disclose when it does not possess responsive records, as this would indicate that certain matters are not of foreign intelligence interest or that NSA has been unsuccessful in collecting relevant foreign intelligence information. Further, if NSA were to respond to some requests for intelligence information by disclosing that no responsive records exist, while issuing other responses that neither confirm nor deny the

[11] The determination that the existence or non-existence of the requested records is classified has not been made to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

[12] E.O. 13526 § 1.2(a)(1).

existence of responsive records, it would give rise to the inference that a *Glomar* response is an acknowledgment that some records do exist. Over time, by implication, such a practice would disclose NSA's priorities and capabilities, and could inform our adversaries of the degree to which NSA is able to exploit particular communications.[13] This would allow our adversaries to accumulate information and draw conclusions about NSA's technical capabilities, sources, and methods. NSA, therefore, cannot respond to each FOIA request in isolation, but must assume that our adversaries may examine all released information together.

22. NSA has not made any official public disclosures confirming or denying whether or not it collected or acquired credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at Jamal Khashoggi, or whether Khashoggi was or was not warned of such a threat pursuant to Directive 191.

23. I have reviewed Plaintiffs' characterization of news reporting represented in the First Amended Complaint, and I nonetheless maintain my assessment regarding the serious harm to national security that would result if the NSA confirmed the existence or non-existence of records responsive to Parts 2 and 3 of plaintiff's request.

24. As the fact of the existence or non-existence of records responsive to Parts 2 and 3 of this request is properly classified TOP SECRET "under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and is "in fact properly classified pursuant to such Executive order," it is therefore a fact exempt from disclosure pursuant to FOIA Exemption 1.

[13] E.O. 13526 specifically contemplates the danger a mosaic of unclassified information can present, providing that compilations of items of information that are individually unclassified may be classified when compiled, if certain conditions are met.

b. The Fact of the Existence or Non-Existence of the Records Requested is Protected from Disclosure by Statute and thus Protected from Disclosure per FOIA Exemption 3.

25. The acknowledgment of the existence or non-existence of the intelligence information requested is also protected from disclosure by statute. Pursuant to Exemption 3, the FOIA does not require the disclosure of matters that are specifically exempted from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.[14] Review of the application of Exemption 3 consists solely of determining that the statute relied upon qualifies as an Exemption 3 statute, and that the information withheld falls within the scope of the statute.

26. The information at issue here falls squarely within the scope of three statutes in particular. First, Section 102A(i)(1) of the National Security Act of 1947, as amended, authorizes the IC to protect from disclosure its sensitive intelligence activities and efforts. [15] Second, Section 6 of the National Security Agency Act of 1959 ("NSA Act")[16] authorizes NSA to protect from disclosure information about its organization, functions, and activities. Finally, with respect to Part 2 of the request in particular, 18 U.S.C. § 798 authorizes the IC to protect from disclosure information about COMINT activities specifically. Because NSA is protected from disclosing the information covered by these statutes, the existence or non-existence of responsive records is a fact exempt from disclosure pursuant to FOIA Exemption 3.

27. First, Section 102A(i)(1) of the National Security Act of 1947, as amended, states that "[t]he Director of National Intelligence shall protect the intelligence sources and methods

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[14] 5 U.S.C. § 552(b)(3).

[15] Pub. L. No. 108-458 § 102A(i)(1), 118 Stat. 3651, 50 U.S.C. § 3024 (i)(1).

[16] 50 U.S.C. § 3605.

from unauthorized disclosure." NSA, as a member agency of the U.S. Intelligence Community, must also protect intelligence sources and methods. The protection afforded to intelligence sources and methods is absolute.[17] Whether the sources and methods at issue are classified is irrelevant for purposes of the protection afforded by Section 102A(i)(1). Because either confirming or denying the existence of records responsive to Parts 2 and 3 of this request would reveal information about the existence or non-existence of underlying intelligence information relating to a threat to a particular individual, doing so would also reveal information about IC intelligence sources and methods. Section 102A(i)(1) exempts such disclosure.

28. The second applicable statute is a statutory privilege unique to NSA. NSA's statutory privilege is set forth in Section 6 of the NSA Act, 50 U.S.C. § 3605, which provides that "[n]othing in this chapter or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency, or any information with respect to the activities thereof." By this language, Congress expressed its finding that disclosure of *any* information relating to NSA activities is potentially harmful.[18] Section 6 states unequivocally that NSA cannot be compelled by statute to disclose any information with respect to its activities.[19] Further, NSA is not required to demonstrate specific harm to national security when invoking this statutory privilege—NSA need only to show that the information it seeks to protect relates to its activities, and therefore falls within the scope of Section 6.[20] While, in this case, the harm from the disclosure of the existence or non-existence of records responsive to

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[17] *See CIA v. Sims*, 471 U.S. 159, 167 (1985).

[18] *See e.g., Linder v. NSA*, 94 F.3d 693, 698 (D.C. Cir. 1996) ("The protection afforded by section 6 is, by its very terms, absolute.").

[19] *Hayden v. NSA*, 608 F.2d 1381, 1390 (D.C. Cir. 1979); *see also Larson v. Dep't of State*, 565 F.3d 857, 868 (D.C. Cir. 2009); *Students Against Genocide v. Dep't of State*, 257 F.3d 828 (D.C. Cir. 2001); *People for the American Way Found. v. NSA*, 462 F. Supp. 2d 21, 30 (D.D.C. 2006).

[20] *See Larson*, 565 F.3d at 868.

Parts 2 and 3 of plaintiff's request would be exceptionally grave—as disclosure would reveal classified information about NSA intelligence activities, sources, and methods—information on NSA's functions and activities is protected from disclosure regardless of classification. Here, because acknowledging the existence or non-existence of responsive records to Parts 2 and 3 of plaintiff's request would reveal information about NSA's functions and activities, 50 U.S.C. § 3605 exempts such disclosure.

29. Finally, with respect to Part 2 of the request in particular, the fact of the existence or non-existence of responsive records is protected from disclosure by 18 U.S.C. § 798. Part 2 of the request specifically seeks NSA records related to the duty to warn as applied to Jamal Khashoggi. 18 U.S.C. § 798 prohibits the unauthorized disclosure of classified information: (i) concerning the communications intelligence activities of the United States; or (ii) obtained by the process of communications intelligence derived from the communications of any foreign government. The term "communication intelligence," as defined by Section 798, means the "procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients." Thus, information concerning COMINT—which, as explained above, is a particularly fragile subset of SIGINT—is specifically protected from disclosure pursuant to 18 U.S.C. § 798. This statutory scheme underscores Congress's commitment to protecting COMINT, which is central to NSA's mission, from disclosure. With respect to Part 2 of the request, either confirming or denying the existence of responsive records would reveal information about the existence or non-existence of underlying NSA COMINT. The duty to warn, as set forth in ICD 191, could only be triggered by the existence of intelligence information—and, with respect to NSA specifically, COMINT. Confirming the existence of responsive records would necessarily confirm that NSA collected

relevant COMINT. Conversely, denying the existence of responsive records would indicate a lack or dearth of COMINT. Because disclosing this information would reveal information related to NSA's COMINT activities, targets, priorities, and capabilities, it is protected from disclosure by 18 U.S.C. § 798.

30. I have determined that IC intelligence sources and methods, information related to NSA's activities and functions, and information related to COMINT would be revealed if NSA confirmed or denied the existence of records responsive to the FOIA request. Based upon my review, I therefore conclude that the acknowledgment of the existence or non-existence of intelligence information is protected from disclosure by statute pursuant to the following three authorities: (1) Section 102A(i)(1) of the National Security Act of 1947, because the information concerns intelligence sources and methods; (2) Section 6 of the NSA Act, because the information concerns the function and activities of NSA; and (3) 18 U.S.C. § 798, because with respect to Part 2 of the request disclosure would reveal information related to NSA's COMINT activities, as described above. For these reasons, the fact of the existence or non-existence of records responsive to Parts 2 and 3 of the request has been properly determined to be statutorily protected from disclosure. The Agency's *Glomar* response was therefore proper under FOIA Exemption 3.

V. CONCLUSION

31. In conclusion, based upon my position as the Acting Chief of Policy, Information, Performance, and exports, the Agency official responsible for the processing of all requests made pursuant to FOIA, I am confident that the Agency could neither confirm nor deny the existence of intelligence information because either response would reveal information that is both

currently and properly classified in accordance with Executive Order 13526 and is protected from disclosure by the above-referenced statutes.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 28th day of August 2019 pursuant to 28 U.S.C. § 1746.

Linda M. Kiyosaki

LINDA M. KIYOSAKI
Acting Chief of Policy, Information,
Performance, and Exports
National Security Agency

EXHIBIT A

NATIONAL SECURITY AGENCY
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 105832
6 December 2018

AVI SCHAPIRO
COMMITTEE TO PROTECT JOURNALIST
330 7TH AVE. 11TH FLOOR
NEW YORK, NY 10001

Dear Avi Schapiro:

This is an initial response to your Freedom of Information Act (FOIA) request of 20 November 2018, which was received by this office on 27 November 2018, for "...records relating to the journalist Jamal Khashoggi. CPJ seeks the same documents requested by the Knight First Amendment Institute at Columbia University ('Knights Institute') on October 19, 2018. The Knight Institute's request is attached as Exhibit A."

Your letter has been assigned Case Number 105832. Please refer to this case number when contacting us about your request. There will be no processing fees; therefore, we have not addressed your fee category or request for a fee waiver.

A FOIA request may be expedited if the requester has made a statement certified by the requester to be true and correct to the best of his/her knowledge that a compelling need exists. Compelling need is defined as follows:

1. The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
2. The information is urgently needed by an individual primarily engaged in disseminating information to inform the public about actual or alleged Federal Government activity. Urgent need means that the information has a particular value that will be lost if not disseminated quickly.

A request will also be handled expeditiously, upon receipt of a certified statement by the requester, if the substantial due process rights of the requester would be impaired by the failure to process the request immediately and the information sought is not otherwise available; there is a humanitarian need which will promote the welfare and interest of mankind; or other narrowly construed exceptional circumstances exist.

Your request for expedited treatment is denied because it does not meet the FOIA's criteria for expedited treatment. We will process your request in our normal processing queue, and will provide a more substantive response as soon as we are able.

FOIA Case: 105832

Since the denial of expedited treatment may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS FOIA/PA Appeal Authority. You may appeal this denial now, or upon receipt of the Agency's final decision pertaining to the entirety of all of the denials within your request. If you decide to appeal, you should do so in the manner outlined below.

- The appeal must be sent via U.S. postal mail, fax or electronic delivery (e-mail) and addressed to:

  NSA FOIA/PA Appeal Authority (P132)
  National Security Agency
  9800 Savage Road STE 6932
  Fort George G. Meade, MD 20755-6932

  The facsimile number is 443-479-3612.
  The appropriate email address to submit an appeal is FOIARSC@nsa.gov.

- It must be postmarked or delivered electronically no later than 90 calendar days from the date of this letter. Decisions appealed after 90 days will not be addressed.
- Please include the case number provided above.
- Please describe with sufficient detail why you believe this denial was unwarranted.

You may also contact our FOIA Public Liaison at foialo@nsa.gov for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Rd - OGIS
College Park, MD 20740
ogis@nara.gov
877-684-6448
(Fax) 202-741-5769

Sincerely,

for Sharon C Linkins

JOHN R. CHAPMAN
Chief, FOIA/PA Office
NSA Initial Denial Authority

EXHIBIT B

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 105522A/105832A
11 March 2019

RAMYA KRISHNAN
ADI KAMDAR
KNIGHT FIRST AMENDMENT INSTITUTE
AT COLUMBIA UNIVERSITY
475 RIVERSIDE DRIVE SUITE 202
NEW YORK, NY 10115

AVI ASHER-SCHAPIRO
COMMITTEE TO PROTECT JOURNALISTS
330 7th AVE, 11th FLOOR
NEW YORK, NY 10001

Dear Ms. Krishnan and Mr. Schapiro:

This letter accompanies NSA's final response to the 19 October 2018 Freedom of Information Act (FOIA) request on behalf of the Knight First Amendment Institute, and the 20 November 2018 FOIA request on behalf of the Committee to Protect Journalists for the following:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions with respect to him;

3. All records concerning any 'issue aris[ing] among IC elements' regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

The request on behalf of the Knight First Amendment Institute was assigned FOIA Case Number 105522, and the request on behalf of the Committee to Protect Journalists was assigned FOIA Case Number 105832. On 20 November 2018, the Knight First Amendment Institute filed a complaint which included NSA, initiating the litigation regarding the above-described FOIA requests. Your cases have been processed in accordance with FOIA.

FOIA Case: 105522A

Item 1

Two documents (21 pages) responsive to item 1 are enclosed: (1) *NSA/CSS Policy Instruction 2-0003 (Duty to Warn)* and (2) *Duty to Warn Operating Procedures.*[1] Certain information has been deleted from the enclosures, as explained below.

Some of the information deleted from the documents was found to be currently and properly classified in accordance with Executive Order 13526. This information meets the criteria for classification as set forth in Subparagraph (c) of Section 1.4 and remains classified SECRET as provided in Section 1.2 of the Executive Order. The information is classified because its disclosure could reasonably be expected to cause serious damage to the national security. Because the information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. § 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA (5 U.S.C. § 552(b)(3)), which provides for the withholding of information specifically protected from disclosure by statute. The statute applicable in this case is Section 6, Public Law 86-36 (50 U.S.C. § 3605).

Items 2 and 3

Regarding items 2 and 3 of your requests, we have determined that the fact of the existence or non-existence of the materials you request is a currently and properly classified matter in accordance with Executive Order 13526, as set forth in Subparagraph (c) of Section 1.4. Thus, we can neither confirm nor deny the existence of responsive records, pursuant to the first exemption of the FOIA (5 U.S.C. § 552(b)(1)), which provides that the FOIA does not apply to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign relations and are, in fact, properly classified pursuant to such Executive Order.

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. The third exemption of the FOIA provides for the withholding of information specifically protected from disclosure by statute. Thus, the existence or non-existence of the information is also exempted from disclosure pursuant to the third exemption. The specific statutes applicable in this case are 18 U.S.C § 798; 50 U.S.C § 3024(i); and Section 6, Public Law 86-36 (50 U.S.C. § 3605).

NSA collects and provides intelligence derived from foreign communications to policymakers, military commanders, and law enforcement officials. We do this to help these individuals protect the security of the United States, its allies, and their citizens from threats such as terrorism, weapons of mass destruction, foreign espionage, international organized crime, and other hostile activities. What we are authorized to do, and how we do it, is described in Executive Order 12333. Information about how

[1] Please note that the policy instruction cited in *Duty to Warn Operating Procedures, NSA/CSS Policy Instruction 11-0002 (Duty to Warn)*, is an unpublished version of 2-0003. 11-0002 was the numbering given to 2-0003 prior to publication.

FOIA Case: 105522A

NSA conducts signals intelligence activities is available on the websites of NSA (www.nsa.gov) and the Office of the Director of National Intelligence (www.dni.gov).

Please be advised that NSA has completed its processing of your cases.

Sincerely,

for Shawn C Lucas

JOHN R. CHAPMAN
Chief, FOIA/PA Office
NSA Initial Denial Authority

Encls:
a/s

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, et al., Plaintiff, v. CENTRAL INTELLIGENCE AGENCY, et al. Defendants.	Case No. 18-cv-2709

DECLARATION OF ANTOINETTE B. SHINER,
INFORMATION REVIEW OFFICER FOR THE
LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

I. INTRODUCTION

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I have held this position since 19 January 2016 and have worked in the information review and release field since 2000.

2. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information,

based on the classification criteria of Executive Order 13526 and applicable regulations.

3. Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

4. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. I am submitting this declaration and the accompanying Vaughn index, attached as Exhibit A, in support of the Motion for Summary Judgment to be filed by the United States Department of Justice in this proceeding.

II. BACKGROUND

5. This matter concerns identical FOIA requests from Knight First Amendment Institute ("Knight Institute") and the Committee to Protect Journalists ("CPJ") to CIA. By letter dated 19 October 2018, the Knight Institute sought expedited processing for the following records:

(1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an

intended victim or those responsible for protecting the intended victim, pursuant to Directive 191[1];

(2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;[2]

(3) All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

6. By letter dated 26 October 2018, the CIA acknowledged receipt of the Knight Institute's FOIA request, assigned it the reference number F-2019-00158, and denied Plaintiff's request for expedited processing. The letter advised the Plaintiff of their right to appeal this determination.

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[1] Intelligence Community Directive 191 ("ICD 191") is entitled "Duty to Warn" and establishes "a consistent, coordinated approach for how the Intelligence Community (IC) will provide warning regarding threats to specific individuals or groups of intentional killing, serious bodily injury, and kidnapping." Under subsection (F) of ICD 191, IC elements are required to establish internal procedures for making duty to warn determinations and delivering warnings in a timely manner.

[2] Plaintiffs' included the following footnote: "'Duty to warn actions' include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim."

7. By letter dated 2 November 2018, the Knight Institute appealed the CIA's denial of expedited processing.

8. On 20 November 2018, the Knight Institute filed a complaint in this Court naming CIA as a defendant.

9. By letter received 21 November 2018, CPJ submitted an identical FOIA request to CIA seeking expedited processing. A true and correct copy of these letters are attached as Exhibit "A".

10. By letter dated 28 November 2018, the CIA acknowledged receipt of CPJ's FOIA request, assigned it the reference number F-2019-00522, and denied Plaintiff's request for expedited processing. The letter advised the Plaintiff of their right to appeal this determination. A true and correct copy of these letters are attached as Exhibit "B".

11. On 17 January 2019, the Knight Institute filed an unopposed motion to amend the complaint to add plaintiff CPJ.

12. CIA identified and searched all CIA components that were likely to possess records responsive to Part 1 of plaintiff's FOIA request and used search methods that were reasonably likely to identify all responsive CIA records. In addition, CIA processed a CIA-originated document that was located by the Office of the Director of National Intelligence ("ODNI") in the course of its search related to part 1 of this same request, and referred by ODNI to CIA for processing.

13. By letter dated 15 March 2019, the CIA made a final production responsive to part 1 of the Plaintiffs' FOIA Request.[3] Three documents were released in part and two documents were withheld in full. Redactions and withholdings were both made pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(5), and (b)(6). CIA asserted a "Glomar" response as to parts 2 and 3. A true and correct copy of these letters are attached as Exhibit "C".

14. During the Department of State's ("State") review of responsive records in connection with this case, State identified two documents, both of which were responsive to part one of the Plaintiffs' FOIA request, containing information that was thought to belong to CIA. In accordance with the requirements of Section 3.6(b) of Executive Order 13526, State referred review of these documents to CIA, for direct response to the Plaintiffs, via letter dated 27 March 2019.

15. By letter dated 29 March 2019, CIA withheld both documents referred by State in full pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(5), and (b)(6). A true and correct copy of this letter is attached as Exhibit "D".

[3] CIA's March 15, 2019 letter was inadvertently addressed only to the Knight Institute, but I understand that a copy of this letter and the accompanying production were provided via email to both the Knight Institute and CPJ on this date. On March 18, 2019, CIA issued a second letter, and accompanying production, addressed to CPJ but otherwise identical to the first, in order to correct the administrative oversight. A true and correct copy of both letters is attached as Exhibit A.

16. I understand that on July 18, 2019, former plaintiff Knight Institute voluntarily dismissed its claims, without prejudice to seeking fees at a later point in the proceedings. Accordingly, this declaration addresses only CIA's response to remaining plaintiff CPJ.

III. APPLICABLE FOIA EXEMPTIONS

A. Exemption (b)(1)

17. Exemption (b)(1) provides that the FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). Here, the Exemption (b)(1) withholdings in the documents at issue satisfy the procedural and the substantive requirements of Executive Order 13526, which governs classification. *See* E.O. 13526 § 1.1(a), § 1.4(c).

18. As an original classification authority, I have determined that the information at issue in this case is currently and properly classified, and appropriately withheld from disclosure. Additionally, this information is owned by, and is under the control of, the U.S. Government. As described below, the information falls under classification category

§ 1.4(c) of the Executive Order because it concerns "intelligence activities (including covert action), [or] intelligence sources or methods." Further, its unauthorized disclosure could reasonably be expected to result in damage to national security. None of the information at issue has been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization, or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security. Further, the classified information is properly marked in accordance with § 1.6 of the Executive Order.

19. More specifically, the classified information at issue consists of details about foreign liaison and intelligence sources and methods. To the greatest extent possible, I have attempted to explain on the public record the nature of the information subject to Exemption (b)(1). As described below, disclosure of these details, which would reveal intelligence sought by the Agency and the means by which it is acquired, could reasonably be expected to cause harm, and in some instances serious damage, to the CIA's continued ability to collect this information and to the Agency's relationships with foreign partners, thereby damaging the national security.

20. *Intelligence Methods*. The withholdings made on the basis of Exemption (b)(1) contain details with respect to the Agency's duty to warn policies and procedures that would disclose other intelligence methods of the CIA. Intelligence methods are the means by which the CIA accomplishes its mission. Intelligence methods are highly sensitive because their disclosure could provide adversaries with valuable insight into CIA operations that could impair the effectiveness of CIA's intelligence collection.

21. Here, revealing aspects of what types of information or threats the Agency deems sufficient to qualify as "credible and specific," so as to trigger the duty to warn; internal processes related to how the Agency conducts the appropriate analysis of this question; and how warnings are, in certain instances, conveyed to the intended victim, would disclose details about the practice of intelligence gathering and specific aspects of Agency tradecraft. These details would reveal what type of information the Agency considers in its analysis regarding the duty to warn, which could be utilized by adversaries. For example, adversaries could use the CIA's internal policies and policy related deliberations as a means to detect and/or counteract the Agency's intelligence methods - which could have grave consequences for the security of

individuals facing a threat to their life and safety in the context of the duty to warn.

22. Document 1 also contains details regarding the locations of covert CIA installations located abroad. The places where the CIA maintains a presence constitute intelligence methods of the Agency. Official acknowledgment that the CIA has or had a facility in a particular location abroad could cause the government of the country in which the installation is or was located to take countermeasures, either on its own initiative or in response to public pressure, to eliminate the CIA's presence within its borders or curtail cooperation with the CIA. Damage to those relationships with foreign governments could harm the CIA's continued ability to obtain accurate and timely foreign intelligence, and could result in terrorists and foreign intelligence services targeting that installation and the persons associated with it, placing CIA employees and sources at great risk, and harming the Agency's ability to protect personnel.

23. In sum, I have determined that information withheld pursuant to Exemption (b)(1) has been properly withheld because it is currently and properly classified and its disclosure could identify CIA methods and activities.

B. Exemption (b)(3)

24. Exemption (b)(3) protects information that is specifically exempted from disclosure by statute. To justify withholding under Exemption (b)(3), a statute must either (i) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3).

25. Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the "CIA Act"), provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires the publication or disclosure of, the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. Accordingly, under Section 6, the CIA is exempt from disclosing information relating to employees' names and personal identifiers. The CIA Act therefore constitutes a federal statute that "establish[es] particular criteria for withholding or refer[s] to particular types of matters to be withheld" and is well-established as a qualifying withholding statute under Exemption (b)(3). 5 U.S.C. § 552(b)(3). Each of the documents contains information concerning the organization, numbers, names, or official titles of personnel employed by the CIA, the disclosure of which the CIA Act expressly prohibits.

26. Additionally, Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), which provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure," applies to certain responsive records. Accordingly, the National Security Act constitutes a federal statute which "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b)(3). Under the direction of the DNI pursuant to section 102A of the National Security Act, as amended, and section 1.6(d) of Executive Order 12333,[4] the Director of the CIA is responsible for protecting CIA intelligence sources and methods from unauthorized disclosure. 50 U.S.C. § 3024(i)(1). Accordingly, the CIA relies on the National Security Act to withhold information that would reveal intelligence sources and methods and their application by Agency personnel. I further note that the vast majority of information withheld pursuant to the National Security Act is also protected by Exemption (b)(1) for the reasons set forth above. To the extent that the information covered by the statute is not

[4] Section 1.6(d) of Executive Order 12333, as amended by Executive Order 13470 (July 30, 2008) requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure . . . ."

classified, it nevertheless would reveal protected intelligence sources and methods related to the Agency's duty to warn policy.

27. Although neither the CIA Act nor the National Security Act requires the CIA to identify or describe the damage to national security that reasonably could be expected to result from the unauthorized disclosure of information covered by the statutes, the release of this information is reasonably likely to significantly impair the CIA's ability to carry out its core mission of gathering and analyzing intelligence.

C. Exemption (b)(5)

28. Exemption (b)(5) protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). This has been construed to exempt documents that are normally protected in the civil discovery context. Documents in this case were withheld pursuant to both the deliberative process privilege and the attorney-client privilege, which are recognized as protected by Exemption (b)(5).

29. *Attorney-Client Privilege*. The attorney-client privilege protects confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought professional advice. In this case, the attorney-client privilege applies to Document 4, which is an

outline drafted by an attorney for the purpose of briefing Agency clients on legal considerations related to the duty to warn. It contains legal advice from an Agency attorney solicited by internal CIA clients on this topic and the confidentiality of these communications has been maintained.

30. If this confidential information - and other confidential information of this nature - were to be disclosed, it would inhibit open communication between CIA personnel and their attorneys, thereby depriving the Agency of full and frank legal counsel. The deliberative process was also asserted for this document insofar as this legal advice is used to inform decisions made by Agency officers with respect to the duty to warn process.

31. *Deliberative Process Privilege*. The deliberative process privilege protects Agency communications that are pre-decisional and deliberative. The purpose of the privilege is to prevent injury to the quality of agency decision making. Here, the CIA invoked the deliberative process privilege to protect the internal communications and inter-agency communications described broadly below and in the attached Vaughn index for documents 1, 3, and 4.

32. *Internal Memoranda*. Documents 3 and 4 are informal internal outlines consisting of comments, recommendations, operational proposals, and assessments on aspects of the duty to

warn as it relates to internal policy guidance. These records document internal recommendations and comments which feed into guidance regarding the duty to warn.

33. *Inter-Agency Email*. Document 1 in the Vaughn index is an inter-agency email chain providing various considerations and suggestions in response to a specific inquiry regarding the Agency's policies and procedures related to the duty to warn. The deliberative process privilege was applied to protect this email chain in full because it contains interim discussions and considerations that feed into a larger decision making process concerning the implementation of certain policies and procedures related to the duty to warn.

34. I have examined the documents withheld pursuant to the deliberative process privilege and have determined that, to the extent there is any factual material, it is part and parcel of the deliberations and cannot be segregated. To the extent that these documents contain factual information, these details would tend to reveal the nature of the preliminary recommendations and opinions preceding final determinations.

35. Thus, the disclosure of these documents would have the foreseeable harm of significantly hampering the ability of Agency personnel to candidly discuss and assess the viability of certain courses of action, and ultimately chilling deliberations. Additionally, revealing this information could

mislead or confuse the public by disclosing rationales that were not the basis for the Agency's final decisions. Moreover, I note that Exemptions (b)(1) and (b)(3) also apply to all of the information for which Exemption (b)(5) was asserted.

D. Exemption (b)(6)

36. I have also determined that certain information must be withheld pursuant to FOIA Exemption (b)(6). 5 U.S.C. § 552(b)(6) exempts from disclosure:

> personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

37. Therefore, in addition to withholding the names of CIA officers pursuant to the CIA Act, the CIA has also asserted Exemption (b)(6) to withhold names and personally identifying details of CIA personnel contained in Document 1. The persons mentioned in this document maintain a strong privacy interest in this information. Revealing the individuals could subject them to harassment or unwanted contact by the media, particularly given the high profile subject matter of this case.

38. Conversely, plaintiff has not set forth and, I am unable to identify, any qualifying public interest that would be served by such a disclosure. The release of the identities of these individuals would not serve the core purpose of the FOIA -- informing the public about the operations or activities of the

government. Accordingly, because there is no qualifying public interest in disclosure, I have determined that the release of this information would constitute a clearly unwarranted invasion of these individuals' personal privacy.

IV. SEGREGABILITY

39. In evaluating the responsive documents, the CIA conducted a document-by-document and line-by-line review and released all reasonably segregable non-exempt information. In instances where no segregable, non-exempt portions of documents could be released without potentially compromising classified or privileged information or other information protected under the FOIA, then such documents were withheld from Plaintiffs in full. In this case, much of the withheld information is protected by several, overlapping FOIA exemptions. After reviewing all of the records at issue, I have determined that no additional information can be released without jeopardizing classified or privileged material, individuals' personal privacy, and/or other protected information that falls within the scope of one or more FOIA exemptions.

40. Therefore, for the reasons set forth above, the documents are redacted in part or withheld in full pursuant to Exemptions (b)(1), (b)(3),(b)(5), and (b)(6).

V. CIA'S GLOMAR RESPONSE TO PARTS 2 AND 3 OF THE REQUEST

41. As explained below, acknowledging the existence or non-existence of records responsive to the portion of Plaintiffs' request that concerns the Agency's or the Intelligence Community's duty to warn as it relates to Jamal Khashoggi would reveal a classified and/or statutorily-protected fact within the meaning of FOIA Exemptions 1 and 3, as described above. This response is commonly referred to as the Glomar response.[5]

42. As described above, Exemption 1 provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order." 5 U.S.C. § 552(b)(1). Section 1.1(a) sets forth the procedural standards for classification, which have been satisfied in this case. Section 3.6(a) provides that "[a]n agency may refuse to confirm or deny the existence or non-existence of requested records whenever the fact of their existence or non-existence is itself classified under this order or its predecessors." Additionally, Section 102A(i)(1) of the National Security Act in conjunction

[5] The origins of the Glomar response date back to the D.C. Circuit's decision in Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976), which affirmed the CIA's use of the "neither confirm nor deny" response to a FOIA request for records concerning the CIA's reported contacts with the media regarding Howard Hughes' ship the Hughes' Glomar Explorer.

with Exemption (b)(3) protects unauthorized disclosure of intelligence sources and methods. Consistent with sections 1.1(a) and 3.6(a) of Executive Order 13526, and as described below, I have determined that the fact of the existence or non-existence of the requested records is currently and properly classified and pertains to "intelligence activities (including covert action), [or] intelligence sources or methods" within the meaning of section 1.4(c) of the Executive Order.

43. As described above, the Agency has conducted a search for records that contain general information about the Agency's duty to warn pursuant to Intelligence Community Directive 191 and provided the requester with all segregable, non-exempt information contained in those records. The fact that Agency maintains records responsive to part one of the request is not itself a classified fact. However, revealing the existence or non-existence of records responsive to parts two and three of the request would reveal a classified fact - namely, whether the duty to warn was implicated in connection with Jamal Khashoggi.

44. For example, if the Agency were to disclose that responsive records to parts two and three of Plaintiffs' request existed - it would reveal aspects of the CIA's or the Intelligence Community's intelligence collection. The existence of responsive records would indicate that the CIA or other elements of the Intelligence Community possessed threat

information in advance of Khashoggi's death. This fact, in turn, would tend to reveal, at a minimum, targets of intelligence collection at a given point in time and could also reveal sources, capabilities, resources, and/or relationships with domestic or foreign entities. Conversely, disclosing that the Agency had no records on the subject would tend to reveal a blind spot in the U.S. Government's intelligence acquisition. The presence or absence of records on this subject would be of great interest to adversaries - who could attempt to hinder or circumvent intelligence collection efforts and exploit blind spots.

45. Terrorist organizations, foreign intelligence services, and other hostile groups continually gather details regarding the CIA's specific intelligence capabilities, authorities, and interests; and attempt to use this information to their advantage. In order to effectively collect and analyze foreign intelligence, the Agency must avoid disclosing the subjects of intelligence interest and what is known at a given point in time. Accordingly, confirming or denying the existence or non-existence of the records related to parts two and three in this case could reasonably be expected to cause damage to national security because such an admission would reveal broader intelligence priorities and capabilities of the Agency and

sensitive details about the CIA's intelligence methods and activities.

46. Additionally, I find this classified fact is also protected by Exemption (b)(3) and the National Security Act. Acknowledging the existence or non-existence of records reflecting a classified connection to the CIA in this matter would reveal information that concerns intelligence sources and methods, which the National Security Act is designed to protect. In contrast to Exemption (b)(1), this statute does not require the CIA to identify and describe the damage to the national security that reasonably could be expected to result should the CIA confirm or deny the existence or non-existence of the records. Nonetheless, I refer the Court to the paragraphs above for a description of the damage to the national security that is reasonably likely to ensue should anything other than a Glomar response be required of the CIA in response to parts 2 and 3 of the Plaintiff's FOIA request. FOIA Exemptions (b)(1) and (b)(3) thus apply independently and co-extensively.

47. Finally, I have reviewed the First Amended Complaint and Plaintiff's characterizations of news reporting represented in the First Amended Complaint, and I nonetheless maintain my assessment regarding the serious harm to national security that would result if CIA confirmed the existence or non-existence of records responsive to Parts 2 and 3 of plaintiff's request. CIA

has made no official acknowledgement regarding the duty to warn as it relates to Jamal Khashoggi, therefore, the Glomar is proper.

48. Accordingly, a Glomar response to parts 2 and 3 of plaintiff's FOIA request is appropriate because the existence or non-existence of CIA records responsive to these requests is a currently and properly classified fact, the disclosure of which could be expected to cause serious damage to national security.

* * *

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

Executed this 28th day of August 2019.

Antoinette B. Shiner

Antoinette B. Shiner
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency

Exhibit A

Vaughn

Knights First Amendment at Columbia University vs. CIA, et al., 18-cv-2709
Central Intelligence Agency *Vaughn* Index

Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
1	C06796068	Inter-Agency Email – Referral from Department of State Exemptions (b)(1) and Exemptions (b)(3) (National Security Act) were asserted to protect classified intelligence methods, controlled access and dissemination control markings, and locations of Agency stations or bases. Exemption (b)(3) (CIA Act) was asserted to protect employee identification numbers, titles, names, and organization information of Agency personnel. Exemption (b)(5) was asserted to protect pre-decisional inter-agency deliberations regarding the agency's duty to warn policies. Exemption (b)(6) protects information that would constitute a clearly unwarranted invasion of personal privacy of the individuals involved.	8/21/2018	DENIED IN FULL (DIF)	5	(b)(1), (b)(3) CIAAct, (b)(3) NatSecAct, (b)(5), (b)(6)
2	C06796082	Threat Assessment Paper – Referral from Department of State Exemption (b)(1) and Exemption (b)(3) (National Security Act) were asserted to protect classified intelligence methods, controlled access and dissemination control markings, and information pertaining to foreign relations or foreign activities of the United States. Exemption (b)(3) CIA Act was also asserted to protect employee identification numbers, titles, names, and organization information of Agency personnel.	Undated	DIF	1	(b)(1), (b)(3) CIAAct, (b)(3) NatSecAct

Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
3	C06790103	Internal memorandum Exemption (b)(1) and Exemption (b)(3) (National Security Act) were asserted to protect classified intelligence methods and controlled access and dissemination control markings. Exemption (b)(3) (CIA Act) was asserted to protect employee titles and organization information of Agency personnel. Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations regarding duty to warn policies and guidance.	Undated	DIF	4	(b)(1), (b)(3) CIAAct, (b)(3) NatSecAct, (b)(5)
4	C06790104	Internal Memorandum Exemption (b)(1) and Exemption (b)(3) (National Security Act) were asserted to protect classified intelligence methods and sources, locations of Agency stations or bases, and controlled access and dissemination control markings; as well as information pertaining to foreign relations or foreign activities of the United States. Exemption (b)(3) (CIA Act) was asserted to protect employee identification numbers, titles, names, and organization information of Agency personnel. Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations and attorney-client protected information.	Undated	DIF	4	(b)(1), (b)(3) CIAAct, (b)(3) NatSecAct, (b)(5)

Case 1:18-cv-02709-TNM Document 34-4 Filed 08/28/19 Page 25 of 43
USCA Case #20-5045 Document #1850203 Filed: 07/06/2020 Page 135 of 357
JA - 131

Knights First Amendment at Columbia University vs. CIA, et al., 18-cv-2709
Central Intelligence Agency *Vaughn* Index

Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
5	C06788114	Agency Regulation Concerning the Duty to Warn Exemption (b)(1) and Exemption (b)(3) (National Security Act) were asserted to protect classified intelligence methods, and controlled access and dissemination control markings. Exemption (b)(3) (CIA Act) was asserted to protect employee identification numbers, titles, names, and organization information of Agency personnel.	11/4/2016	RELEASED IN PART (RIP)	6	(b)(1), (b)(3) CIAAct, (b)(3) NatSecAct
6	C06788115	Duty to Warn Guidance Exemption (b)(1) and Exemption (b)(3) (National Security Act) were asserted to protect classified intelligence methods, internal database links, information on storage of the document, references to other classified documents, and controlled access and dissemination control markings. Exemption (b)(3) (CIA Act) was asserted to protect employee identification numbers, titles, names, and organization information of Agency personnel.	Undated	RIP	8	(b)(1), (b)(3) CIAAct, (b)(3) NatSecAct
7	C06794097	Duty to Warn Guidance Exemption (b)(1) and Exemption (b)(3) (National Security Act) were asserted to protect classified intelligence methods, internal database links, references to other classified documents, and controlled access and dissemination control markings. Exemption (b)(3) (CIA Act) was asserted to protect employee identification numbers, titles, names, and organization information of Agency personnel.	3/14/2019	RIP	5	(b)(1), (b)(3) CIAAct, (b)(3) NatSecAct

Exhibit A

Letter

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CPJ Committee to Protect Journalists

F-2019-00522

CHAIR
Kathleen Carroll
VICE CHAIR
Jacob Weisberg
HONORARY CHAIR
Terry Anderson
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Susan Chira THE NEW YORK TIMES
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Mhamed Krichen AL-JAZEERA
Isaac Lee EXILE CONTENT STUDIO
Rebecca MacKinnon
Kati Marton
Michael Massing
Geraldine Fabrikant Metz
THE NEW YORK TIMES
Victor Navasky THE NATION
Clarence Page CHICAGO TRIBUNE
Lydia Polgreen HUFFPOST
Ahmed Rashid
David Remnick THE NEW YORKER
Alan Rusbridger
LADY MARGARET HALL, OXFORD
Karen Amanda Toulon BLOOMBERG NEWS
Darren Walker FORD FOUNDATION
Roger Widmann
Jon Williams RTÉ NEWS

To Whom It May Concern:

The Committee to Protect Journalists ("CPJ") submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi. CPJ seeks the same documents requested by the Knight First Amendment Institute at Columbia University ("Knight Institute") on October 19, 2018. The Knight Institute's request is attached as Exhibit A.

CPJ requests expedited processing for the same reasons laid out in the Knight Institute's request.

CPJ requests a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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EXHIBIT 4

KNIGHT FIRST AMENDMENT INSTITUTE
at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

Re: Freedom of Information Act Request
Expedited Processing Requested

To whom it may concern,

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute")[1] submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 ("Directive 191") requires the element to "warn the intended victim or those responsible for protecting the intended victim, as appropriate."[2] Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.[3] The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to

[1] The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

[2] Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), https://perma.cc/49P8-J69X.

[3] *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), https://perma.cc/VD23-B3NX; David D. Kirkpatrick & Carlotta Gall, *Audio Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says*, N.Y. Times (Oct. 17, 2018), https://perma.cc/8RGV-7CVE.

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capture Khashoggi.[4] It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;[5]

3. All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information

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[4] Loveday Morris, Souad Mekhennet & Kareem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), https://perma.cc/82WY-EUJT.

[5] "Duty to warn actions" include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

about government activity are among the Institute's core activities.[6] Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.[7]

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan

Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

[6] About the Knight Institute, https://perma.cc/S9PN-J4ZY.

[7] Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

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Exhibit B

Central Intelligence Agency

Washington, D.C. 20505

28 November 2018

Ms. Kathleen Carroll
Committee to Protect Journalists
330 7th Avenue, 11th floor
New York, NY 10001

Reference: F-2019-00522

Dear Ms. Carroll:

On 21 November 2018 the office of the Information and Privacy Coordinator received your undated Freedom of Information Act (FOIA), request, submitted on behalf of the Committee to Protect Journalists, for **the same documents requested by Knight First Amendment Institute on 19 October 2018 relating to the journalist, Jamal Khashoggi. You included a copy of their request, which included the following items:**

1) **All procedures or guidance for determining whether to warn, or delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;**
2) **All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;**
3) **All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191. §G.1.**

You have requested expedited processing. Generally, we handle all requests in the order we receive them; that is "first-in, first out." We make exceptions to this rule when a requester establishes a compelling need in accordance with our regulations. We have reviewed your request and determined it does not meet the criteria for expedited processing. Specifically, the request neither involves an imminent threat to the life or physical safety of an individual, nor is it made "by a person primarily engaged in disseminating information, and the information is relevant to a subject of public urgency concerning an actual or alleged or Federal activity." Therefore, we have determined that you have not established a "compelling need" for the information as set forth in 32 CFR § 1900.34. Your request for expedited processing is hereby denied. You may appeal this decision, in my care, within 90 days from the date of this letter. Should you choose to appeal the denial of your request for expedited processing, you are encouraged to provide an explanation supporting your appeal.

Our officers will review your request and will advise you should they encounter any problems or if they cannot begin the search without additional information. We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily. In accordance with our regulations, as a matter of administrative discretion, the Agency has waived the fees for this request.

Sincerely,

Allison Fong
Information and Privacy Coordinator

Exhibit C

Central Intelligence Agency

Washington, D.C. 20505

15 March 2019

Jameel Jaffer
Knight First Amendment Institute
at Columbia University
475 Riverside Drive
Suite 302
New York, NY 10115

Re: F-2019-00158; 18-cv-02709

Dear Mr. Jaffer:

This letter is in response to the 19 October 2018 Freedom of Information Act (FOIA) request submitted by Ramya Krishnan, also representing Knight First Amendment Institute, for the following:

1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;
3) All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191. §G.1.

We processed the request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 3141, as amended.

With regard to item 1, we completed a thorough search for records responsive to the request and determined that three (3) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1) and (b)(3). In addition, it has been determined that the remaining records must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), and (b)(5). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507 and/or Section 102A(i)(l) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1).

With regard to items 2 and 3, in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of such records is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(l) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1). Therefore, pursuant to FOIA exemptions (b)(1) and (b)(3), the CIA can neither confirm nor deny the existence or nonexistence of these records.

This concludes our response to the above referenced request.

Sincerely,

Allison Fong
Information and Privacy Coordinator

Central Intelligence Agency

Washington, D.C. 20505

18 March 2019

Avi Asher-Schapiro
Committee to Project Journalists
330 7th Ave, 11th Floor
New York, NY 10001

Re: F-2019-00158; 18-cv-02709

Dear Mr. Asher-Schapiro:

This letter is in response to the 19 October 2018 Freedom of Information Act (FOIA) request submitted by Ramya Krishnan for the following:

1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;
3) All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191. §G.1.

We processed the request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 3141, as amended.

With regard to item 1, we completed a thorough search for records responsive to the request and determined that three (3) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1) and (b)(3). In addition, it has been determined that the remaining records must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), and (b)(5). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507 and/or Section 102A(i)(l) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1).

With regard to items 2 and 3, in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of such records is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(l) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1). Therefore, pursuant to FOIA exemptions (b)(1) and (b)(3), the CIA can neither confirm nor deny the existence or nonexistence of these records.

This concludes our response to the above referenced request.

Sincerely,

Allison Fong
Information and Privacy Coordinator

Exhibit D

Central Intelligence Agency

Washington, D.C. 20505

29 March 2019

Avi Asher-Schapiro
Committee to Project Journalists
330 7th Ave, 11th Floor
New York, NY 10001

Reference: CIA Case No. F-2019-01234; DOS Case No. F-2019-00752; 18-cv-02709

Dear Mr. Asher-Schapiro:

In the course of processing the 19 October 2018 Freedom of Information Act (FOIA) request submitted by Ramya Krishnan, the Department of State (DOS) located CIA material responsive to part 1 of the request and referred it to us for review and direct response to you. The request was for the following:

1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;
3) All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191. §G.1.

We reviewed the referred CIA material in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 3141, as amended.

It has been determined that the material must be denied in its entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), and (b)(6). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507 and/or Section 102A(i)(l) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1).

This completes our response to the above referenced referral.

Sincerely,

Riggs Monfort
Information and Privacy Coordinator

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA and COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	)	Civ. A. No. 1:18-cv-02709 (TNM)

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section ("RIDS"), Information Management Division ("RMD"), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation ("FBI"), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 245 FBI employees, supported by approximately 75 contractors, who staff a total of twelve (12) FBI Headquarters ("FBIHQ") units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to

FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order ("E.O.") 13526,[1] and the preparation of declarations in support of Exemption 1 claims under the FOIA. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13526, §§ 1.3 and 3.1. The statements contained in this declaration are based on my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. §552a. Specifically, I am aware of the FBI's handling of Plaintiffs' three-part FOIA requests to FBIHQ, seeking access to records concerning the duty to warn under Directive 191 and the late Jamal Khashoggi. This declaration is being submitted in support of Defendant FBI's Motion for Summary Judgment.

PLAINTIFFS' FOIA REQUESTS

(4) By FBI eFOIA[2] communication dated October 19, 2018, Ms. Adi Kamdar on behalf of Plaintiff, Knight First Amendment Institute at Columbia University ("Knight First"), submitted a FOIA request to the FBI seeking:

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[1] 75 Fed. Reg. 707 (2010).

[2] FBI eFOIA is an electronic FOIA format that allows requesters to submit requests on non-first party or third party requests with privacy waivers (these requests must be emailed,

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him.[3]

3. All records concerning any "issue aris[ing] among IC elements" regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to Jamal Khashoggi. See Directive 191, § G.1.

In addition, Knight First requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and a waiver of document search, review and duplication fees.

(5) By FBI eFOIA communication dated November 20, 2018, Ms. Avi Asher-Schapiro on behalf of Plaintiff, Committee to Protect Journalists ("CPJ"), submitted a FOIA request to the FBI seeking the same documents requested by the Knight First on October 19, 2018. In addition, Ms. Asher-Schapiro requested expedited processing for the same reasons laid out by Knight First, as well as a waiver of search, review and duplication fees.

(6) Plaintiffs' request letters included two distinct subjects – records about procedures and guidelines (Item 1) and records concerning Jamal Khashoggi (Items 2 and 3). Part I of this declaration addresses the administrative history of Plaintiffs' FOIA requests, including FBI's

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faxed, or mailed) FOIA topics of interest to requesters through the FBI eFOIA portal instead of via e-mail, fax, or mail. The FBI response correspondence will be emailed to a valid email address provided by the requester.

[3] "Duty to warn actions" include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Central Intelligence Agency) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. See Directive 191, § F.13.

final production in response to Item 1 of the requests, and Part II of this declaration addresses the FBI's *Glomar* response to Items 2 and 3 of the requests.

***

PART I:
ADMINISTRATIVE HISTORY OF
FOIPA REQUEST NUMBERS 1420624-000 and 1422759-000

(7) As previously noted in ¶ 4, *supra*, Plaintiff, Knight First's October 19, 2019 request sought inter alia, "[a]ll procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191."

(8) By letter dated October 30, 2018, the FBI acknowledged receipt of Knight First's FOIA request and assigned it FOIPA Request Number 1420624-000.

(9) By separate letter also dated October 30, 2018, the FBI advised Knight First that its request for expedited processing was denied because it did not provide enough information concerning the statutory requirements permitting expedition.

(10) By submission through OIP's eFOIA portal on November 2, 2018, Knight First appealed the FBI's denial of expedited processing of FOIPA Request No. 1422759-000. The appeal was assigned Appeal Number DOJ-AP-2019-000627.

(11) By letter dated November 9, 2018, OIP affirmed the FBI's determination to deny Knight First's request for expedited treatment.

(12) On November 20, 2018, Knight First filed its complaint in the instant action. (*See* **Docket Number 1**.)

(13) As previously noted in ¶ 5, *supra*, Plaintiff, CPJ's November 20, 2018, request sought, inter alia, "[a]ll procedures or guidance for determining whether to warn, or for

delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191."

(14) By letter dated November 28, 2018, the FBI acknowledged receipt of CPJ's FOIA request and assigned it FOIPA Request Number 1422759-000. (*See* **Exhibit A**.)

(15) By separate letter also dated November 28, 2018, the FBI advised CPJ that its request for expedited processing was denied because it did not provide enough information concerning the statutory requirements permitting expedition. (*See* **Exhibit B**.)

(16) On January 17, 2019, Knight First filed an Amended Complaint to add CPJ as a Co-Plaintiff in the instant action. (*See* Docket Number 17.)

(17) FBI identified and searched all FBI components that were likely to possess records responsive to Part 1 of the FOIA request, and used search methods that were reasonably likely to identify all responsive FBI records.

(18) By letter dated March 29, 2019, the FBI responded to Plaintiffs' Requests. Concerning Item 1 of their requests, the FBI advised Plaintiffs it reviewed 33 responsive pages and 32 pages were being released in full or in part, with certain information withheld pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C) and (b)(7)(E). Concerning Items 2 and 3 of their requests, the FBI provided Plaintiffs a *Glomar* response advising it cannot confirm or deny the existence of any records about the subject of their requests as the mere acknowledgement of such records existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1). (*See* **Exhibit C**.)

(19) By letter dated May 14, 2019, the FBI made a supplemental release of Bates-numbered page FBI 18-cv-02709-5 to Plaintiffs, as it had determined upon further review that additional information was able to be segregated for release on this page. (*See* **Exhibit D**.)

(20) I understand that remaining Plaintiff CPJ is not challenging any aspect of FBI's response to Part 1 of its request.

(21) On July 18, 2019, Knight First filed a Stipulation of Dismissal without prejudice to document its intent to withdrawal as a party in the instant civil action. Accordingly, the remainder of this declaration addresses only FBI's response to remaining Plaintiff CPJ.

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PART II:
FBI'S *GLOMAR* RESPONSE AS TO ITEMS 2 AND 3 – DOCUMENTS CONCERNING JAMAL KHASHOGGI

(22) The FBI relies on a *Glomar* response in instances in which, assuming that responsive records existed, even acknowledging their existence would result in harm protected against by one or more FOIA exemptions.[4] To be credible and effective, the FBI must maintain a *Glomar* response in all similar cases regardless of whether or not responsive records actually exist, including instances in which the FBI does not possess records responsive to a particular request. If the FBI were to invoke a *Glomar* response only when it actually possessed responsive records, then the invocation would be interpreted as an admission responsive records exist.

(23) In an effort to carry its responsibilities as fully integrated, intelligence-driven national security organization, the FBI must consistently provide "*Glomar*" responses neither confirming nor denying the existence of records pertaining to intelligence sources, methods and

[4] The phrase "*Glomar*" stems from a case in which a FOIA requester sought information concerning a ship named the "Hughes Glomar Explorer," and the CIA refused to confirm or deny its relationship with the Glomar vessel because to do so would compromise the national security of divulge intelligence sources and methods. *Phillipi v. CIA*, 655 F 2d. 1325 (D.C. Cir. 1981).

activities. Acknowledgement of the existence or lack thereof of these types of records on a particular subject, could lead interested parties to deduce information about classified national security investigations and intelligence activities, sources and methods.

(24) For reasons explained at greater length below, the FBI's *Glomar* response here is justified because revealing the existence or non-existence of responsive records:

(a) is classified in the interest of national security, *see* 5 U.S.C. § 552(b)(1); and

(b) would risk disclosure of information protected by statute specifically the National Security Act of 1947, *see id* § 552(b)(3).

FOIA EXEMPTION (b)(1)

(25) Exemption 1 protects records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). Executive Order 13526 currently governs classification. It provides for the protection of intelligence activities, sources and methods. Executive Order 13526 § 1.4(c).

(26) Executive Order 13526 establishes four requirements for classification: (1) an original classification authority classifies the information; (2) the U.S. Government owns, produces, or controls the information; (3) the information is within one of eight protected categories listed in section 1.4 of the Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and identifies or describes that damage. Exec. Order No. 13526 § 1.1(a), 75 Fed. Reg. 707, 707 (Dec. 29, 2009).

(27) The categories of information listed in section 1.4 include information that "pertains to . . . intelligence activities" or "intelligence sources or methods." *Id.* § 1.4(c).

(28) Executive Order 13526 further provides that "[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors." *Id.* § 3.6(a).

(29) I have determined that the fact of the existence or non-existence of records responsive to Plaintiff's FOIA request is classified; acknowledging whether or not records exist would tend to confirm or disprove the use of a specific intelligence method to collect information concerning Jamal Khashoggi.

(30) Any records responsive to Plaintiff's request concerning the duty to warn Jamal Khashoggi under Directive 191, would necessarily be held by the FBI, and would therefore be "under the control of the United States Government." *Id.* § 1.1(a)(2).

(31) The existence or non-existence of such records also "pertains to . . . intelligence activities" or "intelligence sources or methods." *Id.* § 1.4(c). An intelligence activity or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of national security interest, and includes any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity or method has two characteristics. First, the intelligence activity or method, and information generated by it, is needed by United States Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the use or non-use of the activity or method, including intelligence sources, if the viability, productivity, and usefulness of the activity, method, and source are to be preserved.

(32) Intelligence activities, methods, and sources must be protected from disclosure in every situation in which a certain intelligence capability, technique, or interest—or its specific

use—is unknown to the groups against which it is deployed, since those groups could take countermeasures to nullify its effectiveness. Intelligence activities, methods, and sources are valuable only so long as they and/or their use under particular circumstances or against particular targets remains unknown and unsuspected. Once the fact of an intelligence activity, method, or source's use or non-use in a certain situation or against a certain target is discovered, its continued successful use is seriously jeopardized.

(33) The U.S. Government must do more than prevent explicit references to an intelligence activity, method, or source; it must also prevent indirect references to them. One vehicle for gathering information about the U.S. Government's capabilities is by reviewing officially-released information. We know that terrorist organizations and other hostile or Foreign Intelligence groups have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods from disparate details to defeat the U.S. Government's collection efforts. Thus, even seemingly innocuous, indirect references to an intelligence activity, source, or method could have significant adverse effects when juxtaposed with other publicly-available data.

(34) Here, acknowledging the existence or non-existence of records responsive to Plaintiff's request could tend to confirm or refute the FBI's acquisition and reliance on a particular intelligence activity, source, or method. Such an acknowledgement could suggest non-public information regarding the nature of the FBI's intelligence interests, priorities, activities, and methods—information that is desired by adversaries who seek to thwart the FBI's intelligence-gathering mission. Accordingly, to confirm or deny that the FBI possesses records responsive to Plaintiff's request could risk compromising intelligence activities and methods, and thus would pose at least a serious risk to the national security.

(35) Thus, a *Glomar* response as to Items 2 and 3 of the FOIA request is necessary because confirming or denying the issuance of a warning as it relates to Directive 191, in relation to a specific subject (*i.e.*, Mr. Khashoggi) would indicate that the FBI had in fact collected or acquired—or not collected or acquired—prerequisite intelligence related to the threat to Mr. Khashoggi in the time period directly preceding his death. Merely acknowledging the existence or non-existence of records related to a potential or actual warning to Mr. Khashoggi, would, at minimum, tend to confirm or deny the FBI and/or IC's collection or acquisition of intelligence indicating one or more specific credible threats. Acknowledging this collection of intelligence would, in turn, tend to reveal the FBI and/or IC's specific intelligence interests and collection capabilities. Conversely, confirmation that the FBI lacks any records responsive to Items 2 and 3 would, at minimum, tend to reveal the FBI and/or IC's limitations in regard to this specific subject matter. Information about the gaps in the FBI and/or IC's intelligence interests and collection capabilities is of great interest to the U.S. Government's adversaries, who can use such information to, for example, exploit tactics they have used in successfully avoiding detection.

(36) The FBI has not made any official public disclosures confirming or denying whether or not it collected or acquired credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at Jamal Khashoggi, or whether Khashoggi was or was not warned of such a threat pursuant to Directive 191.

(37) I have reviewed Plaintiff's characterization of news reporting represented in the First Amended Complaint, and I nonetheless maintain my assessment regarding the serious harm to national security that would result if the FBI confirmed the existence or non-existence of records responsive to Parts 2 and 3 of Plaintiff's request.

(38) The determination that the existence or nonexistence of the requested records is classified has not been made to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

FOIA EXEMPTION (b)(3)

(39) Exemption (b)(3) protects information "specifically exempted from disclosure by statute" where the statute "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3)(B). Here, the statute on which the FBI relies is the National Security Act of 1947, as amended, which provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 3024(i)(1).

(40) As relevant to the FBI's assertion of Exemption (b)(3), the National Security Act of 1947 was enacted before the date of enactment of the OPEN FOIA Act of 2009. On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 3024(i)(1) is absolute.

(41) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community ("IC") for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(1). The FBI is one of the member agencies comprising the IC, and as such must protect intelligence sources and methods.

(42) Disclosure of intelligence sources and methods information presents the potential for adversaries to develop and implement countermeasures, which would result in the loss of critical intelligence information relied upon by national policymakers and the IC.

(43) As described above, acknowledging the existence or non-existence of records responsive to Plaintiff's request could reasonably be expected to reveal classified national security information. Thus, the requested information, if it existed, would pertain to "intelligence sources and methods," and must therefore be "protect[ed] . . . from unauthorized disclosure." 50 U.S.C. § 3024(i)(1).

(44) Accordingly, the National Security Act, in conjunction with Exemption (b)(3), provides an additional and independent basis for the FBI's *Glomar* response to Plaintiff's request.

***

CONCLUSION

(45) The FBI can neither confirm nor deny whether it possesses records responsive to Items 2 and 3 of Plaintiff's request, pursuant to FOIA Exemptions 1 and 3, 5 U.S.C. § 552 (b)(1) and (b)(3) because merely confirming or denying the existence of such records would reveal classified information and intelligence sources and methods information prohibited from disclosure by statute.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and Exhibits A through D attached hereto are true and correct copies.

Executed this 29th day of August, 2019.

DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Information Management Division
Federal Bureau of Investigation
Winchester, Virginia

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA and COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	)	Civ. A. No. 1:18-cv-02709 (TNM)

EXHIBIT A

U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

November 28, 2018

MS. AVI ASHER-SCHAPIRO
THE COMMITTEE TO PROTECT JOURNALISTS
NUMBER 11
330 7TH AVENUE
NEW YORK, NY 10001

FOIPA Request No.: 1422759-000
Subject: KHASHOGGI, JAMAL AHAMD

Dear Ms. Asher-Schapiro:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI. Below you will find check boxes and informational paragraphs about your request, as well as specific determinations required by these statutes. Please read each one carefully.

☑ Your request has been received at FBI Headquarters for processing.

☐ Your request has been received at the _____ Resident Agency / _____ Field Office and forwarded to FBI Headquarters for processing.

☑ You submitted your request via the FBI's eFOIPA system.

- ☑ We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIA request will be provided in an email link.
- ☐ We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIPA request will be sent through standard mail.

☐ The subject of your request is currently being processed and documents will be released to you upon completion.

☐ Release of responsive records will be posted to the FBI's electronic FOIA Library (The Vault), http:/vault.fbi.gov, and you will be contacted when the release is posted.

☑ Your request for a public interest fee waiver is under consideration, and you will be advised of the decision at a later date. If your fee waiver is not granted, you will be responsible for applicable fees per your designated requester fee category below.

☑ For the purpose of assessing any fees, we have determined:

- ☐ As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
- ☑ As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
- ☐ As a general (all others) requester, you will be charged applicable search and

duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at www.fbi.gov/foia by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: https://www.foiaonline.gov/foiaonline/action/public/home. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Information Management Division

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA and COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	)	Civ. A. No. 1:18-cv-02709 (TNM)

EXHIBIT B

U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

November 28, 2018

MS. AVI ASHER-SCHAPIRO
THE COMMITTEE TO PROTECT JOURNALISTS
NUMBER 11
330 7TH AVENUE
NEW YORK, NY 10001

FOIPA Request No.: 1422759-000
Subject: KHASHOGGI, JAMAL AHAMD

Dear Ms. Asher-Schapiro:

This is in reference to your letter to the FBI, in which you requested expedited processing for the above-referenced Freedom of Information/Privacy Acts (FOIPA) request. Under Department of Justice (DOJ) standards for expedited processing, it can only be granted in the following situations:

28 C.F.R. §16.5 (e)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."

28 C.F.R. §16.5 (e)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."

28 C.F.R. §16.5 (e)(1)(iii): "The loss of substantial due process of rights."

28 C.F.R. §16.5 (e)(1)(iv): "A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affects public confidence."

You have not provided enough information concerning the statutory requirements permitting expedition; therefore, your request is denied.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: https://www.foiaonline.gov/foiaonline/action/public/home. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA and COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	)	Civ. A. No. 1:18-cv-02709 (TNM)

EXHIBIT C

U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

March 29, 2019

MR. ADI KAMDAR
KNIGHT FIRST INSTITUTE AT COLUMBIA UNIVERSITY
SUITE 302
475 RIVERSIDE DRIVE
NEW YORK, NY 10115

THE COMMITTEE TO PROTECT JOURNALISTS
C/O MR. TIMOTHY K. BEEKEN
DEBEVOISE & PLIMPTON, LLP
919 THIRD AVENUE
NEW YORK, NY 10022

Knight First Amendment Institute at Columbia University, et al. v. U.S. Department of Justice, et al.
Civil Action No. 1:18-cv-02709

FOIPA Request Nos.: 1420624-000 and 1422759-000
Subject: Khashoggi, Jamal

Dear Mr. Kamdar and Mr. Beeken:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find checked boxes under applicable statutes for the exemptions asserted to protect information exempt from disclosure. The appropriate exemptions are noted on the processed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely pursuant to applicable exemptions. An Explanation of Exemptions is enclosed to further explain justification for withheld information.

Section 552		Section 552a
☑ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☐ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☑ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
50 USC § 3024(i)(1)	☐ (b)(7)(D)	☐ (k)(2)
	☑ (b)(7)(E)	☐ (k)(3)
	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☑ (b)(6)		☐ (k)(7)

33 pages were reviewed and 32 pages are being released.

Below you will also find additional informational paragraphs about your request. Where applicable, checked boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

☐ Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].

☐ This information has been referred to the OGA(s) for review and direct response to you.
☐ We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

☐ In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010). This response is limited to those records subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

Please direct any further inquiries about this case to the Attorney representing the Government in this matter. Please use the FOIPA Request Number and/or Civil Action Number in all correspondence or inquiries concerning your request.

☑ See additional information which follows.

Sincerely,

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

The enclosed documents, Bates-numbered FBI 18-cv-02709-1 thru FBI 18-cv-02709-33, represent the FBI's final release of information responsive to Item 1 of your Freedom of Information/Privacy Acts (FOIPA) requests and subsequent civil action case pending in the U.S. District Court for the District of Columbia.

In response to Items 2 and 3 of your records requested, the FBI is a criminal law enforcement agency as well as an intelligence agency. The records located, processed and released to you pertain to the FBI's criminal law enforcement mission and functions. In its capacity as an intelligence agency, the FBI compiles records while carrying out its responsibilities to investigate threats to national security and gather foreign intelligence. The nature of your request implicates records the FBI may or may not compile pursuant to these national security and foreign intelligence missions and functions. Accordingly, the FBI cannot confirm or deny the existence of any records about your subject as the mere acknowledgment of such records existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1).

It is unnecessary to adjudicate your requests for a fee waiver as no responsive main files were located. This material is being provided to you at no charge.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

(b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

(d)(5) information compiled in reasonable anticipation of a civil action proceeding;

(j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;

(k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;

(k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;

(k)(4) required by statute to be maintained and used solely as statistical records;

(k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;

(k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA and COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	)	Civ. A. No. 1:18-cv-02709 (TNM)

EXHIBIT D

U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 14, 2019

MR. ADI KAMDAR
KNIGHT FIRST INSTITUTE AT COLUMBIA UNIVERSITY
SUITE 302
475 RIVERSIDE DRIVE
NEW YORK, NY 10115

THE COMMITTEE TO PROTECT JOURNALISTS
C/O MR. TIMOTHY K. BEEKEN
DEBEVOISE & PLIMPTON, LLP
919 THIRD AVENUE
NEW YORK, NY 10022

Knight First Amendment Institute at Columbia University, et al. v. U.S. Department of Justice, et al.
Civil Action No. 1:18-cv-02709

FOIPA Request Nos.: 1420624-000 and 1422759-000
Subject: Khashoggi, Jamal

Dear Mr. Kamdar and Mr. Beeken:

In response to Item 1 of your Freedom of Information Act (FOIA) requests and subsequent civil action pending in the U.S. District Court for the District of Columbia, enclosed is one (1) page representing a supplemental release of information.

Upon further review of the responsive records, additional information was able to be segregated for release on Bates-numbered page FBI 18-cv-02709-5.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. The **"Standard Responses to Requests"** section of the Addendum applies to all requests. If the subject of your request is a person, the **"Standard Responses to Requests for Individuals"** section also applies. The **"General Information"** section includes useful information about FBI records. Also enclosed for your reference is the FBI's Explanation of Exemptions.

Please direct any further inquiries about this case to the Attorney representing the Government in this matter. Please use the FOIPA Request Numbers and/or Civil Action Number in all correspondence or inquiries concerning your requests.

Sincerely,

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosures

FBI FOIPA Addendum

As referenced in our letter, the FBI FOIPA Addendum includes information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. If you submitted a request regarding yourself or another person, Part 2 includes additional standard responses that apply to requests for individuals. If you have questions regarding the standard responses in Parts 1 or 2, visit the www.fbi.gov/foia website under "Contact Us." Previously mentioned appeal and dispute resolution services are also available. Part 3 includes general information about FBI records that you may find useful.

Part 1: Standard Responses to All Requests: See Below for all Requests

(i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). *See* 5 U.S. C. § 552(c) (2006 & Supp. IV (2010). FBI responses are limited to those records subject to the requirements of the FOIA. Additional information about the FBI and the FOIPA can be found on the fbi.gov website.

(ii) **National Security/Intelligence Records**. The FBI can neither confirm nor deny the existence of national security and foreign intelligence records pursuant to FOIA exemptions (b)(1) and (b)(3) and PA exemption (j)(2) as applicable to requests for records about individuals [5 U.S.C. §§ 552/552a (b)(1), (b3), and (j)(2); 50 U.S.C § 3024(i)(1)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3); 50 USC § 3024(i)(1). This is a standard response and should not be read to indicate that national security or foreign intelligence records do or do not exist.

Part 2: Standard Responses to Requests for Individuals: See Below for all Requests for Individuals

(i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2]. This is a standard response and should not be read to indicate that watch list records do or do not exist.

(ii) **Requests for Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E) and (b)(7)(F) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

(i) **Record Searches.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching those systems or locations where responsive records would reasonably be found. Most requests are satisfied by searching the Central Record System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its dual law enforcement and intelligence mission as well as the performance of agency administrative and personnel functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters ("FBIHQ"), FBI Field Offices, and FBI Legal Attaché Offices ("Legats") worldwide. A CRS search includes Electronic Surveillance (ELSUR) records.

(ii) **FBI Records**
Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.

(iii) **Requests for Criminal History Records or "Rap Sheets."** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks –often referred to as a criminal history record or "rap sheets." These criminal history records are not the same as material in an investigative "FBI file." An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.

(iv) **The National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private citizens cannot request a name check.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

(b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

(d)(5) information compiled in reasonable anticipation of a civil action proceeding;

(j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;

(k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;

(k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;

(k)(4) required by statute to be maintained and used solely as statistical records;

(k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;

(k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*, *Plaintiffs*, *v.* CENTRAL INTELLIGENCE AGENCY, *et al.*, *Defendants*.	Civil Action No. 1:18-cv-2709 (TNM)

DEFENDANTS' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO ISSUE

Pursuant to Local Civil Rule 7(h)(1), remaining Defendants Central Intelligence Agency ("CIA"), Federal Bureau of Investigation ("FBI"), and National Security Agency ("NSA"), and the Office of the Director of National Intelligence ("ODNI") (collectively, "remaining Defendants" or "Defendants") respectfully submit the following statement of material facts as to which there is no genuine dispute.[1]

I. Plaintiffs' FOIA Requests and the Initiation of This Action

1. On October 19, 2018, former Plaintiff Knight First Amendment Institute at Columbia University ("Knight Institute") submitted the following FOIA requests to the CIA, FBI, NSA, and ODNI, as well as former Defendant DoS:

[1] As explained below, former Defendant Department of State ("DoS") has been dismissed from this suit (without prejudice to Plaintiffs' ability to seek attorney's fees at a later point in these proceedings). Accordingly, facts related to DoS's response to Plaintiffs' FOIA requests are not set forth in this filing, except incidentally to facts involving the remaining Defendants.

> (1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191 [("Part 1")];
>
> (2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him [("Part 2")];
>
> (3) All records concerning any 'issue aris[ing] among IC elements' regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1 [("Part 3")].

First Amended Complaint ("FAC"), Dkt. No. 17, ¶¶ 15, 17; Dkt. No. 17-1 (the Knight Institute's October 19, 2018 requests).

2. In addition, the Knight Institute also sought—from ODNI only—a fourth category of documents:

> (4) All records relating to any dispute referred to the [O]DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G2 [("Part 4")].

FAC ¶ 18; Dkt. No. 17-1.

3. On November 20, 2018, Plaintiff CPJ submitted substantively identical requests to the same agencies. FAC ¶ 16 and fn. 2; Dkt. No. 17-2.

4. Also on November 20, 2018, the Knight Institute initiated the instant civil proceeding. Dkt. No. 1.

5. On January 2, 2019, the Court granted Defendants' motion to stay proceedings in light of the then-extant lapse in appropriations to the U.S. Department of Justice ("DOJ"), as well as several of the Defendant agencies. *See* Dkt. No. 15 (Defendants' Motion to Stay); January 2,

2019 Minute Order (staying proceedings "until Congress has restored appropriations to the Department of Justice").

6. On January 17, 2019, the Court granted the Knight Institute's motion to temporarily lift the stay, for the limited purpose of allowing the filing of the First Amended Complaint, which added CPJ as a party to the suit. January 17, 2019 Minute Order.

7. On the same day, the Knight Institute and CPJ filed the FAC. Dkt. No. 17.

II. Defendants' Responses to the FOIA Requests

8. Following the restoration of federal appropriations to the DOJ and the affected Defendant agencies, the Court lifted the temporary stay, January 29, 2019 Minute Order, and the Defendants moved forward with the processing of Plaintiffs' requests. The remaining Defendants responded to these requests, respectively, as follows.

A. ODNI

9. ODNI responded to Plaintiffs' FOIA requests on February 14, 2019. Declaration of Patricia Gaviria ("Gaviria Decl.") ¶ 12 & Ex C thereto. ODNI informed Plaintiffs that it had conducted and completed a search as to Part 1 of the requests, and had located responsive records, all of which had originated with other Defendant agencies. *Id.* Accordingly, ODNI informed Plaintiffs that these records had been referred to the respective other agencies for processing and production. *Id.*[2]

[2] As the Gavira Declaration additionally clarifies, there were two such documents, one of which originated with the CIA and the other of which originated with NSA. Gavira Decl. ¶ 11. CIA and NSA processed these respective documents and provided final responses regarding the same to Plaintiffs. *See* Shiner Decl. ¶ 12; Kiyosaki Decl. ¶ 13 n. 4.

10. In the same letter, ODNI further informed Plaintiffs that pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive Parts 2, 3, or 4 of the requests. *Id.* Specifically, ODNI explained that the fact of the existence or non-existence of such records "is itself currently and properly classified, and could reveal intelligence sources and methods information that is protected from disclosure pursuant to Section 102A(i)(1) of the National Security Act of 1947[.]" *Id.*

B. NSA

11. NSA responded to Plaintiffs' FOIA requests on March 11, 2019. Declaration of Linda M. Kiyosaki ("Kiyosaki Decl.") ¶ 13 & Ex. B thereto. NSA informed Plaintiffs that it had conducted and completed a search as to Part 1 of the requests, and had located two responsive records, totaling 21 pages, which it simultaneously produced, in part, to Plaintiffs. *Id.*

12. In the same letter, NSA further informed Plaintiffs that pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive Parts 2 or 3 of the requests. *Id.* Specifically, NSA explained that the fact of the existence *or non-existence* of such records "is a currently and properly classified matter," and that "the existence or non-existence of the information" is also protected from disclosure by 18 U.S.C. § 798, 50 U.S.C. §§ 3024(i), 3605. *Id.*

C. CIA

13. The CIA initially responded to Plaintiffs' FOIA requests on March 15, 2019. Declaration of Antoinette B. Shiner ("Shiner Decl.") ¶ 13 & fn. 3 & Ex. C thereto. CIA informed Plaintiffs that it had conducted and completed a search as to Part 1 of the requests, and had located responsive records. *Id.*

14. With respect to Request 1, CIA simultaneously produced in part three records, totaling 19 pages, and withheld in full two additional records. *Id.* CIA's redactions to the documents produced in part were pursuant to FOIA Exemption 1 and 3, and its withholdings of the documents in full were pursuant to FOIA Exemptions 1, 3, 5, and 6. *Id.*; *see id.* Ex. A (*Vaughn* index).

15. In the same letter, CIA further informed Plaintiffs that pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive Parts 2 or 3 of the requests. Shiner Decl. ¶ 13 & Ex. C thereto. Specifically, CIA explained that the fact of the existence or non-existence of such records "is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1)." *Id.*

16. By letter dated March 29, 2019, the CIA provided a supplemental response to Plaintiffs. Shiner Decl. ¶¶ 14-15 & Ex. D thereto.[3] As the CIA explained in its supplemental response, in the course of preparing its own response to Plaintiffs' FOIA requests, DoS had located two CIA-originated records that are responsive to Request 1. *Id.* After DoS referred these records to CIA for processing, CIA determined that the records were required to be withheld in full on the basis of FOIA Exemptions 1, 3, 5, and 6. *Id.*; *see also id.* Ex. A.

[3] CIA's supplemental letter is dated March 29, 2019, but was forwarded to Plaintiffs via email by the undersigned defense counsel on April 5, 2019.

D. FBI

17. FBI responded to Plaintiffs' FOIA requests on March 29, 2019. Declaration of David M. Hardy ("Hardy Decl.") ¶ 18 & Ex. C thereto. FBI informed Plaintiffs that it had conducted and completed a search as to Part 1 of the requests, and had located eight responsive records, totaling 33 pages, which it simultaneously produced, in part, to Plaintiffs. *Id.*

18. In the same letter, FBI further informed Plaintiffs that pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive Parts 2 or 3 of the requests. *Id.* Specifically, FBI explained that "the mere acknowledgement of such records['] existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1)." *Id.*

19. On May 14, 2019, after determining upon further review that additional information on one page of its March 29, 2019 production could be segregated for release, FBI produced to Plaintiffs a revised version of this page, disclosing additional information. Hardy Decl. ¶ 19 & Ex. D thereto.

III. Plaintiffs' Narrowing of Claims and Issues for Resolution by the Court

20. In a Joint Status Report filed on June 28, 2019, the parties informed the Court that all Defendants had completed their searches and processing, and provided final productions. Dkt. No. 28.

21. In the same filing, the parties additionally proposed a schedule for further proceedings; this schedule included, *inter alia*, a proposal that Plaintiffs identify all issues and

withholding they planned to challenge, if any, to Defendants by July 12, 2019. *Id.* The Court subsequently adopted this proposal. July 1, 2019 Minute Order.

22. In accordance with the Court July 1, 2019 Order, on July 12, 2019 counsel for Plaintiffs emailed defense counsel, stating:

> We write to inform you that the Committee to Protect Journalists ("CPJ") will challenge the Glomar responses for the FBI, CIA, ODNI, and the NSA. In addition, CPJ will challenge the CIA's redactions with respect to the three documents that it produced, the remaining documents that it withheld in response to item 1 in the FOIA request, and the remaining documents that it withheld in coordination with the Department of State. We request that the CIA provide a Vaughn Index.
>
> The Knight Institute has decided to withdraw from the litigation and will be seeking the government's consent to file a stipulation of dismissal pursuant to FRCP 41(a)(1)(A)(ii). The Knight Institute intends to stipulate to the dismissal of its claims in this action, while reserving its right to move for attorneys' fees.

Defendants' Exhibit ("DEX") 1.

23. Consistent with these representations, on July 18, 2019, former Defendant Knight Institute voluntarily dismissed its claims as against all Defendants, without prejudice to its ability to seek an award of attorney's fees and other litigation costs at a later point in these proceedings. Dkt. No. 29; *see also* July 19, 2019 Minute Order (so ordering the stipulation of dismissal).

24. On July 25, 2019, remaining Plaintiff CPJ further dismissed any and all claims against former Defendant DoS, also without prejudice to seek attorney's fees and costs from DoS at a later point in the litigation. Dkt. No. 30; *see also* July 30, 2019 Minute Order (so ordering DoS's dismissal).

Respectfully submitted,

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Counsel for the Defendants

DATED: August 28, 2019

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Civil Action No. 1:18-cv-2709 (TNM)

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Points and Authorities, Declaration of Alexandra P. Swain, and Statement of Material Facts, upon all prior pleadings and proceedings herein, the undersigned, attorneys for Committee to Protect Journalists ("CPJ"), hereby moves this Court for an order granting Plaintiff CPJ's motion for summary judgment, denying the motion for summary judgment made by Defendants Central Intelligence Agency ("CIA"), Federal Bureau of Investigation ("FBI"), National Security Agency ("NSA"), and the Office of the Director of National Intelligence ("ODNI"), and for such other and further relief as the Court may deem just and proper on the grounds that there is no genuine issue of disputed material

fact and that it is entitled to judgment as a matter of law. The reasons supporting this motion are set forth in the concurrently filed memorandum.

Dated: New York, NY
September 26, 2019

Respectfully submitted,

/s/ Timothy K. Beeken

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Civil Action No. 1:18-cv-2709 (TNM)

PLAINTIFF COMMITTEE TO PROTECT JOURNALISTS' STATEMENT OF MATERIAL FACTS

Pursuant to Local Civil Rule 7(h)(1), Plaintiff Committee to Protect Journalists ("CPJ") respectfully submits the following statement of material facts as to which there is no genuine dispute.[1]

I. Known Facts Regarding the Murder of Jamal Khashoggi

1. Jamal Khashoggi was a U.S. resident, a Saudi dissident, and internationally recognized journalist known for his human rights and press freedom advocacy in the Middle East.

2. As a columnist for *The Washington Post* and editor-in-chief of Al-Arab News Channel, Mr. Khashoggi's journalism regularly featured criticisms of the Saudi government, and in

[1] Facts independently related to former Defendant Department of State ("DoS") and its response to Plaintiffs' FOIA requests are not addressed as DoS has been dismissed from this suit, without prejudice to Plaintiffs' ability to seek attorney's fees at a later point in these proceedings.

particular the Saudi Crown Prince Mohammed bin Salman (the "Crown Prince"). Declaration of Alexandra P. Swain ("Swain Decl.") Ex. 1.

3. On October 2, 2018, Mr. Khashoggi arrived at the Saudi consulate in Istanbul, Turkey to obtain documentation for his upcoming marriage to his Turkish fiancé, Hatice Cengiz. Swain Decl. Ex. 2.

4. When Mr. Khashoggi failed to emerge from the consulate, his fiancé contacted the Turkish police. Swain Decl. Ex. 3.

5. The Turkish police and a prosecutor initiated an investigation into his disappearance. Swain Decl. Ex. 4.

6. On October 5, 2018, the Crown Prince stated that Mr. Khashoggi had left the Saudi consulate and that the government had nothing to hide. Swain Decl. Ex. 5.

7. On October 10, 2018, the Turkish media released images of a fifteen-member team of Saudi agents allegedly responsible for Mr. Khashoggi's murder. Swain Decl. Ex. 6.

8. Later, on October 20, 2018, the Saudi government conceded that Mr. Khashoggi was killed in their consulate and that an investigation was underway. Swain Decl. Ex. 7.

9. The following month, in November, the Central Intelligence Agency ("CIA") concluded that the Crown Prince likely ordered Mr. Khashoggi's killing. Swain Decl. Ex. 8.

10. Audio transcriptions, later released by Turkish intelligence agencies, revealed that once Mr. Khashoggi was grabbed in the consulate, Mr. Khashoggi struggled and repeatedly pleaded for his life while a team of Saudi agents strangled him. Swain Decl. Ex. 9.

11. Mr. Khashoggi's body was also mutilated, and the current whereabouts of his remains are unconfirmed. *Id.*

12. On September 26, 2019, the Crown Prince reportedly claimed "all the responsibility" for the killing of Khashoggi, while still denying that he had prior knowledge of the plan. Swain Decl. Ex. 10.

II. The Duty to Warn

13. The Intelligence Community, pursuant to Intelligence Community Directive 191 ("Directive 191"), has a duty to warn individuals or groups about threats of intentional killing, serious bodily injury, and kidnapping. Swain Decl. Ex. 11.

14. Directive 191 equally applies to both U.S. persons and non-U.S. persons and requires intelligence community elements to document and maintain records in relation to actions taken pursuant to the duty to warn. *Id*.

III. Public Response to Jamal Khashoggi's Murder

15. Mr. Khashoggi's disappearance and the facts surrounding his murder have prompted interest from U.S. officials, foreign governments, and international human rights groups.

16. For example, a week after Mr. Khashoggi's death, the Senate Foreign Relations Committee issued a letter to the President pursuant to the Global Magnitsky Human Rights Accountability Act (the "Global Magnitsky Act")[2] which required the President to make a determination on the imposition of sanctions pursuant to the Global Magnitsky Act with respect to any foreign person responsible for violations related to Mr. Khashoggi. Swain Decl. Ex. 12.

[2] The Global Magnitksy Act requires the President to determine whether a foreign person is responsible for an extrajudicial killing, torture, or other gross violation of internationally recognized human rights against an individual exercising freedom of expression.

17. On October 22, 2018, over fifty congressional representatives sent a letter to Director of National Intelligence Daniel Coats inquiring about what actions were taken by the U.S. intelligence agency relating to Directive 191 and Mr. Khashoggi. The following week, another group of senators sent a letter to Director of National Intelligence Daniel Coats, dated October 30, 2018, addressing Directive 191 and. Mr. Khashoggi's murder. Swain Decl. Ex. 13.

18. On December 13, 2018, the Senate unanimously passed a resolution that held the Crown Prince personally responsible for the death of Mr. Khashoggi. In the same session, the Senate also invoked the War Powers Act, and voted to end U.S. military assistance to Saudi Arabia over Mr. Khashoggi's killing. Swain Decl. Ex. 14.

19. In December 2018, CIA director Gina Haspel briefed Senate committees on the matter, resulting in senators making public statements about the killing. Swain Decl. Ex. 15.

20. In the year since Mr. Khashoggi's death, Congress has urged for a public investigation, introducing legislation requiring a public report on the killing of Mr. Khashoggi, Swain Decl. Ex. 16, and the Saudi Arabia Diplomatic Review Act of 2019 ("SADRA"), a bill to mandate an Executive Branch review of America's relationship with the Saudi government. Swain Decl. Ex. 17.

21. In a June 23, 2019 interview, President Donald Trump stated that Mr. Khashoggi's murder had already been "heavily investigated." Swain Decl. Ex. 18. When asked about whether the U.S. arms deals with Saudi Arabia allowed him to "overlook some of [Saudi Arabia's] bad behavior," he said that: "the Middle East … is a hostile place" and Saudi Arabia continues to buy "massive amounts, $150 billion worth of military equipment …

So Saudi Arabia is a big buyer of America product. That means something to me. It's a big producer of jobs." *Id*.

IV. Acknowledgment of Responsive Records

22. The CIA and the Office of Director of National Intelligence ("ODNI") have both, in a separate litigation proceeding, acknowledged the existence of "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," Swain Decl. Ex. 19. Swain Decl. Ex. 20.

V. Plaintiffs' Narrow FOIA Requests and Defendants' Responses

23. On October 19 2018, then-plaintiff, the Knight Institute of Columbia University ("the Knight Institute"), sent the following FOIA requests to the CIA, Federal Bureau of Investigation ("FBI"), National Security Agency ("NSA"), and ODNI (collectively "Defendants") seeking records related to the Government's duty to warn and any records the Defendants may have in relation to the duty to warn as it relates to Mr. Khashoggi:

> Request 1: Procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191.
>
> Request 2: Records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him.
>
> Request 3: Records concerning any issue arising among IC elements regarding a determination to warn Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.
>
> Request 4 (for ODNI only): Records relating to any dispute referred to the ODNI regarding a determination to warn Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

First Amended Complaint ("FAC"), Dkt. No. 17, ¶¶ 15, 17; Dkt. No. 17-1.

24. On November 20, 2018, after the Defendants failed to respond to the Knight Institute's FOIA requests within the statutorily mandated time period, the Knight Institute initiated the instant lawsuit to compel the Defendants to produce responsive documents. Dkt. No. 1

25. Also on November 20, 2018, Plaintiff CPJ submitted substantively identical FOIA requests to the same agencies. FAC, Dkt. No. 17-2

26. On January 17, 2019, the Knight Institute filed its First Amended Complaint, adding CPJ as a plaintiff. FAC, Dkt. No. 17.

27. The Defendants processed the Plaintiffs' FOIA requests and responded as follows[3]:

A. ODNI

28. On February 14, 2019, ODNI informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located responsive records, all of which had originated with other Defendant agencies. Decl. of Patricia Gaviria ("Gaviria Decl.") ¶ 12. ODNI informed the Knight Institute and CPJ that these records had been referred to the respective other agencies for processing and production, because all responsive records originated with other Defendant agencies. *Id.*

29. ODNI also informed the Plaintiffs that, pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2, 3, or 4. *Id.* ODNI explained that the fact of the existence or nonexistence of such records "is itself currently and properly classified, and could reveal intelligence sources and methods

[3] None of the Defendants issued Glomar responses to FOIA Request 1, so these responses are not addressed in detail.

information that is protected from disclosure pursuant to Section 102A(i)(1) of the National Security Act of 1947[.]" *Id.*

B. NSA

30. On March 11, 2019, the NSA informed the Plaintiffs that it had completed a search as to Request 1, and had located two responsive records, totaling 21 pages, which it simultaneously produced. Decl. of Linda M. Kiyosaki ("Kiyosaki Decl.") ¶ 13. The NSA claimed that, under FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2 or 3. *Id.* The NSA stated that the fact of the existence or nonexistence of such records "is a currently and properly classified matter," and that "the existence or non-existence of the information" is protected from disclosure by 18 U.S.C. § 798, 50 U.S.C. §§ 3024(i), 3605. *Id.*

C. CIA

31. On March 15, 2019, the CIA informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located responsive records. Decl. of Antoinette B. Shiner ("Shiner Decl.") ¶ 13 & fn. 3. For Request 1, the CIA produced three records with redactions, totaling 19 pages, and withheld in full two additional records. *Id.* The CIA claimed the redactions were pursuant to FOIA Exemption 1 and 3, and that it withheld two documents in full under FOIA Exemptions 1, 3, 5, and 6. *Id.* Additionally, CIA informed the Plaintiffs that, for Requests 2 or 3, it claimed FOIA Exemptions 1 and 3, and thus could neither confirm nor deny the existence of such records. *Id.*

32. The CIA also claimed that, pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2 or 3. Shiner Decl. ¶ 13. The CIA explained that the fact of the existence or nonexistence of such records "is

itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1)." *Id.*

D. FBI

33. On March 29, 2019, the FBI informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located eight responsive records, totaling thirty-three pages, which it simultaneously produced, in part. With respect to Requests 2 or 3, the FBI informed the Plaintiffs it could neither confirm nor deny the existence of such records. The Defendant claimed that "the mere acknowledgement of such records[']existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1)." Decl. of David M. Hardy ("Hardy Decl.") Defs.' Ex. C, at 2.

34. On May 14, 2019, the FBI released a single additional page pursuant to its March 29, 2019 production. *Id.* at Defs.' Ex. D.

VI. Issues for Resolution by the Court

35. In a Joint Status Report filed on June 28, 2019, the parties proposed a schedule for further proceedings, including a proposal that Plaintiffs identify all issues and challenges by July 12, 2019. Dkt. No. 28.

36. On July 1, 2019, the Court adopted this proposal. July 1, 2019 Minute Order.

37. On July 12, 2019, Plaintiff CPJ informed the Defendants that it would challenge the Glomar responses for the FBI, CIA, ODNI, and the NSA. Defs.' Ex. 1. CPJ also requested that the CIA provide a Vaughn Index and expressed its intention to challenge the CIA's redactions with respect to the three documents that it provided, the remaining documents that it withheld in response to item 1 in the FOIA request, and the remaining documents it withheld in coordination with the Department of State. *Id.*

38. On July 18, 2019 then-Plaintiff Knight Institute voluntarily dismissed its claims against all Defendants, without prejudice to its ability to seek an award of attorney's fees and other litigation costs at a later point in these proceedings. Dkt. No. 29; *see also* July 19, 2019 Minute Order (ordering the stipulation of dismissal).

39. On July 25, 2019, Plaintiff CPJ dismissed all claims against then Defendant DoS, also without prejudice to seek attorney's fees and costs from DoS at a later point in the litigation. Dkt. No. 30; see also July 30, 2019 Minute Order (ordering DoS' dismissal).

[Remainder of the page intentionally left blank.]

40. In accordance with the July 1, 2019 Order, on August 28, 2019, Defendants filed a Motion for Summary Judgment along with public affidavits. Dkt No. 34. Additionally, Defendant CIA filed the requested Vaughn Index. *Id.*

Dated: New York, NY
September 26, 2019

Respectfully submitted,

/s/ Timothy K. Beeken

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, COMMITTEE TO PROTECT JOURNALISTS, Plaintiffs, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	Civil Action No. 1:18-cv-2709 (TNM)

DECLARATION OF ALEXANDRA P. SWAIN

I, Alexandra P. Swain, declare as follows:

1. I am admitted to this Court *pro hac vice* and am associated with the law firm of Debevoise & Plimpton LLP, counsel for Plaintiff Committee to Protect Journalists.

2. I make this declaration based on personal knowledge, and on the record of this litigation, in support of Plaintiff's Statement of Material Facts.

3. Attached as **Exhibit 1** is a news article titled "Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic" dated Oct. 10, 2018 published in *Bloomberg News*.

4. Attached as **Exhibit 2** is a news article titled "Jamal Khashoggi was Worried About Consulate Visit, Says Fiancé" dated Oct. 26, 2018 published in *The Guardian*.

5. Attached as **Exhibit 3** is a news article titled "Turkey Concludes Saudi Journalist Jamal Khashoggi Killed by 'Murder' Team, Sources Say" dated Oct. 6, 2018 published in *The Washington Post*.

6. Attached as **Exhibit 4** is a news article titled "Turkey Searches Saudi-Owned Mansion for Evidence in Khashoggi Case" dated Nov. 26, 2018 published in *The New York Times*.

7. Attached as **Exhibit 5** is a news article titled "Khashoggi's Death Is Explained by the Saudis in Five Acts (and Counting)" dated Oct. 25, 2018 published in *The New York Times*.

8. Attached as **Exhibit 6** is a news article titled "Jamal Khashoggi: Turkish Media Says Video Shows Disappearance Plot" dated Oct. 10, 2018 published by *BBC News*.

9. Attached as **Exhibit 7** is a news article titled "Jamal Khashoggi Case: Saudi Arabia Says Journalist Killed in Fight" dated Oct. 20, 2018 published by *BBC News*.

10. Attached as **Exhibit 8** is a news article titled "CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi" dated Dec. 1, 2018 published in *The Wall Street Journal*.

11. Attached as **Exhibit 9** is a news article titled "Saudi Hit Squad's Gruesome Conversations During Khashoggi's Murder Revealed" dated Sep. 9, 2019 published in *Daily Sabah*.

12. Attached as **Exhibit 10** is a news article titled "On Khashoggi Killing and Yemen, Saudis Cannot Avoid Fresh Scrutiny" dated Sept. 26, 2019 published by *The New York Times*.

13. Attached as **Exhibit 11** is a policy document from the Office of the Director of National Intelligence titled Community Directive 191 or "Duty to Warn."

14. Attached as **Exhibit 12** is a press release titled "Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi" dated Oct. 10, 2018 published by the Senate Committee on Foreign Relations.

15. Attached as **Exhibit 13** is a letter from Senator Richard Blumenthal to Daniel Coates, Director of National Intelligence dated Oct. 30, 2018 published by the Office of US Senator Richard Blumenthal.

16. Attached as **Exhibit 14** is a news article titled "Senate Votes to End Aid for Yemen Fight Over Khashoggi Killing and Saudis' War Aims" dated Dec. 13, 2018 published in *The New York Times*.

17. Attached as **Exhibit 15** is a news article titled "Lindsey Graham after CIA Briefing on Jamal Khashoggi Murder: 'There's a Smoking Saw,'" dated Dec. 4, 2018 published by *CBS News*.

18. Attached as **Exhibit 16** is a press release titled "Senators Coons, Wyden, Heinrich, Reed, Harris Reintroduce Bill Requiring Public Report on Khashoggi

Murder by Saudi Arabia" dated Feb. 26, 2019 published by the Office of US Senator Chris Coons.

19. Attached as **Exhibit 17** is a press release titled "Rubio Joins Risch, Shaheen, Coons on New Bill to Review U.S.-Saudi Relations" dated Jul. 10, 2019 published by the Office of US Senator Marco Rubio.

20. Attached as **Exhibit 18** is a news article titled "President Trump's Full, Unedited Interview with Meet the Press NBC" dated Jun. 23, 2019 published by *NBC News*.

21. Attached as **Exhibit 19** is the judicial opinion, *Open Soc'y Justice Initiative v. CIA*, No. 1:19-cv-00234-PAE, (S.D.N.Y. Jan 9, 2019).

22. Attached as **Exhibit 20** is the joint status letter dated Sep. 24, 2019 from *Open Soc'y Justice Initiative v. CIA*, No. 1:19-cv-00234-PAE, (S.D.N.Y. Jan. 9, 2019).

I declare under penalty of perjury that the foregoing is true and correct. Executed at New York, New York on this 26 day of September 2019.

By: _____

Alexandra P. Swain

EXHIBIT 2

The Guardian



This article is more than **10 months old**

Jamal Khashoggi was worried about consulate visit, says fiancee

Hatice Cengiz says she has been in 'darkness I cannot express' since journalist entered Saudi consulate

Bethan McKernan *in Istanbul*

Fri 26 Oct 2018 10.22 EDT

The fiancee of the killed journalist Jamal Khashoggi has said he was worried about visiting the Saudi consulate in Istanbul for his fateful appointment, but told her he did not think the authorities would dare to interrogate or arrest him in a foreign country.

"His local network in Turkey was very good as you know, his political network as well," Hatice Cengiz told the Turkish broadcaster Habertürk in an interview on Friday. "He thought Turkey is a safe country and if he would be held or interrogated, this issue would be swiftly solved."

The Washington Post columnist, who left Saudi Arabia for the US last year after growing fearful for his safety in his home country, was killed shortly after arriving on 2 October to pick up paperwork needed for the couple's upcoming marriage.

Case 1:18-cv-02709-RBW Document 35-1 Filed 09/26/19 Page 15 of 55
USGA Case #20-5045 Document #1850203 Filed: 07/06/2020 Page 207 of 357

Cengiz, who waited outside until about 1am on the day Khashoggi disappeared, said he had been treated well during an initial visit to the consulate the previous week.

Riyadh's varied and changing explanations for what happened to the writer have been met with international outrage, sparking the biggest diplomatic crisis for the kingdom since the 9/11 terrorist attacks and throwing an unwelcome spotlight on the powerful crown prince, Mohammed bin Salman.

Cengiz, a Turkish academic who became engaged to Khashoggi four months ago, said she has "found myself in a darkness I cannot express," since her fiance was killed. She had asked US secretary of state Mike Pompeo, who recently called her about the case, whether he had any news that would make her happy "but he said he didn't".

She has not received a condolence call from Saudi officials, Cengiz added.

Istanbul police said Cengiz had been placed under 24-hour police protection this week, without elaborating on the reasons why.

Riyadh said for the first time on Thursday that the evidence in the criminal investigation pointed to a "premeditated" killing of the dissident journalist.

Previously, Saudi authorities had said that Khashoggi died during a fight with Saudi officials carrying out a rogue extradition operation, and that his body was rolled up in a rug and disposed of by an unidentified third party. His remains have still not been found.

Turkish investigators, however,have alleged that Khashoggi was tortured before his death and his body dismembered with a bone saw by a 15-man hit team sent to kill him.

The Turkish president, Recep Tayyip Erdoğan, has used the case to exert pressure on his Saudi rival Prince Mohammed, whom many believe must at a minimum have been aware of the operation, which involved several members of his personal guard and other senior officials.

On Friday, Erdoğan made fresh demands for Saudi Arabia to disclose the location of Khashoggi's body and identify who ordered his killing - a sign that Ankara is willing to keep up the pressure on the beleaguered kingdom.

Eighteen men arrested in Saudi Arabia "must know" who killed the journalist and where his remains were taken, Erdoğan said in a parliamentary address, adding that the person who "gave the orders" for the alleged murder must be brought to justice and the suspects extradited for trial in Istanbul.

Riyadh's changing accounts of what happened have been "comic", Erdoğan said, calling them "childish statements ... not compatible with the seriousness of a nation state".

"Who gave that order? If you want to eliminate the suspicion [about you], the key question is these 18 people," Erdoğan said. "You know how to make people talk," he added, in a reference to Prince Mohammed.

"But if you cannot make them talk, then hand them over to us. This incident happened in Istanbul. Let us put them on trial."

Erdoğan also urged the Saudis to identify the "local collaborator" whom they say disposed of Khashoggi's remains.

His pointed remarks come after he spoke to the heir to the Saudi throne on Wednesday about cooperating in the evolving diplomatic crisis.

The same day, Turkish foreign minister Mevlüt Çavuşoğlu spoke on the phone with Pompeo, his US counterpart, although Ankara did not comment on the content of the call.

Police in Istanbul are now focussing their search for the journalist's remains on a well in the garden of the nearby consul general's residence and woodland areas outside the city.

Saudi officials have delayed Turkish investigators several times, including blocking police from investigating the well on the Saudi consul general's property.

There are several avenues of investigation that have yet to be explored, Erdoğan told members of his AK party in Friday's address.

Riyadh is due to send the Saudi public prosecutor to Istanbul on Sunday to assist in the investigation.

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- Turkey
- Saudi Arabia
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- news

EXHIBIT 8

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https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460

MIDDLE EAST

CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi

Conclusion that Prince Mohammed bin Salman 'probably ordered' killing relies in part on 11 messages he sent to adviser who oversaw hit squad around time it killed journalist

By Warren P. Strobel
Updated Dec. 1, 2018 1:33 am ET

WASHINGTON—Saudi Crown Prince Mohammed bin Salman sent at least 11 messages to his closest adviser, who oversaw the team that killed journalist Jamal Khashoggi, in the hours before and after the journalist's death in October, according to a highly classified CIA assessment.

The Saudi leader also in August 2017 had told associates that if his efforts to persuade Mr. Khashoggi to return to Saudi Arabia weren't successful, "we could possibly lure him outside Saudi Arabia and make arrangements," according to the assessment, a communication that it states "seems to foreshadow the Saudi operation launched against Khashoggi."

Mr. Khashoggi, a critic of the kingdom's leadership who lived in Virginia and wrote columns for the Washington Post, was killed by Saudi operatives on Oct. 2 shortly after entering the Saudi consulate in Istanbul, where he sought papers needed to marry his Turkish fiancée.

Excerpts of the Central Intelligence Agency's assessment, which cites electronic intercepts and other clandestine information, were reviewed by The Wall Street Journal.

The CIA last month concluded that Prince Mohammed had likely ordered Mr. Khashoggi's killing, and President Trump and leaders in Congress were briefed on intelligence gathered by the spy agency. Mr. Trump afterward questioned the CIA's conclusion about the prince, saying "maybe he did; and maybe he didn't."

The previously unreported excerpts reviewed by the Journal state that the CIA has "medium-to-high confidence" that Prince Mohammed "personally targeted" Khashoggi and "probably ordered his death." It added: "To be clear, we lack direct reporting of the Crown Prince issuing a kill order."

The electronic messages sent by Prince Mohammed were to Saud al-Qahtani, according to the CIA. Mr. Qahtani supervised the 15-man team that killed Mr. Khashoggi and, during the same period, was also in direct communication with the team's leader in Istanbul, the assessment

says. The content of the messages between Prince Mohammed and Mr. Qahtani isn't known, the document says. It doesn't say in what form the messages were sent.

It is unclear from the excerpts whether the 2017 comments regarding luring Mr. Khashoggi to a third country cited in the assessment are from Prince Mohammed directly, or from someone else describing his remarks.

Saudi Arabia has acknowledged Mr. Khashoggi was murdered in the consulate. But it has denied Prince Mohammed had any role and blamed the operation on rogue operatives. The Saudi Public Prosecutor's office last month announced charges against 11 Saudis in connection with Mr. Khashoggi's death, saying it would seek the death penalty in five cases. The office didn't release their names.

The U.S. Treasury Department in mid-November slapped sanctions on 17 Saudis whom it linked to the killing. But Mr. Trump, in a statement days later, said he intended to maintain strong relations with the crown prince because of Saudi Arabia's opposition to Iran, its investments in the U.S. and its role in the oil market.

The Trump administration's posture has angered many in Congress, and the intercepts and intelligence gathered by the CIA may complicate Mr. Trump's efforts to maintain relations with Prince Mohammed, the de facto leader one of the world's biggest oil producers. The two are among the world's leaders meeting this weekend in Buenos Aires for a summit of Group of 20 nations.

Earlier this week, the Senate voted to begin consideration of a resolution to withdraw U.S. support for a Saudi-led military coalition fighting against Houthi rebels in Yemen, with senators venting their frustration over Mr. Trump's reluctance to hold Prince Mohammed responsible for Mr. Khashoggi's death.

Secretary of State Mike Pompeo, who met with senators Wednesday to try to forestall the resolution, has said that he had read every piece of U.S. intelligence regarding Mr. Khashoggi's killing and that the agency didn't find a so-called smoking gun. "There is no direct reporting connecting the crown prince to the order to murder Jamal Khashoggi," Mr. Pompeo told reporters.

The judgment on Prince Mohammed's likely culpability, the CIA assessment says, 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."

Mr. Qahtani has led Prince Mohammed's efforts to crack down on dissent internally and abroad. He is one of the 17 sanctioned by the Treasury.



Saudi journalist Jamal Khashoggi, seen here in London on Sept. 29, days before he was killed at the Saudi consulate in Istanbul.
PHOTO: MIDDLE EAST MONITOR/REUTERS

After this article's initial publication online, a Saudi official, responding to an earlier request for comment to the Saudi Embassy in Washington, said, "HRH the Crown Prince communicates regularly with various senior officials within the Royal Court on different matters. At no time did HRH correspond with any Saudi officials in any government entity on harming Jamal Khashoggi, a Saudi citizen. We continue to categorically reject any accusations based on speculations."

A CIA spokesman declined to comment on the report. A White House official said Friday the White House doesn't comment on intelligence matters. Mr. Qahtani didn't respond to a request for comment.

Mr. Trump last week said the CIA only had "feelings" about Prince Mohammed's involvement, a statement that irked current and former U.S. intelligence officials. U.S. intelligence assessments are rarely black-and-white, often relying on fragments of information gathered clandestinely.

The highly classified CIA assessment says that the Saudi team sent to kill Mr. Khashoggi was assembled from Prince Mohammed's top security units in the Royal Guard and in an organization run by Mr. Qahtani, the Center for Studies and Media Affairs at the Royal Court, the Saudi royal court's media department.

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

The document says that Mr. Qahtani "explicitly requested the Crown Prince's permission when he pursued other sensitive operations in 2015, which reflects the Crown Prince's command and control expectations."

Mr. Qahtani was fired by King Salman, the crown prince's father, in the aftermath of the murder. But Mr. Qahtani informally continued some of his former functions as royal-court adviser, such

as issuing directives to local journalists and brokering meetings for the crown prince, according to people familiar with the matter.

A U.S. official said that the U.S. government has recently developed information that under Mr. Qahtani, personnel from the Center for Studies and Media Affairs have for two years engaged in the kidnapping—sometimes overseas—and detention and harsh interrogation of Saudis whom the monarchy perceives as a threat. The interrogations have led to repeated physical harm to the detainees, the official said.

The CIA assessment said that since 2015 Prince Salman "has ordered Qahtani and CSMARC to target his opponents domestically and abroad, sometimes violently."

Five employees of the center were involved in the Khashoggi operation, the assessment says. All five were also involved in abusive treatment of prominent Saudis detained at Riyadh's Ritz-Carlton hotel in the fall of 2017 as part of what the Saudi government described as an anticorruption drive, it says.

—Margherita Stancati in Beirut contributed to this article.

Write to Warren P. Strobel at Warren.Strobel@wsj.com

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EXHIBIT 9

Saudi hit squad's gruesome conversations during Khashoggi's murder revealed

dailysabah.com/investigations/2019/09/09/saudi-hit-squads-gruesome-conversations-during-khashoggis-

Audio recordings of the horrifying conversations between the 15-man Saudi hit squad and their victim, journalist Jamal Khashoggi, has been revealed to the public for the first time by the Turkish daily Sabah.

The conversations recorded prior to and during the Oct. 2, 2018 murder of the dissident journalist at the kingdom's Istanbul consulate were obtained by Turkey's National Intelligence Organization (MIT) right after the gruesome incident, and were shared with related Turkish authorities carrying out an investigation into the incident, as well as with international officials and institutions.

One of the recordings of the conversations between Maher Abdulaziz Mutreb, the number two man of the hit squad, and Dr. Salah Muhammed Al-Tubaigy, the head of Forensic Evidence at the Saudi General Security Department who was in charge of dismembering Khashoggi's body, are stamped 1:02 p.m., just 12 minutes before Khashoggi arrived at the consulate building to complete marriage procedures.



Mutreb is seen at the entrance of the Saudi Consulate General located in Istanbul's Beşiktaş district.

The conversation between the two, who are among the five suspects facing death penalty in Saudi Arabia over the murder, is as follows:
Mutreb: Is it possible to put the body in a bag?

Al-Tubaigy: No. Too heavy, very tall too. Actually, I've always worked on cadavers. I know how to cut very well. I have never worked on a warm body though, but I'll also manage that easily. I normally put on my earphones and listen to music when I cut cadavers. In the meantime, I sip on my coffee and smoke. After I dismember it, you will wrap the parts into plastic bags, put them in suitcases and take them out (of the building).

Al-Tubaigy is also heard saying: "My superior at the Forensic Evidence does not know what I'm doing. There is no one to protect me," in efforts to ask for protection in the vertical hierarchy going right up to Crown Prince Mohammed bin Salman for the responsibility of dismembering Khashoggi's body.



The photo on the left shows al-Tubaigy waiting at a passport control desk in Istanbul's Atatürk Airport upon arrival.

At the end of the conversation, Mutreb asks whether the "animal to be sacrificed" has arrived. At 1:14 p.m., an unidentified member of the hit squad says "[he] is here."

Khashoggi enters the Saudi consulate

According to the released recordings, Khashoggi is greeted by a familiar face or someone he knows, gauging from his reaction. He is told that the Consul General Mohammad al-Otaibi is also present in the building. First, he is politely invited into the consul's office on the second floor. When he starts to get suspicious, he is pulled by the arm. He then says;"Let me go, what do you think you're doing?"

As soon as Khashoggi enters the room, Mutreb says: "Please sit. We have to take you back [to Riyadh]. There is an order from Interpol. Interpol demanded you be returned. We are here to take you." To which Khashoggi responds: "There are no lawsuits against me. My fiancée is waiting outside for me."

During these conversations, another unidentified hit squad member, probably portraying the "bad cop" during the interrogation, repeatedly tells Khashoggi to "cut it short."

At 1:22 p.m. Mutreb asks Khashoggi whether he has any mobile phones on him. Khashoggi responds with "I have two mobile phones." Mutreb asks "which brand" and Khashoggi says "iPhone."

Following these conversations in the last 10 minutes leading up to Khashoggi's death, the dialogue goes:

Mutreb: Leave a message for your son.

Khashoggi: What should I tell my son?

Mutreb: You will write a message, let's rehearse; show it to us.

Khashoggi: What should I say, 'see you soon'?

Unidentified hit squad member: Cut it short.

Mutreb: You will write something like 'I'm in Istanbul. Don't worry if you cannot reach me.'

Khashoggi: I shouldn't say kidnapped.

Unidentified hit squad member: Take your jacket off.

Khashoggi: How can such a thing take place at a consulate? I'm not writing anything.

Unidentified hit squad member: Cut it short.

Khashoggi: I'm not writing anything.

Mutreb: Write it, Mr. Jamal. Hurry up. Help us so we can help you, because in the end we will take you back to Saudi Arabia and if you don't help us you know what will happen eventually.

Khashoggi: There is a towel here. Will you have me drugged?

Al-Tubaigy: We will put you to sleep.

After he was drugged, Khashoggi says "do not keep my mouth closed" before losing his consciousness.

"I have asthma. Do not do it, you will suffocate me." These were Khashoggi's last words.

His killers had already put on a plastic bag over his head, and he would eventually be suffocated to death. Scuffling and struggling then dominate the recordings, with occasional questions and directives from the hit squad heard in between.

"Is he asleep?" "He's raising his head," "keep pushing," "push it well."

Before Khashoggi gives his final breath, scuffling and suffocation sounds continue for a while. Then the postmortem phase begins, which includes sounds of dismembering Khashoggi's body.

At exactly 1:39 p.m., the sound of an autopsy saw is heard. This savage procedure lasts half an hour.

According to the book "Diplomatic Atrocity: The dark secrets of the Khashoggi murder," penned by Sabah writers Abdurrahman Şimşek, Nazif Karaman and Ferhat Ünlü, Khashoggi's body was dismembered by al-Tubaigy and taken out of the building in five suitcases. The whereabouts of Khashoggi's body remains unknown.

Khashoggi was killed and dismembered by a group of Saudi operatives in the country's consulate in Istanbul on Oct. 2, 2018. Initially denying and later downplaying the incident as an accidental killing in a fistfight, Riyadh finally admitted almost three weeks after the disappearance that Khashoggi was murdered in a premeditated fashion but denied any involvement of the royal family.

The incident was blamed on lower-level officials, including five who are now facing the death penalty over their involvement. A Saudi public prosecutor said in late March that they would seek the death penalty for five suspects among the 21 involved in the case. Ankara has said the statement is not satisfactory and demanded genuine cooperation from Riyadh.

Khashoggi's body has not been recovered and the kingdom has remained silent on its whereabouts. The U.N. human rights expert who conducted an independent probe into the murder of Khashoggi, Agnes Callamard, said in a report last month that the state of Saudi Arabia was responsible for the murder. The report also found "credible evidence" that linked Saudi Crown Prince Mohammed bin Salman to the killing of Khashoggi. The rapporteur noted she had received no cooperation from Riyadh and minimal help from the U.S.

Records of premeditated murder revealed

The recordings, which took place before the murder between Sept. 28 and Oct. 2, 2018, reveal in detail the plans and preparations made between the Saudi Consulate in Istanbul and the Riyadh administration.

On Sept. 28, when Khashoggi came to the Saudi Consulate for papers to marry his fiancee Hatice Cengiz, Ahmed Abdullah al-Muzaini, who worked as Saudi Arabia's intelligence station chief at the kingdom's consulate in Istanbul, informed Riyadh with an emergency code that Khashoggi had arrived at the consulate. Khashoggi's return to the consulate on Oct. 2 was also informed to Riyadh.

On the same day at 7:08 p.m., Saudi Consul Otaibi held a phone call with an official from the office of Saud al-Qahtani, a close aide of Crown Prince Mohammed.

During the conversation, the murder of Khashoggi was called "a private matter" and "a top-secret mission." The official told the Saudi consul that "the head of state security called me. They have a mission. They want one of your officials from your delegation to deal with a private matter. They want someone from your protocol... for a private, top-secret mission. He can even get permission if necessary."

These statements are proof that the murder of Khashoggi was not done without the consent of the Saudi crown prince.

At 8 p.m., Muzaini received a phone call from Saudi Consul Otaibi, who told him that "there will be a special training course in Riyadh."

"I got a call from Riyadh. They asked me to find an officer who previously worked in the protocol. But, this is top secret... there will be training... almost for five days. This is top secret. I want a reliable, nationalist intelligence officer."
During the rest of the conversation, the two discussed flight alternatives from Istanbul to Riyadh. Muzaini asked if the training would begin the day before or not, to which the Saudi consul replied to him saying, "Yes, they say it will."

One day before the murder, on Oct. 1, 2018 at 9:48 p.m., a conversation between two unidentified Saudi officials went as follows: "A commission from Saudi Arabia will come tomorrow, there is something they will do at the consulate in my office," one said.

The other asked if "it" will happen on the first floor to which he got a reply saying, "No, right next to my office. It will last for two to three days, and they have no personnel in charge of the office above."

"Ok, I will be at the consulate at 8 a.m.," the other said. "The name of the man who will come to the consulate is Mr. Maha, [a nickname] and they will pass through permission from the head of the commission."

EXHIBIT 11

INTELLIGENCE COMMUNITY DIRECTIVE

191

21 July 2015

(U) Duty to Warn

A. (U) AUTHORITY: The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; and other applicable provisions of law.

B. (U) PURPOSE

1. (U) This Directive establishes in policy a consistent, coordinated approach for how the Intelligence Community (IC) will provide warning regarding threats to specific individuals or groups of intentional killing, serious bodily injury, and kidnapping.

2. (U) This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States (U.S.), its departments, agencies, or entities, its officers, employees, or agents, or any other person.

C. (U) APPLICABILITY

1. (U) This Directive applies to the IC as defined by the National Security Act of 1947, as amended; and to such elements of any other department or agency as may be designated an element of the IC by the President, or jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned.

2. (U) This Directive, for IC elements located within departments, is intended to complement, to the greatest extent possible, departmental policies, including policies that address threats that apply both to official and non-official U.S. citizens and nationals. Any perceived inconsistencies between this Directive and departmental policies shall be resolved in consultations between the Office of the DNI (ODNI) and the department.

D. (U) DEFINITIONS

1. (U) ***Duty to Warn*** means a requirement to warn U.S. and non-U.S. persons of impending threats of intentional killing, serious bodily injury, or kidnapping.

2. (U) ***Intentional Killing*** means the deliberate killing of a specific individual or group of individuals.

3. (U) ***Serious Bodily Injury*** means an injury which creates a substantial risk of death or which causes serious, permanent disfigurement or impairment.

4. (U) ***Kidnapping*** means the intentional taking of an individual or group through force or threat of force.

E. (U) POLICY

1. (U) An IC element that collects or acquires credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person or group of people (hereafter referred to as intended victim) shall have a duty to warn the intended victim or those responsible for protecting the intended victim, as appropriate. This includes threats where the target is an institution, place of business, structure, or location. The term *intended victim* includes both U.S. persons, as defined in EO 12333, Section 3.5(k), and non-U.S. persons.

F. (U) IMPLEMENTATION

1. (U) IC elements shall establish internal procedures for making duty to warn determinations based on information they acquire, and for delivering threat information in a timely manner while protecting sources and methods.

2. (U) IC elements shall designate senior officers responsible for reviewing threat information initially determined to meet duty to warn requirements to affirm whether the information is credible and specific, so as to permit a meaningful warning. IC elements shall also designate senior officers responsible for making waiver determinations based on criteria identified in this Directive. The senior officers designated for affirming that duty to warn information is sufficient for a meaningful warning and for making waiver determinations should not be the same individual.

3. (U) Each IC element's duty to warn procedures shall include a provision whereby the duty to warn may be waived. An IC element's internal procedures shall include all justifications appropriate for the IC element. The following are examples of appropriate justifications that should be included in an element's procedures:

a. (U) The intended victim, or those responsible for ensuring the intended victim's safety, is already aware of the specific threat;

b. (U) The intended victim is at risk only as a result of the intended victim's participation in an insurgency, insurrection, or other armed conflict;

c. (U) There is a reasonable basis for believing that the intended victim is a terrorist, a direct supporter of terrorists, an assassin, a drug trafficker, or involved in violent crimes;

d. (U) Any attempt to warn the intended victim would unduly endanger U.S. government personnel, sources, methods, intelligence operations, or defense operations;

e. (U//[redacted] The information resulting in the duty to warn determination was acquired from a foreign government with whom the U.S. has formal agreements or liaison relationships, and any attempt to warn the intended victim would unduly endanger the personnel, sources, methods, intelligence operations, or defense operations of that foreign government; or

f. (U) There is no reasonable way to warn the intended victim.

4. (U) Issues concerning whether threat information meets the duty to warn threshold should be resolved in favor of informing the intended victim if none of the justifications in Section F.3 are present.

5. (U) Upon determination by an IC element that a duty to warn exists and will not be waived that IC element shall generate statements documenting the threat information and the basis for the duty to warn determination, and include an unclassified tear line, where possible, for use in delivering the threat information to the intended victim.

6. (U) Tearlines for delivery to the intended victim should be devoid of information that identifies sources and methods involved in acquiring the information, and consistent with IC Directive 209, *Tearline Production and Dissemination*.

7. (U) Communication of threat information to the intended victim may be delivered in person, or through other verifiable means of communication.

8. (U//[redacted] Communication of threat information to the intended victim may be delivered anonymously if that is the only method available to ensure protection of U.S. government personnel, sources, methods, intelligence operations, or defense operations.

9. (U) If the intended victim is located in the U.S. and its territories, IC elements shall consult with the Federal Bureau of Investigation (FBI) to determine how best to communicate threat information to the intended victim.

10. [redacted]

11. (U) When an IC element identifies a duty to warn in information originated by another IC element, the IC element shall notify the originating IC element, which will make a determination if a duty to warn exists and, if so, shall provide the warning and take other appropriate action in compliance with this policy. The originating element also shall inform the notifying element of its determination and the course of action taken.

12. (U//[redacted] When a threat is so imminent as to render consultation or notification infeasible, an IC element may deliver threat information to an intended victim in an expeditious manner without prior consultation or notification. Notification of the delivery of the threat information shall be made to the FBI or the CIA, as appropriate, and to the originating IC element expeditiously and no later than five days after informing the intended victim.

13. (U) IC elements shall document and maintain records on the following duty to warn actions:

a. (U) The method, means, and substance of any warning given by the IC element;

b. (U) Senior officer reviews of threat information and determinations;

c. (U) Justifications not to warn an intended victim based on waiver criteria identified in this Directive;

d. (U//[redacted] Coordination with the FBI, or CIA, consistent with Sections F.9 and F.10, to determine how best to pass threat information to the intended victim;

e. (U) Decisions to inform the intended victim in light of exigent circumstances that preclude prior consultation;

f. (U) Communication of threat information to another IC element or U.S. government agency for delivery to the intended victim; and

g. (U) Notification to the originating IC element of how and when threat information was delivered to the intended victim.

14. (U) IC elements that receive threat information from another IC element or a U.S. government agency outside the IC for the purpose of delivering the information to an intended victim shall document the steps taken to deliver the threat information to the intended victim and notify the originating IC element or U.S. government agency of the steps taken.

G. (U) DISPUTE RESOLUTION

1. (U) If an issue arises among IC elements regarding a determination to warn an intended victim or waive the duty to warn requirement, or regarding the method for communicating the threat information to the intended victim, resolution of the issue shall occur at the lowest practical and authorized level.

2. (U) If an issue in dispute has been elevated to the heads of the involved IC elements and attempts at resolution remain at an impasse, the heads of the IC elements shall notify the DNI. The DNI will facilitate resolution of issues that have been referred.

3. (U) Dispute resolution shall occur in a manner that does not unnecessarily delay the timely notification of threat information to the intended victim.

H. (U) ROLES AND RESPONSIBILITIES

1. (U) The DNI will oversee and facilitate resolution of disputes referred by heads of IC elements.

2. (U) The heads of IC elements shall:

a. (U) Establish an internal duty to warn process consistent with this Directive;

b. (U) Maintain records on duty to warn determinations, including decisions to waive the requirement and any actions taken to warn the intended victim; and

c. (U) Provide information to the DNI, upon request, regarding duty to warn procedures and actions.

3. (U) IC employees who identify credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping of an individual or group shall immediately report this information to their IC element for a determination by the element whether to warn the intended victim.

I. (U) EFFECTIVE DATE: This Directive becomes effective on the date of signature.

//SIGNED//
James R. Clapper — 21 July 2015

Director of National Intelligence — Date

EXHIBIT 12

OCTOBER 10, 2018

CORKER, MENENDEZ, GRAHAM, LEAHY LETTER TRIGGERS GLOBAL MAGNITSKY INVESTIGATION INTO DISAPPEARANCE OF JAMAL KHASHOGGI

WASHINGTON – In a letter to President Donald J. Trump, U.S. Senators Bob Corker (R-Tenn.) and Bob Menendez (D-N.J.), chairman and ranking member of the Senate Foreign Relations Committee, and Lindsey Graham (R-S.C.) and Patrick Leahy (D-Vt.), chairman and ranking member of the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs, today triggered an investigation and Global Magnitsky sanctions determination regarding the disappearance of Jamal Khashoggi, a Saudi journalist and columnist for The Washington Post. Khashoggi has not been heard from since he entered a Saudi consulate in Istanbul last Tuesday afternoon. The letter was also signed by Senators Marco Rubio (R-Fla.), Ben Cardin (D-Md.), John Barrasso (R-Wyo.), Chris Murphy (D-Conn.), Jeff Flake (R-Ariz.), Tim Kaine (D-Va.), Cory Gardner (R-Colo.), Ed Markey (D-Mass.), Johnny Isakson (R-Ga.), Jeff Merkley (D-Ore.), Todd Young (R-Ind.), Jeanne Shaheen (D-N.H.), Rob Portman (R-Ohio), Cory Booker (D-N.J.), Ron Johnson (R-Wis.), Chris Coons (D-Del.), Jim Risch (R-Idaho), and Tom Udall (D-N.M).

Text of the letter is included below.

Dear Mr. President:

The Global Magnitsky Human Rights Accountability Act requires the President, upon receipt of a request from the Chairman and Ranking Member of the Senate Committee on Foreign Relations, to determine whether a foreign person is responsible for an extrajudicial killing, torture, or other gross violation of internationally recognized human rights against an individual exercising freedom of expression, and report to the Committee within 120 days with a determination and a decision on the imposition of sanctions on that foreign person or persons.

The recent disappearance of Saudi journalist and Washington Post columnist Jamal Khashoggi suggests that he could be a victim of a gross violation of internationally recognized human rights, which includes "torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person." Therefore, we request that you 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 such a violation related to Mr. Khashoggi. Our expectation is that in making your determination you will consider any relevant information, including with respect to the highest ranking officials in the Government of Saudi Arabia.

BACKGROUND

Under the Global Magnitsky Human Rights Accountability Act, the president, upon receipt of a letter from the chairman and ranking member of the Senate Foreign Relations Committee, must make a determination and is authorized to impose sanctions with respect to a foreign person responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights violations against individuals who seek to obtain, exercise, defend, or promote human rights and freedoms, including freedom of expression.

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EXHIBIT 13

United States Senate
WASHINGTON, DC 20510

October 30, 2018

The Honorable Daniel Coats
Director of National Intelligence
1500 Tysons McLean Drive
McLean, Virginia 22102

Dear Director Coats:

The disturbing disappearance of journalist Jamal Khashoggi from the Saudi consulate in Istanbul and his subsequent murder have sparked global outrage. The perpetrators must be publicly-identified and held accountable, particularly in light of varied Saudi attempts to attribute Mr. Khashoggi's death to a failed interrogation, rogue agents, and a fist-fight. These developments instill further urgency in gaining an accurate account of the events preceding the murder as members of Congress, business community leaders, and other global actors reevaluate alliances and relationships with Saudi Arabia. As investigations continue, Congress must understand the circumstances of Mr. Khashoggi's disappearance. In order to fulfill our oversight obligation, we request a classified briefing regarding the implementation of the duty to warn determinations articulated in Intelligence Community Directive 191 (21 July 2015) and its specific application to the Jamal Khashoggi case.

Press accounts claim that the Intelligence Community was aware that Saudi Arabia had plans to abduct Mr. Khashoggi in retaliation for his criticism of the government. Specifically, the *Washington Post* stated: "U.S. intelligence intercepted communications of Saudi officials discussing a plan to capture him."[1] Under Directive 191, the Intelligence Community has a duty to warn individuals or groups about threats of intentional killing, serious bodily injury, and kidnapping. The Directive is a clear message to the American people that the U.S. government takes targeted threats seriously and prioritizes the protection of individuals as a matter of national security. Consequently, questions regarding whether Mr. Khashoggi was notified of known threats to his life have raised serious concerns.

As Director of National Intelligence, you are responsible for oversight of the Directive and mediating any disputes regarding its implementation. The Intelligence Community must clearly account for any known threats levied against Mr. Khashoggi and whether the Directive was triggered appropriately and followed accordingly. We ask that you make available the following information:

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[1] Loveday Morris, Souad Mekhennet, and Kareem Fahim, "Saudis are said to have lain in wait for Jamal Khashoggi," *Washington Post* (Istanbul, Turkey), October 9, 2018, https://www.washingtonpost.com/world/saudis-lay-in-wait-for-jamal-khashoggi-and-left-turkey-quickly-sources-say/2018/10/09/0e283e2e-cbc5-11e8-ad0a-0e01efba3cc1_story.html?utm_term=.74060ce013df.

1.) Briefing on Threats to Jamal Khashoggi: It is critical that Congress understand whether the Intelligence Community had advance knowledge of a Saudi threat to U.S. resident Jamal Khashoggi. We request clarification of whether the Intelligence Community identified such a threat prior to Khashoggi's disappearance and the nature of this threat. If a threat was identified, please provide any documentation or information regarding the triggering and implementation of Directive 191. Additional information regarding any communication of threat information to Jamal Khashoggi–including the method, means, and substance–and the timeliness of this communication must also be disclosed. If the duty to warn was waived, an appropriate justification–as articulated in Directive 191–must be provided.

2.) Procedures and Policies Regarding Implementation of Directive 191: While the directive requirements are explicit, the case of Mr. Khashoggi has raised concerns regarding its application. These concerns center on whether the definition of "kidnapping" includes situations in which governments of individuals acting under the color of law may engage in human rights abuses. We request documentation–including determinations and waivers–regarding Directive definitions, procedures, as well as information related to the training provided to employees, who are responsible for the threat assessments that inform the duty to warn determinations of the Directive.

3.) Information Regarding Invocation of Directive 191: We request background data regarding the number and instances of threat assessments that have triggered duty to warn obligations since the promulgation of Directive 191 on July 21, 2015; the instances in which the duty to warn was waived; and the justifications invoked for such waivers.

4.) Intelligence Analysis on Saudi Arabia: We request an update intelligence assessment on Saudi Arabia including political dynamics within the royal and suppression of dissent both domestically and internationally.

While we understand that responses to these questions will contain both classified and unclassified information, we ask that you publicly provide all unclassified information in addition to a classified briefing or classified addendum. Given the time-sensitive nature of this matter and its relevance to ongoing investigations, we request your immediate attention to this request and appreciate your prompt cooperation.

Sincerely,

RICHARD BLUMENTHAL
United States Senate

RICHARD J. DURBIN
United States Senate

CHRIS VAN HOLLEN
United States Senate

BRIAN SCHATZ
United States Senate

BERNARD SANDERS
United States Senate

PATRICK LEAHY
United States Senate

AMY KLOBUCHAR
United States Senate

EDWARD J. MARKEY
United States Senate

EXHIBIT 14

The New York Times

Senate Votes to End Aid for Yemen Fight Over Khashoggi Killing and Saudis' War Aims

By Julie Hirschfeld Davis and Eric Schmitt

Dec. 13, 2018

WASHINGTON — The Senate voted on Thursday to end American military assistance for Saudi Arabia's war in Yemen in the strongest show of bipartisan defiance against President Trump's defense of the kingdom over the killing of a dissident journalist.

The 56-to-41 vote was a rare move by the Senate to limit presidential war powers and sent a potent message of disapproval for a nearly four-year conflict that has killed thousands of civilians and brought famine to Yemen. Moments later, senators unanimously approved a separate resolution to hold Crown Prince Mohammed bin Salman of Saudi Arabia personally responsible for the death of the journalist, Jamal Khashoggi.

Together, the votes were an extraordinary break with Mr. Trump, who has refused to condemn the prince and dismissed United States intelligence agencies' conclusions that the heir to the Saudi throne directed the grisly killing.

While the House will not take up the measure by the end of the year, the day's votes signal that Congress will take on Mr. Trump's support of Saudi Arabia when Democrats take control of the House next month.

The action indicated a growing sense of urgency among lawmakers in both parties to punish Saudi Arabia for Mr. Khashoggi's death, and to question a tradition of Washington averting its gaze from the kingdom's human rights abuses in the interest of preserving a strategically important relationship.

"What the Khashoggi event did, I think, was to focus on the fact that we have been led into this civil war in Yemen, half a world away, into a conflict in which few Americans that I know can articulate what American national security interest is at stake," said Senator Mike Lee, Republican of Utah. "And we've done so, following the lead of the kingdom of Saudi Arabia."

The resolution was written by Mr. Lee and Senator Bernie Sanders, independent of Vermont. It was an unusual invocation of the War Powers Act, a 1973 law by which Congress sought at the end of the Vietnam War to reassert its constitutional role in deciding when the United States would go to war.

Mr. Sanders called it the first time Congress had used the law to make clear "that the constitutional responsibility for making war rests with the United States Congress, not the White House."

"Today, we tell the despotic regime in Saudi Arabia that we will not be part of their military adventurism," he said.

Seven Republican senators joined Democrats to pass the resolution: Mr. Lee, Susan Collins of Maine, Steve Daines of Montana, Jeff Flake of Arizona, Jerry Moran of Kansas, Rand Paul of Kentucky and Todd Young of Indiana.

[Read about how American-made bombs kill civilians in Yemen.]

With both votes, senators diverged sharply from Mr. Trump, who has maintained steadfast support for Saudi Arabia and Prince Mohammed, even though the C.I.A. has concluded that he ordered the assassination of Mr. Khashoggi inside its consulate in Istanbul in October.

"Maybe he did and maybe he didn't!" Mr. Trump wrote of whether the crown prince had knowledge of the killing in an extraordinary statement that the president released last month, in which he argued that punishing Saudi Arabia for Mr. Khashoggi's death would risk billions of dollars of American arms sales to the kingdom.



Secretary of State Mike Pompeo on Thursday after a closed briefing at which he defended the United States' relationship with Saudi Arabia to members of the House.
Erin Schaff for The New York Times

Senator Bob Corker, the Tennessee Republican who heads the Foreign Relations Committee and sponsored the measure condemning the crown prince, said on Thursday that it was vital that the Senate "is speaking with one voice" to hold him accountable.

"Unanimously, the United States Senate has said that Crown Prince Mohammed bin Salman is responsible for the murder of Jamal Khashoggi," Mr. Corker said. "That is a strong statement. I think it speaks to the values that we hold dear."

Senators in both parties described the twin measures as a direct response to the refusal by Mr. Trump and his administration to hold Saudi Arabia to account for Mr. Khashoggi's death — and a way to counter the president's assertion that the money to be made from arms sales to the kingdom was enough to justify turning a blind eye to such a deed.

"We cannot sweep under the rug the callous disregard for human life and flagrant violations of international norms the Saudis are showing," said Senator Robert Menendez of New Jersey, the senior Democrat on the Foreign Relations Committee.

"A few more weapons purchases cannot buy our silence — it should not buy our silence," Mr. Menendez said. "And if the president will not, Congress must act."

The votes came only hours after Defense Secretary Jim Mattis and Secretary of State Mike Pompeo implored members of the House of Representatives during a closed-door briefing to continue the military advising, logistics support and intelligence that have for years been shared with Saudi Arabia.

Some lawmakers emerged from the House meeting frustrated that Mr. Pompeo and Mr. Mattis had defended the United States' relationship with the kingdom, which the White House needs to counter growing Iranian influence in the Middle East.

Representative David Cicilline, Democrat of Rhode Island, said the two top administration officials had warned against jeopardizing the Saudi partnership — given what they described as a continuing, open investigation into whether Prince Mohammed had, in fact, ordered the killing of Mr. Khashoggi, a Washington Post columnist who had lived in the United States.

"The briefing was a colossal waste of time," Mr. Cicilline told reporters afterward.

Some senior Republicans offered the administration officials more support.

Representative Steve Scalise of Louisiana, the No. 3 Republican in the House, said Mr. Pompeo and Mr. Mattis had explained details of the investigation into Mr. Khashoggi's death, as well as complexities of the relationship with Saudi Arabia.

"There needs to be action," Mr. Scalise said, without elaborating. "We need to hold everyone accountable."

Mr. Mattis and Mr. Pompeo gave a similar briefing to the Senate late last month. But it broke down as Republican and Democratic senators grew irritated with the administration's defense of Prince Mohammed. By contrast, after Gina Haspel, the C.I.A. director, briefed senators last week on the case, they emerged saying they were even more convinced of Prince Mohammed's role.

The measure limiting war powers in Yemen has been under consideration for months, but senators sharpened its language two weeks ago with a procedural vote that signaled their deep frustration over the Trump administration's refusal to blame Prince Mohammed for Mr. Khashoggi's killing.

"The relationship with the crown prince is so toxic, so tainted, so flawed that I can't ever see myself doing business with Saudi Arabia in the future unless there is change there," Senator Lindsey Graham, Republican of South Carolina, told reporters on Wednesday as debate on the measure began.

But Mr. Graham and other senators sought to separate the importance of maintaining a close alliance and partnership with Saudi Arabia from punishing Prince Mohammed.

Before the killing and dismemberment of Mr. Khashoggi, most Republicans had supported the military alliance between the United States and Saudi Arabia.

But in the Saudi-led campaign in Yemen, to which the Pentagon has supplied bombs and intelligence, Saudi airstrikes targeting Houthi rebels have also killed thousands of people at weddings, at funerals and on school buses.

In late October, Mr. Mattis and Mr. Pompeo had called for a cease-fire in Yemen, and on Thursday, talks that were brokered by the United Nations in Sweden appeared to reach an agreement to ease the hostilities.

The agreement calls for an exchange of up to 15,000 prisoners, the creation of a humanitarian corridor into the city of Taiz and, importantly, the withdrawal of troops from Hudaydah. That city, on the Red Sea, is a key entry point to Yemen for essential products like food and medicine.

Peace talks are expected to continue in January in an effort to resolve what has become a humanitarian crisis in one of the poorest nations on Earth.

"The agreements today mean a lot, not only for the Yemeni people but for humanity if this can be a starting point for peace and for ending the humanitarian crisis in Yemen," António Guterres, the United Nations secretary general, said at the close of the talks on Thursday.

Mr. Menendez and Mr. Graham said on Wednesday that they and other senators would introduce legislation early next year to impose even broader penalties against Saudi Arabia, including suspending weapons sales and cementing a ban on American refueling of Saudi coalition aircraft in Yemen.

While Thursday's moves were largely a symbolic, if stinging, slap at the Trump administration, they previewed what could be a far more consequential debate after Democrats take over the House in 2019.

"If Paul Ryan thinks on his way out the door his last public service gift to humanity is covering up for Saudi Arabia, great, he can make that his legacy," said Senator Tim Kaine, Democrat of Virginia, referring to the procedural gambit by Mr. Ryan, the House speaker, this week to prevent the war powers measure from coming up for a swift a vote.

"But we're going to be around next year," Mr. Kaine said, "and we'll figure out ways that there can be consequences for this."

Correction: *Dec. 13, 2018*
An earlier version of this article misspelled the surname of the United Nations secretary-general. He is António Guterres, not Guterrez.

Eileen Sullivan, Gardiner Harris and Charlie Savage contributed reporting.

A version of this article appears in print on Dec. 14, 2018, Section A, Page 1 of the New York edition with the headline: With Two Votes, Senators Signal Anger at Saudis

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EXHIBIT 15

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Lindsey Graham after CIA briefing on Jamal Khashoggi murder: "There's a smoking saw"

BY OLIVIA GAZIS, BO ERICKSON, CAMILO MONTOYA-GALVEZ
DECEMBER 4, 2018 / 12:19 PM / CBS NEWS

@import
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WASHINGTON -- After CIA director Gina Haspel briefed a handful of senators Tuesday about U.S. intelligence related to the murder of dissident writer Jamal Khashoggi, lawmakers said they were even more confident that Saudi Crown Prince Mohammed bin Salman was directly

involved in the brutal assassination. "There's not a smoking gun – there's a smoking saw," Republican Sen. Lindsey Graham told reporters after the classified meeting.

"I went into the briefing believing it was virtually impossible for an operation like this to be carried out without the crown prince's knowledge," Graham added. "I left the briefing with high confidence that my initial assessment of the situation was correct."

Sen. Bob Corker, an outspoken Republican critic of President Trump and his response to Khashoggi's killing, stressed, "If the crown prince went in front of a jury, he would be convicted in 30 minutes." Asked by a reporter if it would be a murder conviction, Corker replied "yes."

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Mr. Trump has repeatedly defended the Saudi government in the wake of the Khashoggi killing in October. In November, the president said that bin Salman may have had no knowledge of the killing, and in any event the U.S. relationship with Saudi Arabia should not be jeopardized

LIVE

"All evidence leads back to the crown prince" Republican Sen. Richard Shelby told reporters as he left the briefing Tuesday. Two senators present told CBS News that Haspel did not share with lawmakers the audio tapes from the day Khashoggi was killed and reportedly dismembered inside the Saudi consulate in Istanbul, Turkey. Secretary of Defense James Mattis has said the U.S. does not have any such tapes in its possession.

The CIA chief briefed the leaders of committees and subcommittees with interests in national security – including the Senate Intelligence, Foreign Relations and Appropriations Committees. Senate Majority Leader Mitch McConnell and Minority leader Chuck Schumer were also present. In a statement issued after the briefing, Schumer called on Haspel to brief the entire Senate "without delay."

Republican Sen. Rand Paul said that he couldn't even have asked for an invitation to the briefing because he only found out about it from the

media. "Intelligence is only given to a few people within our system," Paul said Tuesday. "That's more like an oligarchy." Democratic Sen. Tim Kaine, who was also not in the meeting, said the White House was "frightened to let senators have access to this intelligence briefing."

Haspel's absence at a closed-door briefing on Saudi Arabia last week rankled key lawmakers. Soon after that briefing, led by Secretary of State Mike Pompeo and Mattis, senators voted overwhelmingly to advance a resolution to cut American military assistance to Saudi Arabia in its war in Yemen.

Both Mattis and Pompeo stressed after their briefing last week that U.S. intelligence did not suggest there was a direct connection between the crown prince and the order to kill Khashoggi.

"There is no direct reporting connecting with the crown prince to order the murder of Jamal Khashoggi," Pompeo said to reporters last Tuesday.

"I have seen all the intelligence we have," Mattis said on Saturday at the Reagan National Defense Forum in Simi Valley, California. "Right now we do not have a smoking gun."

Corker called the difference between Haspel's briefing on Tuesday and the one led by Pompeo and Mattis last week "darkness and sunshine."

Although he denounced the Trump administration for sending the heir to the Saudi throne a "message" that "you can go around killing

journalists," the retiring Tennessee senator questioned the effectiveness of a resolution sponsored by independent Sen. Bernie Sanders designed to end American military aid to the Saudi-led coalition waging a bloody war in Yemen.

"The Yemen resolution gets into a war powers situation. The administration can easily turn the light back on and say we are not involved in hostilities," he said.

Senate leaders are currently debating among themselves how to proceed with the resolution and if any amendments should be added. If allowed, amendments could water-down the resolution to the point where it is mostly symbolic.

One of the Democratic backers of the resolution, Democratic Sen. Chris Murphy, told reporters on Tuesday a decision on the process could extend into next week.

Khashoggi's murder in October has opened a rift between the Trump administration and some of its most consistent supporters in Congress – including Graham, who threatened last week to withhold key votes until he received a briefing from Haspel.

The CIA has assessed that bin Salman, known as MBS, ordered Khashoggi's killing, based mainly on an understanding of how the kingdom operates and the proximity of several members of the team involved to the prince, officials told CBS News. But the Saudis have

denied he was involved in the assassination and instead blamed former deputy intelligence chief Ahmed al-Asiri, who they said last month was the highest-ranking official to authorize the attack.

In November, the Trump administration announced sanctions against 17 Saudi nationals for their alleged involvement in Khashoggi's murder. Saoud al-Qahtani, a close aide to the crown prince, was designated as a sanctions target, but neither the crown prince nor Asiri were on the list.

Sarah Horbacewicz contributed to this report.

First published on December 4, 2018 / 12:19 PM

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EXHIBIT 16

Senators Coons, Wyden, Heinrich, Reed, Harris Reintroduce Bill Requiring Public Report on Khashoggi Murder by Saudi Arabia

FEBRUARY 26, 2019

Following Conflicting Statements by Trump and Silence from IC Leaders, Bill Requires Public Assessment of Killing of Washington Post Columnist

WASHINGTON – U.S. Senators Chris Coons (D-Del.), Ron Wyden (D-Ore.), Martin Heinrich (D-N.M.), Jack Reed (D-R.I.), and Kamala Harris, (D-Calif.), introduced legislation today requiring a public report on the killing of Washington Post journalist Jamal Khashoggi. The bill comes in response to the Trump administration's repeated refusal to release a public assessment about Khashoggi's murder at the hands of Saudi officials.

"The Saudi government brazenly murdered a Washington Post journalist, and this administration refuses to even tell the American people who is responsible for giving the order," said Senator Wyden. "This bill says the Trump administration can't get away with burying the facts about Jamal Khashoggi."

"The Trump administration has been unwilling to acknowledge the abduction, torture, and killing of Jamal Khashoggi for what it was: a state-sponsored, cold blooded murder within a diplomatic consulate," said Senator Heinrich. "The American people deserve nothing less than the truth and transparency about the Saudi government's involvement in this shameful act. That starts with ensuring the public hears directly from the intelligence community identifying who carried out or ordered Mr. Khashoggi's death."

"The brutal murder of U.S. resident and Washington Post columnist Jamal Khashoggi and the brazen cover up by the Saudi government cannot be tolerated. The American people deserve to know the truth about what happened. We are once again calling for an unclassified and public assessment of who ordered his killing and why," said Senator Reed, the Ranking Member of the Armed Services Committee and an ex officio member of the Intelligence Committee. "I urge the Trump administration to share what it knows about this heinous crime and hold all perpetrators accountable."

"As a nation founded on freedom of speech and freedom of the press, the United States cannot turn a blind eye to egregious violations of those principles around the world," said Senator Coons. "The American people deserve to know the facts about the brutal murder of Washington Post journalist and U.S. resident Jamal Khashoggi, and Congress should act to hold those responsible accountable."

"The murder of Jamal Khashoggi was a tragedy and represented an attack on journalists everywhere," said Senator Harris. "Unfortunately, the White House has not provided clear answers about what happened or who in the Saudi government might bear responsibility for the attack. We must always defend the rights of a free and independent press both at home and abroad, which is why I'm standing with my colleagues to demand a public report on this incident."

The full bill text is available here.

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PREVIOUS ARTICLE NEXT ARTICLE

EXHIBIT 18

President Trump's full, unedited interview with Meet the Press

nbcnews.com/politics/meet-the-press/president-trump-s-full-unedited-interview-meet-press-n1020731

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Get breaking news alerts and special reports. The news and stories that matter, delivered weekday mornings.

CHUCK TODD:

Mr. President, welcome back to Meet the Press.

PRESIDENT DONALD TRUMP:

Thank you.

CHUCK TODD:

Let me start right in, what happened last night?

PRESIDENT DONALD TRUMP:

Well, you had a situation that was very bad because the night before, they shot down an unmanned drone. And the unmanned is a very big factor. The fact that there was not a person on it, a U.S. person on it, or anybody. And that had an impact on me. I said, "Well, you know, we got a little problem." And I think they did that on purpose because they understand that they will be hit very hard if that were a plane with a person in it. And I think they knew that there was nobody there. So we had a very, you know, modest but pretty, pretty heavy attack schedule.

CHUCK TODD:

And this is a pre-plan that you had, something that if they did something, you had something --

PRESIDENT DONALD TRUMP:

Yeah, we had it --

CHUCK TODD:

-- these were sort of ready-made plans --

PRESIDENT DONALD TRUMP:

Sure, we have many of them --

CHUCK TODD:

-- to use if necessary, right?

PRESIDENT DONALD TRUMP:

Oh, I have so many targets you wouldn't believe.

CHUCK TODD:

Right.

PRESIDENT DONALD TRUMP:

We have targets all over.

CHUCK TODD:

So did you green light something? Or had you said --

PRESIDENT DONALD TRUMP:

Nothing's --

CHUCK TODD:

"If we do it, I'll do this." What was, what was the order you gave?

PRESIDENT DONALD TRUMP:

Nothing is green lighted until the very end because --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

-- things change, right?

CHUCK TODD:

So you never gave a final order?

PRESIDENT DONALD TRUMP:

No, no, no, no. But we had something ready to go, subject to my approval. And they came in. And they came in about a half an hour before, they said, "So we're about ready to go." I said, "I want a better definition --"

CHUCK TODD:

Planes in the air? Were planes in the air?

PRESIDENT DONALD TRUMP:

No, no. "We're about ready to go." No, but they would have been pretty soon. And things would have happened to a point where you wouldn't turn back or couldn't turn back. So they came and they said, "Sir, we're ready to go. We'd like a decision." I said, "I want to know something before you go. How many people will be killed, in this case Iranians?" I said, "How many people are going to be killed?" "Sir, I'd like get back to you on that," great people these generals. They said, came back, said, "Sir, approximately 150." And I thought about it for a second and I said, "You know what? They shot down an unmanned drone, plane, whatever you want to call it. And here we are sitting with 150 dead people that would have taken place probably within a half an hour after I said go ahead." And I didn't like it. I didn't think it was, I didn’t think it was proportionate. Now that doesn't mean --

CHUCK TODD:

So what should the response be right now?

PRESIDENT DONALD TRUMP:

I think the response should be -- Well, first of all, as you know, we've done very massive sanctions. We're increasing the sanctions now. But the response is always going to be very strong. I built up a lot of capital. I've had a lot of people that aren't Trump fans saying, "I can't believe." You know, a lot of them said, "We're going to be in World War III the first week." Didn't work out that way. We're doing great in North Korea. We're doing great in a lot of different places. We knocked out the caliphate in Syria. We knocked out 100%. Remember I was going to leave it?

CHUCK TODD:

It’s not 100%. Not everybody says it’s 100%, even --

PRESIDENT DONALD TRUMP:

No, no, no, the caliphate.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

No, the caliphate, which is the land.

CHUCK TODD:

The land.

PRESIDENT DONALD TRUMP:

The area --

CHUCK TODD:

Fair enough.

PRESIDENT DONALD TRUMP:

-- is 100%. You never knock these people out.

CHUCK TODD:

No, you won't.

PRESIDENT DONALD TRUMP:

These people are stone cold crazy. And they walk into a store and they'll be wired up for bombs and they'll blow -- it's a horrible thing. So I never say that. I don't want to do what other presidents have done or other people have done saying, "We won," because you don't win so conclusively. I would love to have the day where we can win. You know, I remember when I was young I'd go on airplane and I'd walk up, I'd buy a ticket, I'd go on a plane. Nobody thought about bombs and nobody thought about security. You'd walk in, you'd give the ticket to the person at the gate and you'd walk into a plane. Today it's like, a big deal. So what happened is I said, "I'm not going to do it. I'll save it. If they do something else, it'll be double."

CHUCK TODD:

You think they were trying to provoke you?

PRESIDENT DONALD TRUMP:

No, I don't think so. And I think it was very important that they, to them, don't forget, their

economy --

CHUCK TODD:

They don’t -- they, they --you don't think they intended to get you to respond militarily?

PRESIDENT DONALD TRUMP:

No, their economy is shattered. Shattered.

CHUCK TODD:

So what's the message you think they’re sending?

PRESIDENT DONALD TRUMP:

Their inflation is through the roof. They’ve never had, the highest in the world right now. Worse than any place. They're, they’re living not well.

CHUCK TODD:

So put yourself in their shoes, what do you think the message they're trying to send you with this, with this drone?

PRESIDENT DONALD TRUMP:

I think they want to negotiate. And I think they want to make a deal. And my deal is nuclear. Look, they're not going to have a nuclear weapon. This isn't about the straits. Do you know that China gets 91% of its oil from the straits? We don't even need the straits. We have, we are now, because of -- since I came in, we're the number one energy producer in the world. Okay? Actually by far. And if I get the pipelines approved through the environmental process, which I will in Texas, we'll go up by another 25%. But we're way ahead of Russia, we're way ahead of Saudi Arabia. And I think that they want to negotiate. I don't think they like the position they're in. Their economy is, is absolutely broken.

CHUCK TODD:

So you sent a letter to the Ayatollah via Prime Minister Abe. And the Ayatollah seemed to say, "I'm not talking to you."

PRESIDENT DONALD TRUMP:

I didn't send a letter, no.

CHUCK TODD:

What was the --

PRESIDENT DONALD TRUMP:

I didn't, I didn't send a letter. No, no --

CHUCK TODD:

Was it a verbal message? What did Prime Minister Abe carry on your behalf?

PRESIDENT DONALD TRUMP:

Prime Minister Abe's a great guy. He's a friend of mine. And he obviously is close to them. I think he was their, their largest buyer of oil from before.

CHUCK TODD:

But did he, did he deliver a message from you to them?

PRESIDENT DONALD TRUMP:

No. He wanted to do something.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

According to Prime Minister Abe, they went to him, it's according to the prime minister, and they said, "What do we do with Trump? Can we make a deal? Is there something that can be done?" That's what Prime Minster Abe told me. I said, "Do you mind if I say that if I have to?" And he said, "Not particularly." So they came to Prime Minister Abe. He then called me. I said, "Send the following message: you can't have nuclear weapons. And other than that, we can sit down and make a deal. But you cannot have nuclear --"

CHUCK TODD:

No other --

PRESIDENT DONALD TRUMP:

"-- weapons."

CHUCK TODD:

-- conditions other than that?

PRESIDENT DONALD TRUMP:

You cannot have nuclear weapons. And they would have had them with President Obama. He gave them $150 billion --

CHUCK TODD:

What is your deal?

PRESIDENT DONALD TRUMP:

Remember this.

CHUCK TODD:

I understand. But what is your deal --

PRESIDENT DONALD TRUMP:

But, Chuck, you have to remember this.

CHUCK TODD:

-- going to look like with them?

PRESIDENT DONALD TRUMP:

Let me explain something. Number one, you have to look at the sites. Some of the most important sites we weren't even allowed to look at or inspect, okay? Number two, the term was not long enough.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

There's like a short number of years left. After a very small number of years, he's talking about a country, after a very small number of years, they have a free pass to nuclear weapons. You can't do that. So I want to be able to inspect all sites. They cannot have ballistic missiles, which under the agreement, isn't even covered. And as you know, that agreement wasn't even approved by Congress. A lot of people don't know that. That was an agreement that he couldn't get through Congress. He was not authorized, really, to do that deal.

CHUCK TODD:

Congress did give him some authorization to do that. It gave him the power to cut the deal.

PRESIDENT DONALD TRUMP:

It wasn't ratified by Congress.

CHUCK TODD:

It wasn't a, it wasn't a treaty.

PRESIDENT DONALD TRUMP:

It was very, very short of what it should have been. You know that.

CHUCK TODD:

Don't you think though -- does it at all tell -- what does it tell you that the Iranians haven't violated the agreement yet? That they are trying hard not to violate this agreement?

PRESIDENT DONALD TRUMP:

Well, you see, I think they have violated the agreement because I think in the areas that we're not allowed to inspect they're doing things. And I think they have been for years.

CHUCK TODD:

Europeans don't think they're violating the agreement.

PRESIDENT DONALD TRUMP:

Well, I don't care about the Europeans. The Europeans are going out and making a lot of money. The Europeans are fine. But they're going out and making a lot of money. They're selling, in France, they're selling cars to Iran. They're doing other things. And let me tell you, we're very good to Europe. We take care of them. NATO, we spend a tremendous amount, a disproportionate amount. On trade, the European Union's taken, really, they have really taken advantage of us for a long time. Just to finish, we have great relationships with Europe. I don't mind Europe getting in the middle. Europe wants to make a deal too. Europe would love to see a deal be made.

CHUCK TODD:

Are these going to be separate deals?

PRESIDENT DONALD TRUMP:

By the way, Europe --

CHUCK TODD:

Do you want to do a separate deal with Iran? Or do you want to get everybody involved in the same deal? Get the Russians, get the Chinese?

PRESIDENT DONALD TRUMP:

I don't care which, what kind of a deal. It can be separate or it could be total.

CHUCK TODD:

But it's one-on-one talks, you and the Ayatollah?

PRESIDENT DONALD TRUMP:

All it is -- all it is --

CHUCK TODD:

Is it one-on-one talks, you and the Ayatollah, or you and the President?

PRESIDENT DONALD TRUMP:

It doesn't matter to me. Here's what I want, anything that gets you to the result. They cannot have a nuclear weapon. It's not about the straits. You know, a lot of people covered it incorrectly. They're never mentioned. They cannot have a nuclear weapon. They'd use it. And they're not going to have a nuclear weapon.

CHUCK TODD:

Did you send a message --

PRESIDENT DONALD TRUMP:

And it's not about the oil.

CHUCK TODD:

-- last night? You know, Reuters is reporting that you sent a message to the Iranians saying, "I don't want war. I want to talk."

PRESIDENT DONALD TRUMP:

Wrong. It's wrong. I did not send that message. I did not send that message. I don't know who --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

I don’t know who would have said that.

CHUCK TODD:

Send a message right now to the Ayatollah.

PRESIDENT DONALD TRUMP:

I mean it's fake news.

CHUCK TODD:

Then send a message right now to the Ayatollah.

PRESIDENT DONALD TRUMP:

Wouldn't be much different than that message.

CHUCK TODD:

Which is?

PRESIDENT DONALD TRUMP:

I'm not looking for war and if there is, it'll be obliteration like you've never seen before. But I'm not looking to do that. But you can't have a nuclear weapon. You want to talk? Good. Otherwise you can have a bad economy for the next --

CHUCK TODD:

No pre-conditions?

PRESIDENT DONALD TRUMP:

-- three years. Not as far as I'm concerned. No pre-conditions.

CHUCK TODD:

And you'll talk anywhere?

PRESIDENT DONALD TRUMP:

Here it is. Look, you can't have nuclear weapons. And if you want to talk about it, good. Otherwise you can live in a shattered economy for a long time to come.

CHUCK TODD:

If you, are you, do you feel like you were being pushed into military action against Iran by any of your advisors?

PRESIDENT DONALD TRUMP:

I have two groups of people. I have doves and I have hawks.

CHUCK TODD:

Yeah, you have some serious hawks.

PRESIDENT DONALD TRUMP:

I have some hawks. Yeah, John Bolton is absolutely a hawk. If it was up to him he'd take on the whole world at one time, okay? But that doesn't matter because I want both sides. You know, some people said, “Why did you put --” You know, I was against going into Iraq for years and years. And before it ever happened I was against going into Iraq. And some people said, "Oh I don't know." I was totally against and I was a private citizen. It never made sense to me. I was against going into the Middle East. Chuck, we've spent $7 trillion in the Middle East right now.

CHUCK TODD:

Why is this our problem? This is a proxy war. Iran and Saudi Arabia are in a fight to the death out there.

PRESIDENT DONALD TRUMP:

Yeah. You're right. You're right. And that's another thing I've done --

CHUCK TODD:

Candidate Trump, candidate Trump for years would have said, "Not our fight." Why are you involved?

PRESIDENT DONALD TRUMP:

Because of nuclear weapons. It has nothing to do with oil.

CHUCK TODD:

So the minute you get them to do nuclear weapons, you want out of the Middle East?

PRESIDENT DONALD TRUMP:

That's all I care. I don't care about -- Well, we're going to protect Israel. But I have nothing to do, absolutely nothing -- and we're going to protect Saudi Arabia. Look, Saudi Arabia is buying $400 billion worth of things for us. That's a very good thing.

CHUCK TODD:

You used to say we don't get anything in return --

PRESIDENT DONALD TRUMP:

We are now.

CHUCK TODD:

-- for protecting Saudi Arabia.

PRESIDENT DONALD TRUMP:

You know that this --

CHUCK TODD:

You feel like they're now paying for --

PRESIDENT DONALD TRUMP:

-- this morning --

CHUCK TODD:

-- the American protection?

PRESIDENT DONALD TRUMP:

-- I spoke to the Crown Prince, this morning. And we had a great conversation. I said, "This is a very expensive operation. You and the other nations that we're protecting have to pay."

CHUCK TODD:

Did you talk --

PRESIDENT DONALD TRUMP:

And he said, "Yes."

CHUCK TODD:

Did you talk to him about the U.N. report about Jamal Khashoggi?

PRESIDENT DONALD TRUMP:

I did not because it really didn't come up in that discussion. I called about one reason.

CHUCK TODD:

I understand.

PRESIDENT DONALD TRUMP:

I called about one -- I didn't call about that. I called about one reason. There's a very expensive operation. Unlike President Obama and unlike everybody else, I'll say others too, not just President Obama. You've got to pay for it. We cannot, we, we just don't want to go in and, and protect the Middle East and protect Saudi Arabia and everyone else and not get reimbursed.

CHUCK TODD:

So this is why you're overruling Congress and, and letting all these weapon sales happen in Saudi Arabia?

PRESIDENT DONALD TRUMP:

Economic development and that. But economic development.

CHUCK TODD:

Never mind the humanitarian disaster --

PRESIDENT DONALD TRUMP:

A million jobs.

CHUCK TODD:

-- that's taking place in Yemen?

PRESIDENT DONALD TRUMP:

A million jobs -- No it's going to end. It's going to end. By the way, who's causing it though? If you look at it, Iran goes into Yemen. They start firing rockets at Saudi Arabia. Saudi Arabia has to protect themselves, Chuck. But it's, it's a million jobs and probably more. They buy massive amounts, $150 billion worth of military equipment that, by the way, we use. We use that military equipment. And unlike other countries that don't have money and we have to subsidize everything. So Saudi Arabia is a big buyer of America product. That means something to me. It's a big producer of jobs.

CHUCK TODD:

It makes you overlook some of their bad behavior?

PRESIDENT DONALD TRUMP:

No.

CHUCK TODD:

I mean --

PRESIDENT DONALD TRUMP:

I don't like anybody's bad behavior.

CHUCK TODD:

Are you going to -- The United Nations said they'd like the United States to order the FBI to investigate Jamal Khashoggi's death and possibly MBS' --

PRESIDENT DONALD TRUMP:

Well, I think it's, I think it's --

CHUCK TODD:

-- involvement in it. Will you allow the FBI to do that?

PRESIDENT DONALD TRUMP:

I think it's been heavily investigated.

CHUCK TODD:

By who?

PRESIDENT DONALD TRUMP:

By everybody. I mean --

CHUCK TODD:

By the FBI?

PRESIDENT DONALD TRUMP:

I've seen so many different reports.

CHUCK TODD:

What about the FBI?

PRESIDENT DONALD TRUMP:

Here's where I am, you ready?

CHUCK TODD:

Uh-huh.

PRESIDENT DONALD TRUMP:

Iran's killed many, many people a day. Other countries in the Middle East, this is a hostile place. This is a vicious, hostile place. If you're going to look at Saudi Arabia, look at Iran, look at other countries, I won't mention names, and take a look at what's happening. And then you go outside of the Middle East, and you take a look at what's happening with countries. Okay? And I only say they spend $400 to $450 billion over a period of time --

CHUCK TODD:

So --

PRESIDENT DONALD TRUMP:

-- all money, all jobs, buying equipment --

CHUCK TODD:

That's the price. As long as they keep buying --

PRESIDENT DONALD TRUMP:

No, no.

CHUCK TODD:

-- you'll overlook some of this behavior.

PRESIDENT DONALD TRUMP:

But I'm not like a fool that says, "We don't want to do business with them." And by the way, if they don't do business with us, you know what they do? They'll do business with the Russians or with the Chinese. They will buy -- We make the best equipment in the world, but they will buy great equipment from Russia and from China. Chuck --

CHUCK TODD:

Yeah. Alright.

PRESIDENT DONALD TRUMP:

Take their money. Take their money, Chuck.

CHUCK TODD:

What would a candidate Trump have said about a president who, on his watch, had Iran shooting down a drone, a Venezuelan dictator thumbing his nose at you, Obamacare still on the books and no results yet on the border? The border getting tough --

PRESIDENT DONALD TRUMP:

Well, let's, let’s take a look. Let’s take a look --

CHUCK TODD:

I just say -- what would candidate Trump have said about that?

PRESIDENT DONALD TRUMP:

Okay, let's take a look. The border's doing great. Mexico's been fantastic. They've been trying to get a deal with Mexico for 45 years, right? So for 45 years, they couldn't get a deal. I got one in one day. I said, "We're going to put tariffs on and we're going to either have a deal or not. We agreed in one day." Mexico just moved 6,000 people to their southern border. 6,000 troops to their southern border. The border's working out well. And the wall is being built. I mean, a lot of people don't like to talk about it. We're building the wall. We will have 400 miles of wall built by the end of next year and that's hard because the Democrats don't want to approve it. We just beat them in a big lawsuit, as you know, in Washington, in D.C. We just beat them in a very big lawsuit.

CHUCK TODD:

But does it frustrate you that your border numbers are worse than Obama’s?

PRESIDENT DONALD TRUMP:

No, because the people are coming up because our economy is so good. They're pouring up because the economy is so good. Obama had a lousy economy. It was a dead economy.

CHUCK TODD:

Can I ask you about that?

PRESIDENT DONALD TRUMP:

Our, our economy is good.

CHUCK TODD:

Let me show you this chart. Do you see that chart?

PRESIDENT DONALD TRUMP:

Yeah.

CHUCK TODD:

It's the unemployment rate from the peak of the recession.

PRESIDENT DONALD TRUMP:

Right.

CHUCK TODD:

Your economy is great. I'm not saying it's not great. But this recovery started and in the 28 months that you've been president and the last 28 months of Obama's presidency, he averaged more new jobs than your first 28 --

PRESIDENT DONALD TRUMP:

That's because he started off with a, with such a bad base. I mean, he hit --

CHUCK TODD:

Ok. But it is -- is it not a continuation?

PRESIDENT DONALD TRUMP:

Yeah, but Chuck, you have to understand, nobody was working. The whole place was a disaster. And I don’t-- I'd never take that away.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

But it's very easy --

CHUCK TODD:

Alright.

PRESIDENT DONALD TRUMP:

-- because when that turned around they pumped a tremendous amount of money into the economy. He also had a Federal Reserve person who kept the interest rates low. I don't. I don't have that privilege.

CHUCK TODD:

Sounds like you do now. Do you feel like you have --

PRESIDENT DONALD TRUMP:

No, no, no.

CHUCK TODD:

-- do you feel you have sent --

PRESIDENT DONALD TRUMP:

He raised them far too fast.

CHUCK TODD:

-- the threat --

PRESIDENT DONALD TRUMP:

He raised them far too fast.

CHUCK TODD:

-- your threat to demote him, do you think that's had an impact?

PRESIDENT DONALD TRUMP:

I didn't ever threaten to demote him.

CHUCK TODD:

There's been some talk that you might demote him to the number two slot.

PRESIDENT DONALD TRUMP:

Well, I, I, I'd be able to do that if I wanted but I haven't suggested that. I mean --

CHUCK TODD:

That’s not a threat --

PRESIDENT DONALD TRUMP:

No, it’s not --

CHUCK TODD:

-- that’s just a reminder that you can?

PRESIDENT DONALD TRUMP:

No, no, I have the right to do that. But I haven't said that. What he's done is $50 billion a month in quantitative tightening. That's ridiculous. What he's done is he raised interest rates too fast.

CHUCK TODD:

Do you worry it's going to hurt --

PRESIDENT DONALD TRUMP:

I've been proven right.

CHUCK TODD:

-- your reelection?

PRESIDENT DONALD TRUMP:

I think the economy's so strong we're going to bull through it. But I'm not happy with his actions. No, I don't think he's done a good job. I think this, if he didn't raise rates Obama had very low rates. So Obama was playing with funny money. I wasn't. I'm playing with the real stuff.

CHUCK TODD:

Let me ask you this.

PRESIDENT DONALD TRUMP:

Wait, wait. Obama had somebody that kept the rates very low. I had somebody that raised the rates very rapidly. Too much. He made a mistake. That's been proven. And yet my economy is phenomenal. We have now the best economy, maybe in the history of our country. One -- just to finish off, when I took over, this country, the economy was ready to collapse. You take a look at the numbers. It was ready to collapse. And if I didn't win --

CHUCK TODD:

I just showed you the numbers. It was not ready to collapse.

PRESIDENT DONALD TRUMP:

No no, no, that's -- You showed me unemployment numbers.

CHUCK TODD:

That was unemployment. It was not ready --

PRESIDENT DONALD TRUMP:

Excuse me.

CHUCK TODD:

-- to collapse.

PRESIDENT DONALD TRUMP:

Excuse me. Take a look at your GDP, take a look at your jobs, take a look at your optimism.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

Take a look at all of the charts. When I took over from election day on, I mean, you show me one chart which, where I did --

CHUCK TODD:

It was the unemployment rate.

PRESIDENT DONALD TRUMP:

-- well in that too, but I'm not --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

-- talking about that. Take a look at some of the optimism charts and everything else. It went from 57 to 92. Nobody's ever seen anything that --

CHUCK TODD:

You're right. You're right.

PRESIDENT DONALD TRUMP:

-- right after I won.

CHUCK TODD:

The optimism, you're right.

PRESIDENT DONALD TRUMP:

Well, optimism is a big part of success in business. Okay.

CHUCK TODD:

You were always hard on Obama. You thought he wasn't enough of a cheerleader.

PRESIDENT DONALD TRUMP:

He was not a cheerleader.

CHUCK TODD:

If you could have one do over as president, what would it be?

PRESIDENT DONALD TRUMP:

Well, it would be personnel.

CHUCK TODD:

Who is it?

PRESIDENT DONALD TRUMP:

I would say if I had one do over, it would be, I would not have appointed Jeff Sessions to be attorney general. That would be my one --

CHUCK TODD:

That's your, in your mind, that's your worst mistake?

PRESIDENT DONALD TRUMP:

Yeah, that was the biggest mistake.

CHUCK TODD:

Is Bill Barr your Roy Cohn?

PRESIDENT DONALD TRUMP:

He should've never -- I think he's a very talented, very--

CHUCK TODD:

But do you know what I mean by that? You've always said --

PRESIDENT DONALD TRUMP:

No, no, look --

CHUCK TODD:

"Where's my Roy Cohn?" Is he your Roy Cohn?

PRESIDENT DONALD TRUMP:

You have to understand, Roy Cohn, but I had many, many lawyers. I mean, a lot of lawyers. Roy was one of them. He was a tough guy. Bill Barr is a -- First of all, Bill Barr --

CHUCK TODD:

Is he cut from the same cloth, do you think?

PRESIDENT DONALD TRUMP:

Bill Barr is a very, he's equally tough. He's a fine man. He's a fine man. The job he's done is incredible. He's brought sanity back. I think he's real -- I don't think, I know, he's respected. You know, he loves the Department of Justice. He saw what was happening. He has done a spectacular job. Now he's in the process of doing something and I stay away from it. I really, I stay away from it. But I think he feels that what's happened in this country was a very bad thing and very bad for our country.

CHUCK TODD:

I want to ask what's going down with the, these, the children in these migrant camps. The stories are horrible, Mr. President. You have children without their parents. You have kids taking care of kids.

PRESIDENT DONALD TRUMP:

Yeah.

CHUCK TODD:

You've, you've read these reports. I know people are coming to you. I know you think this is the Democrats' problem.

PRESIDENT DONALD TRUMP:

Well, it --

CHUCK TODD:

Forget it.

PRESIDENT DONALD TRUMP:

It was --

CHUCK TODD:

Why aren't you doing something?

PRESIDENT DONALD TRUMP:

Are you ready?

CHUCK TODD:

They're in terrible shape down there, Mr. President. Down in Homestead, Florida, that's where I grew up, it's, the conditions are terrible.

PRESIDENT DONALD TRUMP:

I agree. And it's been --

CHUCK TODD:

Do something.

PRESIDENT DONALD TRUMP:

-- that way for a long time.

CHUCK TODD:

Do something.

PRESIDENT DONALD TRUMP:

And President Obama built the cages. Remember when they said that I built them? And then it was 1914 --

CHUCK TODD:

Do two wrongs --

PRESIDENT DONALD TRUMP:

Excuse me.

CHUCK TODD:

-- make a right?

PRESIDENT DONALD TRUMP:

It was 2014. Chuck, just listen for one second.

CHUCK TODD:

Ok. Alright.

PRESIDENT DONALD TRUMP:

Separation, President Obama, I took over separation. I'm the one that put it together. What's happened though are the cartels and all of these bad people, they're using the kids. They're, they're, it's almost like slavery.

CHUCK TODD:

But let's not punish the kids more.

PRESIDENT DONALD TRUMP:

No this has been happening --

CHUCK TODD:

Aren't you -- the kids are getting punished more.

PRESIDENT DONALD TRUMP:

You're right. And this has been happening long before I got there. What we've done is we've created, we've, we've ended separation. You know, under President Obama you had separation. I was the one that ended it. Now I said one thing, when I ended it I said, "Here's what's going to happen. More families are going to come up." And that's what's happened. But they're really coming up for the economics. But once you ended the separation. But I ended separation. I inherited separation from President Obama. President Obama built, they call them jail cells. They were built --

CHUCK TODD:

Let's talk about what's happening now.

PRESIDENT DONALD TRUMP:

-- by the Obama --

CHUCK TODD:

Your administration, and--

PRESIDENT DONALD TRUMP:

I'm just telling you --

CHUCK TODD:

--you're not doing the recreation. You're not even schooling these kids anymore. You've gotten rid of all that stuff.

PRESIDENT DONALD TRUMP:

We're doing a fantastic job under the circumstances. The Democrats aren't even approving giving us money. Where is the money? You know what? The Democrats are holding up the

humanitarian aid.

CHUCK TODD:

It looks like these kids are being used as, as some sort of -- is it hostages? They're being held --

PRESIDENT DONALD TRUMP:

Well, they are being used.

CHUCK TODD:

-- hostage.

PRESIDENT DONALD TRUMP:

They are being used by very bad people on the other side where they actually get --

CHUCK TODD:

But now they're politically being used.

PRESIDENT DONALD TRUMP:

--paid, where money is being made using them because our laws are so bad. Because if you have a child, you have an advantage. You know that better than anybody. And what should happen, Chuck --

CHUCK TODD:

But why let the political debate hurt these children?

PRESIDENT DONALD TRUMP:

Chuck, we could --

CHUCK TODD:

They could be impacted for years.

PRESIDENT DONALD TRUMP:

If the Democrats would change the asylum laws and the loopholes, which they refuse to do because they think it's good politics, everything would be solved immediately. But they refuse to do it. They refuse to do it.

CHUCK TODD:

Let me ask you this.

PRESIDENT DONALD TRUMP:

You know what? If they change those, I say, I used to say 45 minutes. It's 15 minutes. If they changed asylum and if they changed loopholes everything on the border would be perfect.

CHUCK TODD:

Let me ask you this, why do you think Nancy Pelosi has held off her impeachment caucus?

PRESIDENT DONALD TRUMP:

Because I think she feels that I will win much easier. I mean, I've been told that by many people.

CHUCK TODD:

Do you think impeachment's good politics for you?

PRESIDENT DONALD TRUMP:

I think I win the election easier. But, you know, I'm not sure that I like having it. Look, I did nothing wrong. I was spied on. What they did to me was illegal. It was illegal on the other side. I did nothing wrong. So impeachment's a very unfair thing because nothing that I did was wrong. And if you look at the Mueller report, there was no collusion. This was all about collusion.

CHUCK TODD:

Nowhere in the Mueller report --

PRESIDENT DONALD TRUMP:

This was about conspiracy.

CHUCK TODD:

By the way, Mr. President, you say no collusion. There is not a single, I've read this Mueller report, both, both parts of it --

PRESIDENT DONALD TRUMP:

Use the word collusion, or use --

CHUCK TODD:

-- there's not one place it says nothing happened.

PRESIDENT DONALD TRUMP:

Use the word collusion. Use the word conspiracy.

CHUCK TODD:

It never says no collusion.

PRESIDENT DONALD TRUMP:

I'll be honest with you, nobody even mentions Russia anymore since the Mueller report. They don't mention it, in all fairness.

CHUCK TODD:

I --

PRESIDENT DONALD TRUMP:

Nobody mentions Russia anymore. And it was about Russia. It was a hoax.

CHUCK TODD:

Let me ask you this --

PRESIDENT DONALD TRUMP:

Wait a minute.

CHUCK TODD:

-- during the campaign --

PRESIDENT DONALD TRUMP:

Wait, wait. We'll give you the time that you need.

CHUCK TODD:

What hoax it was?

PRESIDENT DONALD TRUMP:

It was a hoax. The Russian hoax with me.

CHUCK TODD:

You don't believe it happened?

PRESIDENT DONALD TRUMP:

I had nothing to do --

CHUCK TODD:

You don't believe the Russians interfered --

PRESIDENT DONALD TRUMP:

What they did with --

CHUCK TODD:

-- in our election?

PRESIDENT DONALD TRUMP:

-- respect to the election is different. We're not talking about that. We're talking about --

CHUCK TODD:

The idea that you were conspiring.

PRESIDENT DONALD TRUMP:

-- my campaign working is a hoax.

CHUCK TODD:

Fair enough.

PRESIDENT DONALD TRUMP:

Okay. Good.

CHUCK TODD:

But going back, on WikiLeaks, knowing now that that was stolen foreign material, do you regret using it?

PRESIDENT DONALD TRUMP:

Well, I, I wouldn't have. But this was well-known. I think it was in papers. And, again, I'm going back now a long ways. But --

CHUCK TODD:

It was all rumored to be Russian stolen property.

PRESIDENT DONALD TRUMP:

Wait a minute. But --

CHUCK TODD:

So why'd you use it?

PRESIDENT DONALD TRUMP:

--but how would I even know that? I made a speech. It was in there about WikiLeaks. I'm not a --

CHUCK TODD:

Right, but I'm saying knowing now --

PRESIDENT DONALD TRUMP:

-- WikiLeaks person.

CHUCK TODD:

Knowing that they are a Russian intelligence --

PRESIDENT DONALD TRUMP:

Hey, Chuck.

CHUCK TODD:

-- asset --

PRESIDENT DONALD TRUMP:

Ok.

CHUCK TODD:

-- do you regret it?

PRESIDENT DONALD TRUMP:

Let me tell you-- WikiLeaks, et cetera, that's not my deal in life. You know, in other words, I don't know about WikiLeaks. It was a strange name. But there were stories about something WikiLeaks that they had information. And I say it in a joking manner at a speech. Joking. Everybody laughing. Everybody having a -- And they made it like it was serious. No, I don't want anything bad to happen to our country. Anything bad happens to this country, I will end it and I'll end it fast. I don't want any of that to happen.

CHUCK TODD:

There's one part in the Mueller report, your, your son, Donald Trump Jr., did cooperate and appear before the Senate Intelligence Committee.

PRESIDENT DONALD TRUMP:

Right. That's right.

CHUCK TODD:

In the Mueller report, it says that he did not voluntarily sit for an interview with Mueller's team. And then there's a redaction. A Grand Jury redaction. Did he involuntarily sit?

PRESIDENT DONALD TRUMP:

I don't know. I can only tell you this --

CHUCK TODD:

Is it possible he was --

PRESIDENT DONALD TRUMP:

-- my son --

CHUCK TODD:

-- subpoenaed by the, --

PRESIDENT DONALD TRUMP:

I, I really don't know.

CHUCK TODD:

-- you don't know if he was subpoenaed?

PRESIDENT DONALD TRUMP:

But let me tell you what I do know.

CHUCK TODD:

So did you not read the Mueller report?

PRESIDENT DONALD TRUMP:

Let me tell you, I read much of it.

CHUCK TODD:

The unredacted version or no?

PRESIDENT DONALD TRUMP:

I read -- No I didn't.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

I didn't. But let me just tell you --

CHUCK TODD:

So if he was subpoenaed --

PRESIDENT DONALD TRUMP:

You know what I read? I read the --

CHUCK TODD:

-- if he was subpoenaed you wouldn't know?

PRESIDENT DONALD TRUMP:

-- I read, I read the conclusion.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

Well, he was subpoenaed. Ultimately he was subpoenaed to sit before the Senate Intel --

CHUCK TODD:

But was he --

PRESIDENT DONALD TRUMP:

-- and he did that.

CHUCK TODD:

Was he subpoenaed by Mr. Mueller?

PRESIDENT DONALD TRUMP:

I don't know. But I don't think so.

CHUCK TODD:

If he was subpoenaed was he going to appear before the Grand Jury or was he --

PRESIDENT DONALD TRUMP:

I don't know.

CHUCK TODD:

-- just going to plead the fifth?

PRESIDENT DONALD TRUMP:

I really don't know. But you can certainly ask him. I just --

CHUCK TODD:

But you don't know?

PRESIDENT DONALD TRUMP:

-- don't know. It was, it was -- He sat, my son, he's been treated so unfairly. He sat for many, many hours before these committees. I think, my impression is, that Mueller took all of the information from the committees and he used that information. How much, how much can you talk about something? Remember the phone calls, the three phone calls? It was such a big deal. Three phone calls that were made to a special type number.

CHUCK TODD:

Yeah.

PRESIDENT DONALD TRUMP:

Okay? And everybody said, "Oh, he called his father." That went on for a year. In other words, before this so-called meeting and after the meeting, “He called his father,” the biggest story. Headlines all over the place. And then it turned out, and I give Mueller credit because Mueller was the one that found out through I guess the phone companies or whatever. Somebody found out, maybe through the FBI. Big investigation on who the calls were made. If they were made to me, it would have sounded like you, wait a minute, they turned out that it wasn't to me. It was to a real estate person and a NASCAR person. Two great people, have nothing to do with Russia. Have nothing to do. And you know what? People hardly even put the story in. My son was treated unfairly. My son, he spent 20 some odd hours and then he went back again.

CHUCK TODD:

But he never --

PRESIDENT DONALD TRUMP:

He was a very innocent, young man and he was treated very badly.

CHUCK TODD:

You're going to see Vladimir Putin in a week.

PRESIDENT DONALD TRUMP:

Yes. I'm going to see many people.

CHUCK TODD:

Are you going to address him directly about interference in 2020?

PRESIDENT DONALD TRUMP:

I may.

CHUCK TODD:

Are you going to tell him --

PRESIDENT DONALD TRUMP:

I may.

CHUCK TODD:

-- not to do it?

PRESIDENT DONALD TRUMP:

I may if you'd like me to do it, I'll do that.

CHUCK TODD:

Because some -- Well, some people think that your answer --

PRESIDENT DONALD TRUMP:

You know what? Here's what you do --

CHUCK TODD:

-- that your answer last week invited him to do it again.

PRESIDENT DONALD TRUMP:

Oh, that's not true. That's not true.

CHUCK TODD:

Are you going to tell him not to and what are the consequences?

PRESIDENT DONALD TRUMP:

My answer last week was both. I said both. I'd do both. Except they didn't put it on. And when they did put it on people understood. But they didn't put it on because they put a different segment on. So they ask me a question. But when I said, "Yeah, I'd do both," people saw that in the last version of it because the thing played like all weekend and on Friday. So it's just more fake news. Chuck, there's so much fake news. It would be so good if --

CHUCK TODD:

That's why I'm interviewing you one-on-one --

PRESIDENT DONALD TRUMP:

That's fine. That's why I like --

CHUCK TODD:

Let me ask you this.

PRESIDENT DONALD TRUMP:

That's why I like doing --

CHUCK TODD:

Do you think you've been --

PRESIDENT DONALD TRUMP:

But I like live interviews better, you know why? Because you can't cut the answers.

CHUCK TODD:

Guess what? I'm not -- You're going to enjoy the fact that I'm not going to over-edit this interview. That I promise you.

PRESIDENT DONALD TRUMP:

Ok. Good.

PRESIDENT DONALD TRUMP:

Do you think you've been more successful in business or the presidency?

PRESIDENT DONALD TRUMP:

I think, well, I can't be more successful in politics. I mean, I ran once and I'm president, right? So you have to say that's about -- there's nothing-- it's never happened before, right? So I'm one for one and I hope to be two for two. But my business has been a tremendous success. I actually said to the lawyers, "I'd like to show my financial statement. My financial statement's great." I built a great business --

CHUCK TODD:

You could release your tax returns any day you want.

PRESIDENT DONALD TRUMP:

I actually don't believe -- You don't learn from tax returns. And I'm under audit, Chuck. I've been saying it. I'm under audit. But you don't learn from tax returns.

CHUCK TODD:

I was under audit.

PRESIDENT DONALD TRUMP:

But you would learn from a financial --

CHUCK TODD:

I had my tax returns.

PRESIDENT DONALD TRUMP:

-- statement. And I would like to release it. I've built a great company. They like to -- For instance, banks. Banks. I could have borrowed from banks. But I didn't need to because I had money. I did things, in fact, a lot of people over the last couple of years were really surprised. “He paid all cash, he didn't use banks.” I think I've been tremendously successful in business. I think I've been tremendously successful in show business with The Apprentice. I mean, I did one show and it was a great hit, as you know, from NBC.

CHUCK TODD:

Yes, sir.

PRESIDENT DONALD TRUMP:

And I guess you have to say I've been really successful at politics.

CHUCK TODD:

The Republican Party has changed in your image. Do you think you caused that change or do you think the party was changing and you were the leader they selected?

PRESIDENT DONALD TRUMP:

I think common sense caused it. You know, I'm about common sense. People say, "Are you conservative?" I guess I'm conservative, but I'm about common sense. I'm about we need borders. We're going to have borders. And we have strong borders. And by the way, Mexico has done a great job. It's slowed down so much. But we have an amazing economy and people want to come up. But it's slowed down so much. But I'm about borders. I'm about great health care. Obamacare is a disaster. I got rid of the individual mandate.

CHUCK TODD:

By the way, why is the economy doing so well if Obamacare is still law of the land? You had said in 2011 --

PRESIDENT DONALD TRUMP:

We are managing --

CHUCK TODD:

-- "Obamacare's going to destroy the economy." Obamacare's still here and --

PRESIDENT DONALD TRUMP:

Because I've managed it great.

CHUCK TODD:

-- the economy's great.

PRESIDENT DONALD TRUMP:

I had a choice. I could have let it implode and killed it or I could have managed it --

CHUCK TODD:

You're still trying to kill it.

PRESIDENT DONALD TRUMP:

No, no.

CHUCK TODD:

Why are you still trying to kill it with the getting rid of preexisting -- If you -- This lawsuit that the Department of Justice joined, it could get rid of --

PRESIDENT DONALD TRUMP:

I am in favor --

CHUCK TODD:

-- coverage of preexisting conditions.

PRESIDENT DONALD TRUMP:

I am in favor of preexisting conditions. I am fighting --

CHUCK TODD:

So get rid -- so drop the lawsuit.

PRESIDENT DONALD TRUMP:

We will --

CHUCK TODD:

So drop your aspect of the lawsuit.

PRESIDENT DONALD TRUMP:

It has nothing to do with it. The lawsuit is one thing. We are going to put in a bill, total preexisting conditions. And the Republicans are in favor of preexisting conditions.

CHUCK TODD:

Mr. President, you had full Republican control and they couldn't pass anything.

PRESIDENT DONALD TRUMP:

Chuck, are you ready?

CHUCK TODD:

What makes you think you're going to get it done this time?

PRESIDENT DONALD TRUMP:

We had a negative vote from John McCain. It was a surprising vote. But I got rid of the worst part of Obamacare which was the individual mandate.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

We will always protect pre-existing conditions. And the reason Obamacare continues is my decision. Wait, I made a big decision.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

We have a man named Azar, our secretary, he's fantastic man, Alex. A total pro. I could have managed Obamacare so it would have failed or I could have managed it the way we did so it's as good as it can be. Not great, but it’s as good -- It's too expensive and the premiums

are too high. I had a decision to make. I could have politically killed Obamacare. I decided not to do it. But still it's not good. We're going to come up with great health care if we win the House, the Senate and the presidency.

CHUCK TODD:

Are you prepared to lose?

PRESIDENT DONALD TRUMP:

No. Probably not. Probably not.

CHUCK TODD:

Very hon -- I mean, you joke --

PRESIDENT DONALD TRUMP:

It would be much better, it would be much better if I said, “Yeah.”

CHUCK TODD:

You’re, you’re --

PRESIDENT DONALD TRUMP:

It would be much easier for me to say, "Oh yes." No I'm probably not too prepared to lose. I don't like losing. I haven't lost very much in my life.

CHUCK TODD:

You didn't like the fact that you lost the popular vote. That bothered you, didn't it?

PRESIDENT DONALD TRUMP:

Well, I think it was a -- I mean, I'll say something that, again, is controversial. There were a lot of votes cast that I don't believe. I look at California.

CHUCK TODD:

Mr. President.

PRESIDENT DONALD TRUMP:

Excuse me.

CHUCK TODD:

But that's a --

PRESIDENT DONALD TRUMP:

Take a look at Judicial Watch, take a look at their settlement where California admitted to a million votes. They admitted to a million votes.

CHUCK TODD:

A million votes of what?

PRESIDENT DONALD TRUMP:

Take a look at judicial --

CHUCK TODD:

What are you talking about?

PRESIDENT DONALD TRUMP:

Judicial Watch made a settlement. There was, there was much --

CHUCK TODD:

About what?

PRESIDENT DONALD TRUMP:

-- there was much illegal voting. But let me tell you about popular vote. Do you have a second?

CHUCK TODD:

Yes, because you were, you were a big fan of it --

PRESIDENT DONALD TRUMP:

There are two --

CHUCK TODD:

-- until you weren't

PRESIDENT DONALD TRUMP:

Well, I like popular vote.

CHUCK TODD:

Yeah.

PRESIDENT DONALD TRUMP:

I think I do better with a popular vote. But I didn't campaign for the popular vote.

CHUCK TODD:

You're right. I --

PRESIDENT DONALD TRUMP:

You didn't see me campaigning in California or New York. If I -- if it was up to the popular vote, I would have been I think even better. I won 306 to 223, which was a lot in the Electoral College. But it's like you're training for the 100-yard dash versus the mile.

CHUCK TODD:

Yep. You're, you're totally right.

PRESIDENT DONALD TRUMP:

It's totally different.

CHUCK TODD:

If it's the popular vote, you campaign differently.--

PRESIDENT DONALD TRUMP:

I went to Wisconsin. --

CHUCK TODD:

-- I don't disagree.

PRESIDENT DONALD TRUMP:

-- She forgot. I went to Michigan. She didn't go to Michigan enough. I won Michigan, Wisconsin, Pennsylvania. I won places that she didn't do a good job. What can I tell you? No, maybe I did a great job. You know, I never get credit for that. They always say she was a lousy candidate. I actually think that Hillary Clinton was a great candidate. She was very smart. She was very tough. She was ruthless and vicious.

CHUCK TODD:

You'd rather run against her again, wouldn't you?

PRESIDENT DONALD TRUMP:

No.

CHUCK TODD:

You only talked about her in your announcement speech.

PRESIDENT DONALD TRUMP:

No.

CHUCK TODD:

You spent a lot of time talking about her.

PRESIDENT DONALD TRUMP:

No. I would actually rather run against Biden.

CHUCK TODD:

Than Hillary.

PRESIDENT DONALD TRUMP:

I think that would be my preference.

CHUCK TODD:

Why?

PRESIDENT DONALD TRUMP:

Sleepy Joe. He's sleepy. She was not sleepy. Let me just tell you something, the Electoral College is tougher for a Republican to win than the popular vote. At least me. I feel that I go to three places. I went to 19 or 21 states. I went to Maine four times because I wanted to get one. And I did get it. And that's the beauty of the Electoral College.

CHUCK TODD:

Right.

PRESIDENT DONALD TRUMP:

You know, I've been a proponent of the other sometimes and I change. But I will tell you, the Electoral College brings you to many of the states in this country.

CHUCK TODD:

You, you have joked about a third term. You've joked about these things.

PRESIDENT DONALD TRUMP:

I only joke.

CHUCK TODD:

Okay.

PRESIDENT DONALD TRUMP:

I joke. And I say “Watch, I will drive Chuck Todd crazy.”

CHUCK TODD:

You will, you will accept the re -- Ok. You will --

PRESIDENT DONALD TRUMP:

Yes, there won’t be a third term.

CHUCK TODD:

You will accept the results?

PRESIDENT DONALD TRUMP:

100%. Sure.

CHUCK TODD:

And you will accept whatever happens in 2020.

PRESIDENT DONALD TRUMP:

Sure.

CHUCK TODD:

You lose, you’ll be like -- you're not going to like it but you walk out.

PRESIDENT DONALD TRUMP:

In fact, I said at a speech recently, I said, "Watch. We'll drive the media crazy. Let's go for a third time and then a fourth." And some of the media said, "He's going to do it."

CHUCK TODD:

Speaking of driving people crazy, when you were asked about Mike Pence in 2024 and you, and you, and you paused a minute about endorsing him as your successor, that got a lot of people going, "Is Mike Pence 100% on your ticket in 2020?"

PRESIDENT DONALD TRUMP:

Well, look, look -- 100%, yes.

CHUCK TODD:

100%?

PRESIDENT DONALD TRUMP:

Oh yeah.

CHUCK TODD:

There is no wiggle room?

PRESIDENT DONALD TRUMP:

He's been, he’s been a terrific vice president. He's my friend and --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

-- a lot of things. No. Zero. Zero.

CHUCK TODD:

So why'd you hesitate in endorsing him in being, succeeding you?

PRESIDENT DONALD TRUMP:

Because it was a surprise question.

CHUCK TODD:

You hadn't thought about it?

PRESIDENT DONALD TRUMP:

I mean, you know, I'm not even thinking of it. It's so far out. I mean, It's so far out. That would be the only reason. Now what happens in 2024? I don't know that Mike is going to run. I don't know who's running or anything else. I will say this, I think it's a tremendous embarrassment to Joe Biden that Obama has not, that President Obama, I like to say that because it's respect for the office and respect for him.

CHUCK TODD:

Do you speak to any of the former presidents?

PRESIDENT DONALD TRUMP:

Yes.

CHUCK TODD:

Who's the last one you did?

PRESIDENT DONALD TRUMP:

Well, I speak to Bush.

CHUCK TODD:

With President Bush?

PRESIDENT DONALD TRUMP:

I speak to Jimmy Carter.

CHUCK TODD:

You do? What about President Obama?

PRESIDENT DONALD TRUMP:

I have not spoken to him --

CHUCK TODD:

But George W. Bush, you do?

PRESIDENT DONALD TRUMP:

-- pretty much from the beginning.

CHUCK TODD:

And Jimmy Carter?

PRESIDENT DONALD TRUMP:

I have spoken to Bush, I have spoken to Jimmy Carter, yes.

CHUCK TODD:

Do you get --

PRESIDENT DONALD TRUMP:

I like Jimmy Carter. You know, Jimmy Carter's oftentimes come to my defense. I don't necessarily agree with the way he ran things and that's okay. And he understands that and so do I. But he came to my defense on numerous occasions. And he thinks that I was treated the worst of anybody he's ever seen by the press.

CHUCK TODD:

During --

PRESIDENT DONALD TRUMP:

I don't think he's including you.

CHUCK TODD:

Every new season, every new season of The Apprentice, you had something new to roll out. What's your big new idea for your re-election?

PRESIDENT DONALD TRUMP:

I think that the economy has tremendous upward potential despite the fact that we're doing really well. I think when we really unleash some of the things --

CHUCK TODD:

But what's your new idea?

PRESIDENT DONALD TRUMP:

-- that we're going to do --

CHUCK TODD:

What is the new big idea?

PRESIDENT DONALD TRUMP:

I also think that health care is going to be very important for me. I will tell you. If we win the House, the Senate and the presidency I will get tremendous health care because --

CHUCK TODD:

Do you think Democrats --

PRESIDENT DONALD TRUMP:

-- Obamacare is a disaster.

CHUCK TODD:

Do you think Democrats won the House because of health care?

PRESIDENT DONALD TRUMP:

I think they won because of preexisting condition.

CHUCK TODD:

Yeah.

PRESIDENT DONALD TRUMP:

Nothing to do with me. Because if you know almost every race that I campaigned for somebody they won. But I couldn't devote too much time to the House, there's too many people. But if you look at some of the Congressmen that I did go for and went for, they won like in Kentucky, et cetera, et cetera.

CHUCK TODD:

So your one new idea is going to be health care?

PRESIDENT DONALD TRUMP:

Just one thing. Ohio governor, he was behind, great guy.

CHUCK TODD:

He was.

PRESIDENT DONALD TRUMP:

Mike won. Georgia, President Obama was there. Oprah was there. Michelle Obama was there. It was going to be a big celebration. She was the star of the party. I went there for Brian. Brian Kemp. Brian Kemp won. Florida, Ron DeSantis --

CHUCK TODD

He ran as you.

PRESIDENT DONALD TRUMP

He was going to lose. He was low in the polls. I endorsed him. He went up 60 points after I endorsed him. Ron won. And he's been a great governor of Florida. You know, I've always heard that an endorsement is nice to have but it doesn't mean anything. I'm driving people up 30%, 40%, 50%, 60%.

CHUCK TODD:

Well, when you show up, you bring a lot of people.

PRESIDENT DONALD TRUMP:

We bring something very good.

CHUCK TODD:

I'm curious, did you see Jon Stewart's pretty passionate plea on behalf of 9/11 responders in front of Congress?

PRESIDENT DONALD TRUMP:

I was very impressed, yes.

CHUCK TODD:

Are you going to -- He's frustrated with Mitch McConnell. He feels like Mitch McConnell's the guy standing in the way of this bill. You're a New Yorker first. I know that in you. I've got to think Jon Stewart got to you.

PRESIDENT DONALD TRUMP:

Yeah, well --

CHUCK TODD:

Are you going to tell Mitch McConnell to --

PRESIDENT DONALD TRUMP:

I liked what Jon Stewart did. I actually did. And I actually have a meeting on that subject next week. So we'll see what happens.

CHUCK TODD:

So you think you will --

PRESIDENT DONALD TRUMP:

You know it's a very complicated subject for a lot of reasons.

CHUCK TODD:

I understand that it is. But --

PRESIDENT DONALD TRUMP:

But I have a meeting --

CHUCK TODD:

-- do you think that Jon Stewart had a point that Congress hadn't done enough?

PRESIDENT DONALD TRUMP:

I have a meeting with that, on that subject with -- Well, when you say Congress, billions of dollars has been passed.

CHUCK TODD:

I understand that.

PRESIDENT DONALD TRUMP:

Okay, billions.

CHUCK TODD:

Right. But the fund was about to run out.

PRESIDENT DONALD TRUMP:

Memorials have been, have been built.

CHUCK TODD:

That's right.

PRESIDENT DONALD TRUMP:

Tremendous amounts of money. But there are still people that are sick. I have a meeting on it next week.

CHUCK TODD:

All right, Mr. President.

PRESIDENT DONALD TRUMP:

Thank you.

CHUCK TODD:

I appreciate the time.

PRESIDENT DONALD TRUMP:

Thank you very much.

CHUCK TODD:

Thank you, sir.

EXHIBIT 19

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/6/19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OPEN SOCIETY JUSTICE INITIATIVE,

Plaintiff,

-v-

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants.

19 Civ. 234 (PAE)
19 Civ. 1329 (PAE)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This case concerns a series of Freedom of Information Act ("FOIA") requests by the Open Society Justice Initiative ("OSJI") to a variety of federal agencies that seek information regarding a subject of considerable public importance: the disappearance of Jamal Khashoggi, a U.S. resident, Saudi national, and *Washington Post* columnist who was not seen alive again after entering the Saudi consulate in Istanbul on October 2, 2018. *See* Dkt. 1[1] ("Compl.") ¶ 9. On May 30, 2019, this Court ordered the U.S. Department of State (the "State Department") to produce responsive documents at "a processing rate of 5,000 pages per month, beginning June 2019," finding that that volume "appropriately balances the urgency of this particular request with the State Department's concerns regarding the burdens of making FOIA productions." Dkt. 50. On June 5, 2019, the Court ordered the U.S. Department of Defense ("DOD") to "process 2,500 pages of potentially responsive records and produce any responsive, non-exempt portions by June 30, 2019, and thereafter process 5,000 pages of potentially responsive records per month and produce any responsive, non-exempt portions by the end of each month." Dkt. 57

[1] These consolidated cases include 19 Civ. 234 and 19 Civ. 1329. References to the docket in this Opinion refer to the docket in lead case 19 Civ. 234 unless otherwise specified.

(superseding original Order at Dkt. 54). Before the Court is the motion by the State Department and DOD (together, the "Government") for reconsideration of these processing rates. The Government requests instead that the Court order processing rates of no more than 3,000 pages per month per agency. For the reasons that follow, the Court denies the motion.

I. Procedural History

On December 4, 2018, OSJI submitted the FOIA requests at issue. *See* Compl. ¶ 25. On January 9, 2019, OSJI filed the Complaint. Dkt. 1. In its Complaint, OSJI alleged that it had submitted FOIA requests to federal agencies including the State Department and DOD 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." *Id.* ¶ 25. OSJI alleged that it had requested expedited processing of these requests, *id.* ¶ 26, but that, as of the filing of the Complaint, it had not received any determination as to those requests, prompting it to file this action, *id.* ¶ 2. On March 18, 2019, defendants answered. Dkt. 24.

On April 19, 2019, the Court held an initial conference. *See* Dkt. 25. Until that point, plaintiffs had not received an update on the status of their FOIA requests. *See* Pl. Mem. at 15. On April 23, 2019, the Court issued a scheduling order that required, *inter alia*, that DOD and the State Department "provide Plaintiff with a proposed processing schedule" by May 30, 2019. Dkt. 30.

On May 13, 2019, the State Department filed a letter requesting a processing rate of 300 pages per month, 19 Civ. 1329 at Dkt. 30 ("State Ltr."), a supporting declaration from Eric F. Stein, *id.* Dkt. 30-1 ("Stein Decl. I"), and attached exhibits. On May 20, 2019, OSJI filed a letter

in opposition requesting a processing rate of 7,500 pages per month. Dkt. 44. On May 30, 2019, the Court ordered the State Department to process at a rate of 5,000 pages per month. Dkt. 50.

On June 3, 2019, the parties filed a joint status report. Dkt. 51. In it, DOD represented that "on June 13, 2019, DOD will provide Plaintiff with an estimated volume of potentially responsive records (in pages) and proposed production schedule for any non-exempt responsive records." *Id.* at 2. On June 4, 2019, at a status conference, DOD took the position that the setting of a date for a "proposed production schedule" complied with the Court's April 23, 2019 Order. Dkt. 59 ("June 4, 2019 Hrg. Tr.") at 10–13. DOD was not prepared with information at that conference regarding DOD's FOIA capabilities beyond that it "expressed some concern with the order with respect to [S]tate as to whether [DOD] would be able to comply with that amount . . . ." *Id.* at 16. Although the Court anticipated setting a processing schedule based on the parties' informed input, DOD was not able to provide any facts at all regarding its processing capabilities. *See id.* at 18 ("THE COURT: . . . If there is something concrete you want to say beyond the agencies are busy, I'm happy to hear it now."). During the June 4, 2019 conference, the Court, in recognition of the public importance and time-sensitivity of the Khashoggi FOIA request, ordered that each agency process 5,000 pages per month, save that the Court set DOD's production obligation during the ongoing month of June 2019 at 2,500 pages. *See id.* at 18–19.

On June 13, 2019, the State Department and DOD filed the instant motion for reconsideration, Dkt. 61, a memorandum of law in support, Dkt. 62 ("Gov't Mem."), and declarations in support from Eric F. Stein, Dkt. 64 ("Stein Decl. II"), and Mark H. Herrington, Esq., Dkt. 63 ("Herrington Decl."). On June 27, 2019, OSJI filed a memorandum of law in opposition, Dkt. 72 ("Pl. Mem."), and the supporting declaration of Catherine Amirfar, Esq., Dkt. 73 ("Amirfar Decl."), with supporting exhibits. On July 3, 2019, the State Department and

DOD filed a reply memorandum of law, Dkt. 79 ("Gov't Reply"), with a supporting declaration from Eric F. Stein, Dkt. 80 ("Stein Decl. III").

II. Applicable Legal Standards

A. Motion for Reconsideration

The standard governing motions for reconsideration "is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (citation omitted); *see also* S.D.N.Y. Local Rule 6.3 (requiring the movant to "set[] forth concisely the matters or controlling decisions which counsel believe the court has overlooked"). Such a motion "is neither an occasion for repeating old arguments previously rejected nor an opportunity for making new arguments that could have been previously advanced." *Assoc. Press v. U.S. Dep't of Def.*, 395 F. Supp. 2d 17, 19 (S.D.N.Y. 2005); *see also Goonan v. Fed. Reserve Bank of N.Y.*, No. 12 Civ. 3859 (JPO), 2013 WL 1386933, at *2 (S.D.N.Y. Apr. 5, 2013) ("Simply put, courts do not tolerate such efforts to obtain a second bite at the apple."). Rather, reconsideration is appropriate "only when the [moving party] identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 104 (2d Cir. 2013) (citation omitted).

The Government argues that the less stringent Rule 16(b)(4) "good cause" standard should govern, because "search and processing schedules in FOIA actions fall within the broad range of matters typically governed by pretrial orders issued under Rule 16." Gov't Reply at 1. OSJI counters that the Orders at issue "provide equitable relief by directing the Government to

take affirmative action to comply with FOIA's expedited processing provisions," and so should be governed under the standard on a motion for reconsideration. Pl. Mem. at 9.

B. FOIA Requests

FOIA requires that executive agencies, upon proper request, produce records to the public or provide justification why the requested materials are exempt from production. *See* 5 U.S.C. § 552. The statute requires that "[e]ach agency, upon any request for records . . . shall . . . determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of . . . such determination and the reasons therefor . . . ." *Id.* § 552(a)(6)(A)(i). Recognizing the difficulties of strict compliance with the 20-day requirement, courts have permitted the processing of FOIA requests on a first-in, first-out basis. *See, e.g.*, *Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976) ("The good faith effort and due diligence of the agency to comply with all lawful demands under the Freedom of Information Act in as short a time as is possible by assigning all requests on a first-in, first-out basis, except those where exceptional need or urgency is shown, is compliance with the Act."); *Bloomberg L.P. v. FDA*, 500 F. Supp. 2d 371, 276 (S.D.N.Y. 2007) ("While a general showing of an agency processing FOIA requests on a first-in, first-out basis, coupled with a multitrack processing system may be consistent with due diligence in some instances, this determination should not be automatic, and fails if extraordinary need is demonstrated.").

Congress has long recognized that "information is often useful only if it is timely" and that, therefore "excessive delay by the agency in its response is often tantamount to denial." H.R. Rep. No. 93-876, at 6271 (1974). In 1996, Congress amended FOIA to provide for "expedited processing" where there is a "compelling need," defined as either (1) involving "an

imminent threat to the life or physical safety of an individual" or (2) in the case of a request made by "a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E). This case falls under the second definition, both because OSJI is an organization primarily engaged in disseminating information, and because there is urgency to inform the public, to the extent that this information is not FOIA-exempt, of official findings regarding the Khashoggi disappearance. *See* Compl. ¶ 26; Gov't Mem. at 5 (acknowledging that the request qualifies for expedited processing). For expedited processing, "a determination of whether to provide expedited process shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request . . . ." 5 U.S.C. § 552(a)(6)(E)(ii). An agency must process any request to which expedited processing has been granted "as soon as practicable . . . ." *Id.* § 552(a)(5)(E)(iii).

Notwithstanding the statutory deadlines for responding to FOIA requests, as to the timetable for production, FOIA "does not assign any particular time frame to release of the records sought." *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 275 (D.D.C. 2012).

III. Analysis

A. State Department

The State Department argues that it is not "practicable," within the meaning of the FOIA statute, for it to process 5,000 pages per month. Gov't Mem. at 9. Although it made the same contention in its initial submissions, *see* State Ltr., the State Department represents that its experience to date complying with the 5,000-page-per-month processing rate ordered by the Court, and the resulting impact on its overall FOIA operations, fortify the conclusion that a 5,000-page-per-month review rate is not practicable. It argues that the State Department's

challenges meeting this Order during the first month it was in effect constitute new facts, or alternatively good cause under Rule 16, so as to justify reconsideration.

The State Department has indeed presented additional relevant data in support of its request for a reduced pace of review. And the Court is prepared to assume *arguendo* that the importance of the issues at hand and the need to assure that the allocation of resources to this FOIA request are reasonable in light of the State Department's limited resources and competing priorities justify reconsideration. Nonetheless, the Court, on *de novo* reconsideration, does not find good cause to revise its considered Order that the State Department process 5,000 pages per month responsive to OSJI's FOIA request.

Salient here, Mr. Stein's first declaration, submitted in support of the State Department's original letter seeking a processing rate of 300 pages per month, outlined substantially the same challenges, in the nature of finite departmental resources, that his second declaration now sets out in more detail. Mr. Stein's initial submission described the State Department's overburdened FOIA resources, Stein Decl. I ¶ 14, and the sharp increase in FOIA requests and FOIA litigation during recent years, *id.* ¶¶ 14–19. Mr. Stein represented that the State Department has largely tasked, as FOIA reviewers, retired Foreign Service Officers who work on a part-time basis. He represented that the State Department therefore could process only approximately 300 pages per month in this matter. *Id.* ¶¶ 19–20. Mr. Stein represented that the State Department, at any given time, has between 60 and 73 reviewers processing records for release, and that it can process between 18,000 and 21,900 pages in total per month. *Id.* ¶ 20. Mr. Stein further represented that the State Department is seeking to fill six vacant positions that would perform FOIA litigation review, and, recognizing the limitations of its model for FOIA review, intends to train and hire more full-time employees to handle FOIA requests. *See id.* ¶¶ 21, 20 n.5. Mr.

Stein's first declaration further represented that the State Department had identified at least 63,000 pages potentially responsive to the instant request, *id.* ¶ 28, and that the 7,500-page per-month processing rate requested by OSJI would require more than 30% of the State Department's available FOIA reviewers, *id.* ¶ 20, drawing resources from other FOIA requests, *id.* ¶ 28. In contrast, Mr. Stein urged, a 300-page per month pace would not give rise to such acute conflicts. *Id.* ¶¶ 29–30.

To be sure, Mr. Stein's second declaration reflects impressive responsiveness on the part of the State Department to the Court's production Order, in that the State Department has significantly fortified the review process anticipated in Mr. Stein's first declaration, largely by, as projected in his first declaration, drawing resources from other FOIA projects. Mr. Stein represents that the State Department, in response to the Court's order, created a "unique project team" to address this FOIA request, "reassigning five full-time employees from their normal roles processing non-litigation FOIA requests." Stein Decl. II ¶¶ 8–9. These five employees, Mr. Stein states, represent 10% of currently-available full-time employees who process non-litigation FOIA requests. *Id.* ¶ 9. This appears to be a substantial expansion of the number of personnel whom Mr. Stein in his first declaration anticipated could be assigned to this request.

At the same time, Mr. Stein represents, the State Department has now identified more than 288,000 pages potentially responsive to OSJI's FOIA request that will ultimately need to be processed. *Id.* ¶ 14. This is a more than four-fold increase in the department's previous estimate of responsive records. If that number holds—*i.e.*, if the universe of responsive records is not pruned in the parties' continuing negotiations as to the materials OSJI seeks—Mr. Stein represents that the 5,000-page-per-month processing rate would therefore "[d]ivert[] more than 10% of the full-time employee resources for more than four years" and "will substantially

impede[] the [State] Department's ability to process the approximately 98% of FOIA requests that are not in litigation, including over 170 expedited requests." *Id.* ¶ 18.

The Court was aware when it originally ordered a 5,000-page-per-month processing rate that this directive would require the State Department either to divert resources from other FOIA requests or to mobilize additional resources. The Court's Order—which fell between the parties' competing proposals, albeit imposing a numeric target closer to the 7,500-page monthly target urged by OSJI than to the 300-page monthly target urged by the State Department—reflected a thoughtful attempt to balance the competing interests at hand, as FOIA case law requires. "It is the duty of the court to uphold FOIA by striking a proper balance between plaintiffs' right to receive information on government activity in a timely manner" and government concerns, including agency capabilities and the heightened clearance process for issues of national security. *ACLU v. Dep't of Defense*, 339 F. Supp. 2d 501, 504 (S.D.N.Y. 2004) (citations omitted); *see also Halpern v. FBI*, 181 F.3d 279, 284 (2d Cir. 1999) (FOIA statute reflects a "preference for the fullest possible agency disclosure of such information consistent with a responsible balancing of competing concerns . . . ."). "Congress enacted FOIA to illuminate government activities. The law was intended to provide a means of accountability, to allow Americans to know what their government is doing." *ACLU*, 339 F. Supp. 2d at 504 (citing *Halpern*, 181 F.3d at 284).

As the Court has recognized at every conference in this case, the instant FOIA request concerns a matter of exceptional public importance and obvious and unusual time-sensitivity. As OSJI has repeatedly emphasized, Khashoggi's disappearance was front-page news in December 2018, when OSJI lodged its FOIA requests with the State Department and other federal agencies. In the months since, Khashoggi's disappearance, and the facts or allegations regarding his killing

in Saudi custody, have continued to be a matter of intense interest among the public, legislators, other policymakers, and journalists. *See, e.g.*, *Jamal Khashoggi and Azori Gwanda Remain Atop Latest "10 Most Urgent" List of Press Freedom Cases from One Free Press Coalition*, Forbes (Aug. 1, 2019), https://www.forbes.com/sites/forbespr/2019/08/01/jamal-khashoggi-and-azory-gwanda-remain-atop-latest-10-most-urgent-list-of-press-freedom-cases-from-one-free-press-coalition/#7eb919041fd2; Colby Itkowitz & Karoun Demirjian, *Senators Introduce Bipartisan Measure to Punish Saudis for Khashoggi Murder*, Wash. Post (July 31, 2019), https://www.washingtonpost.com/politics/senators-introduce-bipartisan-measure-to-punish-saudis-for-khashoggi-murder/2019/07/31/9bb5dbdc-b3b1-11e9-951e-de024209545d_story.html?noredirect=on&utm_term=.31b9a7985b69; *US Silence on Khashoggi 'Not an Option' Says UN Rapporteur*, B.B.C. News (10 July , 2019), https://www.bbc.com/news/world-middle-east-48932600. Recently, a United Nations report found the Khashoggi killing likely to have been a crime committed in violation of international law. Referencing this very FOIA request, the report urged a prompt investigation and called for the U.S. Government to "produce as much information as possible to those seeking to hold the perpetrators accountable." Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Investigation into the Unlawful Death of Mr. Jamal Khashoggi, ¶ 407, U.N. Doc. A/HRC/41/CRP.1, annex (June 19, 2019).

As the record in this case reflects, these request-specific interests have driven the Court's judgment that a heightened commitment of resources is warranted for this particular FOIA request. The Court has found that there is paramount public importance and urgency to OSJI's request for records bearing on the information known to the federal agencies regarding Khashoggi's disappearance. The Court reiterates that assessment here.

The outcome struck by the Court attempted to balance the paramount interest in visibility—in public access to non-exempt records bearing on this consequential topic of urgent public concern—against the State Department's resource constraints and competing priorities. The Court is respectful of these limitations. The Court does not minimize that compliance with this request will draw more heavily on the State Department's FOIA resources than most other requests. The Court carefully considered these factors originally. It has carefully reconsidered them anew in response to the motion for reconsideration and the data contained therein.

Important to the Court's assessments at all times has been the anticipated duration of the State Department's review. Given the 63,000 pages of responsive material estimated at the time the Court ordered the State Department to process 5,000 pages per month, the Department's review would have taken more than a year to complete. The State Department now estimates that there are, in fact, 288,000 pages responsive to OSJI's request. On the pace ordered by the Court, review of this amount of material would take just under five years to review. This fact strongly commends against reducing the review pace ordered by the Court. In contrast, on the pace that the State Department now urges—in which it would review up to 3,000 pages per month, a greater volume than the earlier 300 pages per month it had initially proposed—review would take 96 months, or eight years.

To be sure, the Court is hopeful that as the State Department gains familiarity with the responsive materials, the parties' good-faith negotiations will prune out categories of records in which OSJI has limited interest and materially reduce the production timetable. *See* Pl. Mem. at 6–8 (listing 29 categories of documents the parties have already agreed to exclude). But the term "practicable" must be read in the context of FOIA's aims to provide timely information on government activities to the public. A 5,000-page per-month processing rate, which still

contemplates a protracted period of review and production, appropriately balances agency constraints against that aim.

In sum, the information presently before the Court, including the new facts contained in the State Department's submissions in support of reconsideration, reinforces the judgment that a 5,000-page-per-month review pace is merited. The Court finds this processing rate "practicable" within the meaning of FOIA. The Court therefore denies the motion for reconsideration as to the State Department.

B. Department of Defense

DOD's argument for reconsideration is based partially on the Court's ordering of a 5,000-page-per-month processing rate at the June 4, 2019 conference "without notice or an opportunity to submit a factual record." Gov't Mem. at 9. As noted earlier, DOD came to that conference unprepared to offer any facts beyond its status as a busy agency with competing demands on its resources. DOD has now presented relevant data. The Court finds, however, that even reviewed *de novo* with the benefit of additional facts now supplied by DOD, DOD has not shown good cause or "manifest injustice" sufficient to merit modification of the 5,000-page-per-month processing rate.

Like the State Department, DOD's position, articulated in Mr. Herrington's declaration, turns on DOD's limited FOIA processing capabilities. He notes the remarkable fact that the Office of Information Counsel ("OIC"), the DOD department that oversees FOIA requests, *see* Herrington Decl. ¶ 5, "does not possess eDiscovery software," *id.* ¶ 7. As a result, unexpedited by electronic review, the documents responsive to each FOIA request to DOD are subject to "line-by-line review by OIC staff for responsiveness." *Id.* ¶ 9. Further, he represents, OIC currently consists of only 11 full-time attorneys, 14 analysts, 1 paralegal, and 3 administrative

assistants. *Id.* ¶ 5. DOD is involved in discovery in 19 complex civil law suits of national import, and 40 other FOIA litigations involving matters of public concern, which call upon OIC's resources. *Id.* ¶ 6. Since this Court's processing rate Order, Herrington represents, an average of 25% of OIC's analysts have been working on this request on any given day. *Id.* ¶ 20. As of Mr. Herrington's declaration, DOD had identified 22,637 pages of potentially responsive records. DOD therefore projects that it will take several more months to complete its work on this FOIA request. *Id.* ¶ 21.

The Court is sensitive to the many important FOIA requests that DOD receives and that DOD's seemingly antiquated review capacities strain the ability of its personnel to attend manually to these requests. Nonetheless, DOD's decision to thus far deny itself the technologic capacity to speed its review cannot dictate the Court's assessment of the review pace that is "practicable" under FOIA. As the Court observed at the most recent conference in this case, the inquiry must focus on a reasonable agency's technological capability. Dkt. 82 (transcript of July 8, 2019 hearing) at 10–11. Weighing DOD's duties to effect prompt disclosure under FOIA against its legitimate administrative constraints, the Court finds that a 5,000-page-per-month processing rate remains "practicable" for FOIA purposes, even if meeting this demand calls upon DOD to augment, temporarily or permanently, its review resources, human and/or technological.

The Court notes, finally, that both the State Department and DOD imply that the Court's initial determination that a 5,000-page-per-month processing rate was merited was premised in part on the fact that OSJI's FOIA request was made in December 2018, but that the two agencies did not report to plaintiffs on the requests until April 2019. *See* Gov't Mem. at 2 (noting Court's observation at June 4, 2019 conference that it took "four months before anyone was paying any attention to the request at either agency"). For avoidance of doubt, in setting the 5,000-page-

per-month processing rate, the Court was not punishing either agency for sluggish compliance. The Court was recognizing that the lack of any document production by either agency during the first half-year after OSJI lodged its request reinforced the need for a meaningful production schedule, consistent with the schedules the Court has set. That assessment remains apt.

CONCLUSION

For the reasons reviewed above, the Court denies the motions by the State Department and DOD for reconsideration of the monthly processing rates set by the Court. The Clerk of Court is respectfully directed to deny the motion pending at Dkt. 61.

SO ORDERED.

Paul A. Engelmayer

PAUL A. ENGELMAYER
United States District Judge

Dated: August 6, 2019
New York, New York

EXHIBIT 20

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

September 24, 2019

BY ECF
Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Open Society Justice Initiative v. Central Intelligence Agency, et al.*, No. 19 Civ. 234 (PAE) (BCM)
Open Society Justice Initiative v. Department of Justice, et al., No. 19 Civ. 1329 (PAE) (BCM)

Dear Judge Engelmayer:

We write pursuant to the Court's August 13, 2019 order, ECF No. 94, to submit a joint status letter in advance of the conference scheduled for this **Friday, September 27, 2019**, at **9:00 a.m.**

I. Final Agency Responses and Proposed Next Steps

NSA and DOJ/OIP. On June 26, 2019, NSA made its final response to Plaintiff's FOIA request, and released 24 pages in part. To the extent Plaintiff's request seeks intelligence records, NSA issued a Glomar response, because the fact of whether NSA does or does not possess responsive intelligence is itself classified and statutorily protected from disclosure, and thus exempt from public disclosure pursuant to FOIA exemptions 1 and 3. On June 28, 2019, DOJ/OIP made its final response to Plaintiff's FOIA request, and released two pages. Plaintiff has agreed to dismiss DOJ/OIP and NSA from this case. The parties are preparing a stipulation and proposed order of dismissal and plan to submit it to the Orders and Judgments Clerk promptly.

ODNI and CIA. On August 5, 2019, CIA and ODNI made their third and final respective responses to Plaintiff's FOIA request. In total, CIA released 707 pages in whole or in part and ODNI released 96 pages in part, as a result of searches of each agency's press office. The remaining record or records have been withheld in full pursuant to FOIA exemptions (b)(1) and (b)(3), and portions are also subject to exemptions (b)(5) and (b)(6).

Plaintiff intends to file a motion for summary judgment regarding CIA and ODNI's response to Plaintiff's FOIA request. The parties believe that the most efficient procedure for resolving the dispute is with cross motions for summary judgment, with the agencies moving first. The parties' positions are summarized below. We respectfully request that the Court employ this Friday's conference as a pre-motion conference on the proposed cross-motions.

Plaintiff's Position: CIA and ODNI have acknowledged that they possess responsive records, and have not invoked a *Glomar* response. FOIA therefore requires the agencies to justify their withholdings and demonstrate the adequacy of their search through sufficiently specific *Vaughn* indices and declarations. *See Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994) (stating the Government has the burden on summary judgment to show that it conducted a search that was adequate and that withheld documents fit into a FOIA exemption).

ODNI and CIA's Position: Neither CIA nor ODNI can provide additional information to Plaintiff about the number or type(s) of document(s) withheld because to do so would itself reveal a classified fact and information relating to intelligence sources or methods protected by FOIA exemptions 1 and 3. While not the norm, "[a]n agency may withhold information on the number of responsive documents and a description of their contents if those facts are protected from disclosure by a FOIA exemption." *New York Times Co. v. U.S. Dep't of Justice*, 756 F.3d 100, 122 (2d Cir.), *opinion amended on denial of reh'g,* 758 F.3d 436 (2d Cir. 2014), *supplemented,* 762 F.3d 233 (2d Cir. 2014); *see also Hayden v. Nat'l Sec. Agency/Cent. Sec. Serv.*, 608 F.2d 1381, 1384 (D.C. Cir. 1979) ("When the itemization and justification are themselves sensitive, however, to place them on public record could damage security in precisely the way that [an exemption] is intended to prevent.").

Proposed schedule: The parties have agreed upon the following proposed briefing schedule for the Court's consideration: CIA and ODNI will move for summary judgment on or before December 5, 2019; Plaintiff will cross-move for summary judgment and oppose the agencies' motion on or before January 16, 2020; CIA and ODNI will file a reply in further support of their motion and oppose Plaintiff's cross-motion on or before February 6, 2020; and Plaintiff file its reply in further support of its cross-motion on or before February 27, 2020. CIA and ODNI anticipate filing a single brief at each stage, with supporting public declarations, and possible classified declarations for the Court's *ex parte*, *in camera* review. The parties are in agreement that Local Rule 56.1 statements are not necessary here, as "the general rule in this Circuit is that in FOIA actions, agency affidavits alone will support a grant of summary judgment," and a Local Rule 56.1 statement "would be meaningless." *Ferguson v. FBI*, 1995 WL 329307, at *2 (S.D.N.Y. June 1, 1995), *aff'd*, 83 F.3d 41 (2d Cir. 1996); *see also N.Y. Times v. DOJ*, 872 F. Supp. 2d 309, 314 (S.D.N.Y. 2012) (noting Local Civil Rule 56.1 statement not required in FOIA actions in this Circuit). Accordingly, the parties respectfully request that the Court confirm that the parties do not need to submit Local Rule 56.1 statements.

II. Status of Ongoing Agency Processing and Related Issues

State. State is continuing to process the approximately 319,000 potentially responsive pages for responsiveness and exemptions, pursuant to the Court's processing order. To date, State has released 726 pages in part or in full in response to Plaintiff's FOIA request. As a further update to the parties' August 26, 2019 letter, ECF No. 98, in which the parties reported on State's efforts to prioritize the processing of Plaintiff's FOIA request, the parties have reached an agreement, as follows: State, upon the conclusion of processing the remaining documents from the SAS and Everest databases will, for six months beginning in October 2019, prioritize the processing of documents collected from 29 agreed-upon custodians of the 51 total custodians for whom State collected emails and attachments. In consideration of this agreement to

prioritize, at the end of March 2020, Plaintiff agrees to engage in good faith discussions to further narrow the search results for Plaintiff's FOIA request. The parties memorialized their full agreement on September 16, 2019 while reserving all rights with respect to Plaintiff's FOIA request. In addition, and as a further follow up to the parties' August 26, 2019 letter, the parties have reached an agreement regarding State applying an additional search phrase: "Khashoggi AND die* OR dead*. State will run this additional search phrase on 12 agreed-upon custodians of the 51 total custodians for whom State collected emails and attachments. In consideration of this additional searching and processing, Plaintiff agrees to not challenge the adequacy of State's search on grounds of the "die*" and "dead*" search phrase, and that State need not process additional records from the existing search results for ten custodians from State's Office of the Legal Adviser and State's Office of Legislative Affairs from whom State previously collected emails and attachments. The parties finalized their agreement on September 23, 2019.

DOD. DOD is continuing to process the approximately 22,000 potentially responsive pages for responsiveness and exemptions, pursuant to the Court's scheduling order. To date, DOD has released 368 pages in part in response to Plaintiff's FOIA request. DOD anticipates completing processing by the end of October 2019.

We thank the Court for its attention to this matter.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*, *Plaintiffs*, *v.* CENTRAL INTELLIGENCE AGENCY, *et al.*, *Defendants*.	Civil Action No. 1:18-cv-2709 (TNM)

DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS

Pursuant to Local Civil Rule 7(h), Defendants submit this response to the Statement of Material Facts ("SOMF"), Dkt. No. 36, filed by Plaintiff Committee to Protect Journalists ("CPJ") in support of its cross-motion for summary judgment in the above-captioned case.

1-12. Defendants are not required to respond to the statements in these paragraphs because the alleged facts, regardless of whether true, are not material to the resolution of CPJ's Cross-Motion for Summary Judgment in this Freedom of Information ("FOIA") case. "Material facts" are those facts which, under the governing substantive law, "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Evid. 401 (providing that "[e]vidence is relevant if … the fact is of consequence in determining the action"). None of the purported facts in these paragraphs has any bearing on the outcome of this FOIA suit under applicable law. Since

parties must identify genuine issues only with respect to "material" facts," Fed. R. Civ. P. 56(c), Local Civil Rule 7(h), Defendants are not required to respond to these paragraphs.

13-14. Undisputed.

15-21. Defendants are not required to respond to the statements in these paragraphs because the alleged facts, regardless of whether true, are not material to the resolution of CPJ's Cross-Motion for Summary Judgment in this Freedom of Information ("FOIA") case. "Material facts" are those facts which, under the governing substantive law, "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Evid. 401 (providing that "[e]vidence is relevant if … the fact is of consequence in determining the action"). None of the purported facts in these paragraphs has any bearing on the outcome of this FOIA suit under applicable law. Since parties must identify genuine issues only with respect to "material" facts," Fed. R. Civ. P. 56(c), Local Civil Rule 7(h), Defendants are not required to respond to these paragraphs.

22. Defendants clarify that the quotation in this paragraph is of the FOIA request that the Open Society Justice Initiative submitted in entirely distinct litigation. *See Open Soc'y Justice Initiative v. CIA*, 19-cv-234-PAE (S.D.N.Y.), Dkt. No. 1 (Complaint), Defendants' Exhibit ("DEX") 3; *id.* Exhibit A thereto (a copy of the underlying FOIA request, attached as an exhibit to that Complaint). It is not, as this paragraph implies, a statement made at any time in the course of that other litigation by either the Central Intelligence Agency ("CIA") or the Office of the Director of National Intelligence ("ODNI"), or any other agency Defendant to that suit. In that separate litigation, the Open Society Justice Initiative agreed to "limit[] the request to records created on or after

October 1, 2018." DEX 4 (April 27, 2019 joint status letter, also available at 19-cv-234-PAE, Dkt. No. 27).

It is undisputed that the CIA and ODNI produced nonexempt records, as result of searches of each agency's press office, in response to that narrowed request. *See* Pl. Exhibit 20 at 1. Any remaining responsive records "have been withheld in full pursuant to FOIA [E]xemptions (b)(1) and (b)(3), and portions are also subject to [E]xemptions (b)(5) and (b)(6)." *Id.* CIA and ODNI take the position in the S.D.N.Y. litigation that neither "can provide additional information to Plaintiff about the number or type(s) of document(s) withheld because to do so would itself reveal a classified fact and information relating to sources or methods protected by FOIA [E]xemptions 1 and 3." *Id.* at 2.

23-40. Undisputed.

Respectfully submitted,

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MARCIA BERMAN
Assistant Branch Director

/s/
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Counsel for the Defendants

Dated: October 17, 2019

EXHIBIT 2

United States Department of State

Washington, D.C. 20520

April 5, 2019

Case No.: F-2019-00752
Segment: INR/OPS-0001

Kathleen Carroll
Committee to Protect Journalists
330 7th Ave, 11th Floor
New York, NY 10001

Dear Ms. Krishnam and Ms. Carroll:

In response to your requests dated October 19, 2018 and November 20, 2018, under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552, the Department has completed its searches and processing of responsive records subject to FOIA.

With respect to part 1 of your requests, the Department located four responsive documents. We have determined one document may be released in full and three documents may be released in part. In addition, the Department identified two documents responsive to part 1 that originated with the Central Intelligence Agency. We have referred those documents to the CIA for direct reply to you. With respect to parts 2 and 3 of your requests, the Department's searches returned no responsive records.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made excisions, the applicable FOIA exemptions are marked on each document. In some instances, two or more exemptions may apply to the same document. All non-exempt material that is reasonably segregable from the exempt material has been released and is enclosed.

This concludes the processing of your request. If you have any questions, you may contact Trial Attorney Antonia Konkoly at (202)514-2395 or Antonia.Konkoly@usdoj.gov. Please refer to the request case number, F-2019-00752, and the civil action number, 18-cv-02709, in all correspondence about this request.

Sincerely,

Susan C. Weetman
Chief, Programs and Policies Division
Office of Information Programs and Services

Enclosures: As stated

EXHIBIT 4

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

April 15, 2019

BY ECF
Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Open Society Justice Initiative v. Central Intelligence Agency, et al.*, No. 19 Civ. 234 (PAE) (BCM)
Open Society Justice Initiative v. Department of Justice, et al., No. 19 Civ. 1329 (PAE) (BCM)

Dear Judge Engelmayer:

This Office represents the federal agencies (together, the "government") named as defendants in the two above-captioned actions, which have been consolidated. Consistent with the Court's order, ECF No. 25. We write jointly with Plaintiff in advance of the initial conference set for Friday, April 19, 2019.[1]

Summary of the action. As consolidated, this is an action under the Freedom of Information Act (FOIA) seeking records from seven agencies relating to "the killing of U.S. resident Jamal Khashoggi in response to Plaintiff's properly filed FOIA requests." Complaint (ECF No. 1) ¶ 1.

Parties' conferral; schedule. The Court has ordered that the parties prepare a civil case management plan and scheduling order consistent with the Court's individual rules. We respectfully request that we be relieved of this obligation. Because this is a FOIA action, it is not generally subject to civil discovery. Instead, this case will be resolved either through the parties' agreement, or by the submission of cross-motions for summary judgment on the basis of agency declarations. *Carney v. DOJ*, 19 F.3d 807, 812 (2d Cir. 1994). Accordingly, most of the fields in the proposed case management plan are not relevant to this case.[2] Instead, the parties respectfully provide the following information.

[1] The Court previously granted the parties' joint request to consolidate these matters. *See* ECF Nos. 22, 23 in No. 19 Civ. 234. For the convenience of the parties and the Court, the parties further respectfully request that the Court maintain a single electronic docket under No. 19 Civ. 234 for all future filings.

[2] The Court's Civil Case Management Plan and Scheduling Order asks whether the parties consent to conducting all further proceedings before a United States Magistrate Judge. The parties at this time do not consent to conducting all further proceedings before a United States Magistrate Judge.

Government's position: The government's proposed timeline of each agency's response to the requests follows:

- NSA has started a search, and anticipates completing it by April 30.
- ODNI has started a search, and anticipates completing it by May 10.
- DOJ has started a search. A portion of the search is complete. DOJ estimates the remainder of the search will be complete by June 21.
- CIA has started a search, and anticipates completing it by May 10.
- DOD has started a search, and anticipates completing it by May 30.
- Over the past several weeks, State has conducted limited test searches to determine how best to design its search, and the parties have conferred in an effort to design a search that will not be unreasonably burdensome. Based on these discussions, on Friday, April 12, plaintiff proposed a narrowing of its request to State. State is now formulating a search based on this narrowing; however, some testing and further discussion between the parties is required before State's search can be finalized. Because the search is not yet finalized, an estimated time for completing the narrowed search is not yet available.
- FBI has completed a search within certain records of its Office of Public Affairs and Office of Congressional Affairs; this search yielded no responsive records. As to other records systems, FBI intends to assert a Glomar response, because the fact of whether or not responsive records exist is itself exempt pursuant to FOIA exemptions 1, 3, 7(A), and 7(E).

It is possible that some additional time could be needed for supplemental searches if the results of an agency's initial search indicates further searches are warranted. After the agencies' (other than FBI's) respective searches are complete and the agencies have information about the volume and nature of potentially responsive records, they will be in a position to propose schedules for processing and production of non-exempt responsive records.

In response to Plaintiff's position, below, Plaintiff's requests—which seek "all records relating to the killing of U.S. resident Jamal Khashoggi"—are extremely broad. Accordingly, and at the request of the defendant agencies, this Office has asked Plaintiff to narrow or further refine its requests. While Plaintiff has purported to narrow the request by excluding records that are already public and limiting the request to records created on or after October 1, 2018 (and has further narrowed with respect to State), the requests nevertheless seek sensitive information that present unique complications for response, including with respect to searching. Given the breadth and nature of the request, the proposed timetables above are reasonable.[3]

[3] The government contends that FOIA's 20-working-day statutory deadline addresses only whether Plaintiff can bring its suit to Court—which they have already done here. Thus, FOIA's 20-working-day time period does not create a deadline for production. *Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 189-90 (D.C. Cir. 2013). Rather, "if the agency does not adhere to FOIA's explicit timelines, the 'penalty' is that the agency cannot rely on the administrative exhaustion requirement to keep cases from getting into court." *Id.*; *see also Nat'l Day Laborer Org. Network v. United States Immigration & Customs Enf't*, 236 F. Supp. 3d 810, 814-15 (S.D.N.Y. 2017). Further, to the extent Plaintiff seeks expedited processing, and even if Plaintiff can satisfy the criteria, the only consequence would be a reasonably feasible production schedule—exactly what the agencies have proposed here.

Plaintiff's position: Plaintiff objects to the government's proposed timeline.[4] The FOIA requests – which relate to a matter of extraordinary public interest[5] – were submitted on December 4, 2018, along with requests for expedited processing. It has now been 133 days since the requests were filed, with all Defendant agencies failing to provide a determination as required under FOIA. The government's proposed schedule takes far too long for conducting searches and does not provide dates certain by which the agencies will provide final responses. Significantly, the Justice Department will take 200 days from the filing of the request to complete its search, and the State Department has not even provided a date by which it will complete its search.[6] The government's position is untenable especially in light of the fact that FOIA expressly contemplates that agencies will provide their determinations on a FOIA request within 20 days. Plaintiff has repeatedly proposed an appropriate processing deadline to no avail, and have narrowed the request three times with respect to the State Department to facilitate the timely processing of responsive records. The government has not demonstrated "exceptional circumstances" – or even sensitive information that present unique complications for response – justifying its proposed schedule. *See* 5 U.S.C. § 552(a)(6)(C)(i).[7]

Contemplated motions. Plaintiff submits that the government's schedule unsupportable under FOIA and violates Plaintiff's entitlement to expedited processing of its request. If timing issues cannot be resolved at or before the status conference, Plaintiff believes that motion practice will be necessary to address the government's failure to comply with statutory deadlines for responding to Plaintiff's requests. The parties anticipate that this matter will ultimately be resolved via cross-motions for summary judgment related to whether the Defendant federal agencies properly withheld information requested by Plaintiff under various FOIA exemptions.

Settlement discussions. While no settlement as such has been discussed or is anticipated in this FOIA case, the parties have discussed whether it may be possible to reach an agreement to narrow plaintiff's requests in part and to agree on search and production schedules. Those discussions have not successfully resolved Plaintiff's concerns about timing.

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[4] Plaintiff on Feb. 21 agreed to limit its request to records created on or after Oct. 1, 2018 and to the exclusion of publicly-available records. On April 4, Plaintiff agreed to limit the units within the Department to be searched. On April 12, Plaintiff agreed to limit its request to *substantive* records related to (i) the factual circumstances of and individuals responsible for Jamal Khashoggi's killing and (ii) accountability for the killing. Plaintiff also agreed to the use of search terms Khashoggi" and "kill!/murder!/death/die!/dead/assassinat!" in an effort to further limit the number of responsive documents.

[5] Since the requests were filed, Jamal Khashoggi's murder has been the subject of intense public and Congressional debate, and Congress – like Plaintiff – continues to seek information about the murder. For example, on April 11, 2019, Senator Merkley introduced S.Res.169, seeking information from Defendants about the incident. https://www.merkley.senate.gov/news/press-releases/merkley-colleagues-introduce-resolution-demanding-accountability-for-saudi-human-rights-abuses-2019.

[6] Some defendant agencies were impacted by the government shutdown during this time.

[7] Defendants in FN3 cite *Nat'l Day Laborer Org. Network*, 236 F. Supp. at 814-15 for the point that the only remedy for an agency missing the 20-day deadline is that plaintiffs may go to court. The next sentence in that opinion explains that the Court may only extend the deadline if the agency is able to demonstrate "exceptional circumstances." Nor is it true that Defendants' denial of expedited processing is without consequence.

We thank the Court for its consideration of these requests.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*, Plaintiffs, v. **CENTRAL INTELLIGENCE AGENCY, *et al.*,** Defendants.	Case No. 1:18-cv-02709 (TNM)

MEMORANDUM OPINION

This case stems from the murder and dismemberment of Jamal Khashoggi inside the Saudi Arabian consulate in Istanbul. While his fiancée waited outside for his return with their marriage papers, members of a hit squad dispatched from Riyadh lay in wait in a consular office inside. He was never seen again.

Turkish intelligence captured audio of Khashoggi's last moments. After the consular staff escorted him inside, the assailants pressured him to return to Saudi Arabia. When he refused, there was a struggle as his killers hooded him in plastic and strangled him. Then they dismembered his body with a surgical bone saw. Later, surveillance footage captured Saudi agents transporting his remains in plastic bags and a suitcase. A body double dressed in Khashoggi's clothes left a false trail out of the consulate, the final piece laid in the premeditated attack.

The trail soon proved false, and the evidence pointed to disappearance at the hands of Saudi officials, frequent targets of the slain journalist's criticism. Intelligence agencies, governments, and reporters quickly confirmed the worst. A U.N. Special Rapporteur convened

an investigation.[1] The State Department informed the press that "the United States had no advanced knowledge" of his disappearance.[2] Congress demanded to know how much the Saudi government knew about the disappearance of this U.S. resident last seen entering its consulate.[3] Everything, the CIA said. Senators left a classified briefing certain that the Saudi Arabian Crown Prince directed the killing.[4] The State Department publicly designated 16 Saudi Arabian officials as ineligible to enter the United States because of their roles in this "significant corruption or gross violation[] of human rights."[5] The Treasury Department issued sanctions against those 16, plus the consul general.[6]

Shortly after his disappearance, the Knight First Amendment Institute ("Knight Institute") sought from the CIA, FBI, NSA, and Office of the Director of National Intelligence (collectively, the "Intelligence Agencies") records related to the Intelligence Community's "duty to warn" Khashoggi of the attack. The Committee to Protect Journalists ("CPJ") then sent a nearly identical request. When the Intelligence Agencies did not respond, Knight Institute and the CPJ sued under the Freedom of Information Act ("FOIA") to force the release of records.

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[1] This account is based on the Special Rapporteur's final report: Agnes Callamard (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Investigation into the Unlawful Death of Mr. Jamal Khashoggi*, U.N. Doc. A/HRC/41/CRP.1, annex (June 19, 2019).

[2] Press Briefing, Dep't of State (Oct. 10, 2018), https://www.state.gov/briefings/department-press-briefing-october-10-2018/.

[3] Press Release, Sen. F.R. Comm., *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.

[4] *See, e.g.*, Press Release, Sen. F.R. Comm., *Video: Menendez Reacts to Briefing from CIA Director on Saudi Arabia's Involvement in Khashoggi Murder* (Dec. 4, 2018), https://www.foreign.senate.gov/press/ranking/release/video-menendez-reacts-to-briefing-from-cia-director-on-saudi-arabias-involvement-in-khashoggi-murder-.

[5] Media Note, Dep't of State, *Public Designation of Sixteen Saudi Individuals Under Section 7031(c) of the FY 2019 Department of State, Foreign Operations, and Related Programs Appropriations Act* (Apr. 8, 2019), https://www.state.gov/public-designation-of-sixteen-saudi-individuals-under-section-7031c-of-the-fy-2018-department-of-state-foreign-operations-and-related-programs-appropriations-act/.

[6] Press Release, Dep't of Treasury, *Treasury Sanctions 17 Individuals for Their Roles in the Killing of Jamal Khashoggi* (Nov. 15, 2018), https://home.treasury.gov/news/press-releases/sm547.

But still the Intelligence Agencies would not acknowledge the existence of any relevant documents.

The parties have cross-moved for summary judgment, now ripe for decision. Even in appalling cases such as this, the law recognizes that our Government needs secrecy to discover what others do in secret. Because the requested records are exempt from FOIA's disclosure requirements, the Court will grant summary judgment to the Intelligence Agencies.

I.

Any element of the Intelligence Community "that collects or acquires credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping," must warn the intended victim "in a timely manner while protecting sources and methods." Intelligence Community Directive 191 ("Directive 191") ¶¶ E.1, F.1. (Office of the Dir. of Nat'l Intel. Jul. 21, 2015).

Under FOIA, 5 U.S.C. § 552, Knight Institute and the CPJ requested all Intelligence Agency records related to Directive 191 and the duty to warn Khashoggi. *See* Am. Compl. ¶¶ 15–17, ECF No. 17. They also requested records of disputes the other agencies referred to Office of the Director of National Intelligence ("ODNI") about the duty to warn or how to communicate threat information. *See id.* ¶ 18.[7]

[7] The FOIA request was in four parts: "(1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191; (2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him; (3) All records concerning any 'issue aris[ing] among IC elements' regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.; and (4) All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.2." Am. Compl. ¶¶ 17–18.

The Intelligence Agencies responded with what are known as "*Glomar* responses:" refusals to confirm or deny the existence of the requested records.[8] *See, e.g.*, Joint Status Report (Mar. 1, 2019), ECF No. 25. Knight Institute subsequently voluntarily dismissed its claims, leaving the CPJ as the sole plaintiff. *See* Stipulation of Dismissal, ECF No. 29; Minute Order (Jul. 19, 2019). The State Department was originally also listed as a defendant, but the CPJ dismissed State from the case shortly after Knight Institute dropped out. *See* Motion to Dismiss, ECF No. 30; Minute Order (Jul. 30, 2019).

The remaining defendants filed for Summary Judgment, arguing that FOIA exemptions 1 and 3 prevent the disclosure of the very existence *vel non* of the requested records. Defs.' Mot. for Summ. J. ("Defs.' Mot.") 2, ECF No. 34-1; 5 U.S.C. § 552(b)(1), (3). The CPJ then filed a cross-motion, arguing against the exemptions and that the State Department's denial of advance warning about Khashoggi's disappearance "constitutes an official acknowledgment by the Government that records responsive to CPJ's FOIA requests do not exist, and thereby waives the Government's ability to invoke *Glomar*." Pl.'s Cross-Mot. for Summ. J. ("Pl.'s Cross-Mot.") 21, 23, ECF No. 37-1; *see* Press Briefing, Dep't of State, *supra*, note 2.

II.

The general rule under FOIA is that government agencies "must acknowledge the existence of information responsive to a FOIA request and provide specific, non-conclusory justifications for withholding that information." *Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1178 (D.C. Cir. 2011). This is so because FOIA exists as "a means for citizens to know what their Government is up to." *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171–72 (2004) (cleaned up).

[8] The CIA also withheld documents in whole or part, but the CPJ elected not to challenge the redactions or withholdings on Summary Judgment. *See* Pl.'s Cross-Mot. for Summ. J. 19, n.54, ECF No. 37-1.

The *Glomar* line of FOIA cases stands as an exception to that general rule. *ACLU v. CIA*, 710 F.3d 422, 426 (D.C. Cir. 2013).[9] In a *Glomar* response, an agency may "refuse to confirm or deny the existence of records," *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007), when doing so "would itself cause harm cognizable" under FOIA, *Roth*, 642 F.3d at 1178. In other words, FOIA protects "the existence *vel non*" of the records. *Wolf*, 473 F.3d at 379. And agencies commonly invoke *Glomar* responses when "admission or denial could itself compromise national security." *See Military Audit Project v. Casey*, 656 F.2d 724, 729–30 (D.C. Cir. 1980).

Naturally, the *Glomar* exception has its limits. If an agency has "officially acknowledged otherwise exempt information through prior disclosure, the agency has waived its right to claim an exemption with respect to that information." *Id*. at 426. Put another way, a "plaintiff can overcome a *Glomar* response by showing that the agency has already disclosed the fact of the existence (or nonexistence) of responsive records, since that is the purportedly exempt information that a *Glomar* response is designed to protect." *Id*. at 427 (citations omitted).

A plaintiff who raises a claim of official acknowledgment bears "the initial burden of pointing to specific information in the public domain that appears to duplicate that being withheld." *Wolf*, 473 F.3d at 378 (quotation omitted). The question is whether "the prior disclosure establishes the *existence* (or not) of records responsive to the FOIA request, regardless whether the contents of the records have been disclosed." *Marino v. DEA*, 685 F.3d 1076, 1081 (D.C. Cir. 2012) (quotation omitted). If a plaintiff makes the initial showing, it is the agency's burden "to sustain its action." 5 U.S.C. § 552(a)(4)(B).

[9] The name comes from the CIA's refusal in *Phillippi v. CIA* to confirm or deny whether it had any records of Howard Hughes' *Glomar Explorer* ship that was reportedly used to search for a lost Soviet submarine. 546 F.2d 1009 (D.C. Cir. 1976); *see ACLU*, 710 F.3d at 426 n.1.

Here, the Intelligence Agencies rely on FOIA Exemptions 1 and 3. Exemption 1 protects matters that are "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). In this case, the Intelligence Agencies invoke Executive Order 13,526, which authorizes the classification of information that "pertains to," among other things, "intelligence activities (including covert action), intelligence sources or methods, or cryptology." Exec. Order No. 13,526 § 1.4(c), 75 Fed. Reg. 707 (Dec. 29, 2009).

Exemption 3 applies to matters "specifically exempted from disclosure by [a] statute" other than FOIA. 5 U.S.C. § 552(b)(3). To support the Exemption 3 claims, the Intelligence Agencies rely on the National Security Act of 1947, which provides that the "Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 3024(i)(1); *see Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir. 1984) (holding that provision in predecessor version of the Act supports Exemption 3).[10]

"An agency is entitled to summary judgment if no material facts are in dispute and if it demonstrates that each document that falls within the class requested either has been produced or is wholly exempt from the Act's inspection requirements." *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 833 (D.C. Cir. 2001) (cleaned up). The Court reviews "*de novo* the agency's use of a FOIA exemption to withhold documents," but "in the context of national

[10] The NSA also justifies its Exemption 3 claims with two additional statutes. First, it relies on the National Security Agency Act of 1959, which protects from disclosure "the organization or any function of the National Security Agency, or any information with respect to the activities thereof." 50 U.S.C. § 3605(a); *see Linder v. NSA*, 94 F.3d 693, 698 (D.C. Cir. 1996) ("The protection afforded by [this section] is, by its very terms, absolute."). Second, the NSA invokes 18 U.S.C. § 798(a), which establishes criminal sanctions for the unauthorized release or use of classified information "concerning the communication intelligence activities of the United States . . . or obtained by the processes of communication intelligence from the communications of any foreign government." The Court notes these other authorities but finds no need to reach them.

security concerns, courts must accord *substantial weight* to an agency's affidavit concerning the details of the classified status of the disputed record." *ACLU*, 710 F.3d at 427 (quotations omitted). "Ultimately, an agency's justification for invoking a FOIA exemption, whether directly or in the form of a *Glomar* response, is sufficient if it appears logical or plausible." *Id.* (quotations omitted). If the agency's affidavit meets these criteria, "then summary judgment is warranted on the basis of the affidavit alone." *ACLU v. DOD*, 628 F.3d 612, 619 (D.C. Cir. 2011) (citation omitted).

III.

The central issue here is whether the State Department's press briefing a week after Khashoggi's as-yet-publicly-unconfirmed killing constituted an "official" disclosure that overcomes the Intelligence Agencies' *Glomar* responses. See *ACLU*, 710 F.3d at 427. In response to a reporter's question, a State spokesperson said, "although I cannot comment on intelligence matters, I can say definitively the United States had no advanced knowledge of Jamal Khashoggi's disappearance." Press Briefing, Dep't of State, *supra*, note 2.

Recall that the CPJ voluntarily dismissed its claims against the State Department. *See* Motion to Dismiss, ECF No. 30; Minute Order (Jul. 30, 2019). That is significant because "a disclosure made by someone other than the agency from which the information is being sought" is not "official." *Frugone v. CIA*, 169 F.3d 772, 774 (D.C. Cir. 1999). And this holds whether the information reaches the public through Congress, a former official, the media, or a sister Executive Branch agency. *Id.* (citations omitted).

Frugone controls here. In it, a Chilean resident who claimed he had been a CIA "covert employee" contacted the Office of Personnel Management ("OPM") about retirement benefits. *Id.* at 773. OPM informed him by letter that the CIA maintained his records. *Id.* But when he

contacted the CIA, it denied his request with a *Glomar* response. *Id*. After he sued under FOIA, the CIA explained that "except in those instances wherein we have officially acknowledged a relationship with an individual, we are unable to so acknowledge." *Id*.

The issue presented in *Frugone* should appear familiar: "whether the CIA may give a so-called *Glomar* response where another Executive Branch agency has already confirmed [the fact at issue]." *Id*. at 774 (cleaned up). The court held that "only the CIA can waive its right to assert an exemption to the FOIA." *Id*. at 775. Crediting the CIA's affidavit, the D.C. Circuit noted that "requiring it to break its silence upon the subject . . . would harm the interests of the United States." *Id*. On the one hand, confirmation of his employment "could cause greater diplomatic tension between Chile and the United States than do the informal, possibly erroneous, statements made by the OPM." *Id*. And on the other, a denial "would lessen the burden facing a foreign intelligence agency attempting to track the CIA's covert activities abroad." *Id*. Neither option was appealing. Just as Knight Institute's decision to dismiss this case did not require the CPJ to do likewise, one agency cannot bind another for *Glomar* purposes.

The CPJ's attempts to distinguish *Frugone* are unavailing. The CPJ argues that the State Department is "not just any agency." Pl.'s Reply 12, ECF No. 41 ("It is the oldest federal agency and the most prestigious, exemplified by the Secretary of State's place near the top of the presidential line of succession."). Perhaps. But venerable as the State Department is, it is still a sister to the Intelligence Agencies here, no more able to speak about intelligence matters on behalf of "the entire United States Government," *id*. at 15, than OPM could speak for the CIA, *Frugone*, 169 F.3d at 774. Less so, arguably, given that OPM has some supervisory duties over executive agencies, *see* 5 U.S.C. §§ 1101–1104, while State is a small fry in the Intelligence Community pond where the Director of National Intelligence rules, *see* 50 U.S.C. § 3023.

The CPJ cites *Marino v. DEA*, but it is not to the contrary. *See* Pl.'s Reply at 13 n.1 (citing 685 F.3d at 1082). There, the D.C. Circuit found that information an assistant U.S. attorney disclosed in a criminal trial could be considered in the "public domain" for purposes of a FOIA request against the DEA. 685 F.3d at 1082. But this was so because the DEA is a "component *within* the Department of Justice." *Id*. (citing *Davis v. DOJ*, 968 F.2d 1276, 1279–82 (D.C. Cir. 1992)). And that relationship reveals the CPJ's flawed analogy. State enjoys no similar parent-agency status vis-à-vis the remaining defendant agencies. *See* 50 U.S.C. § 3003(4) ("intelligence community" includes all Intelligence Agencies and the State Department's Bureau of Intelligence and Research); *id*. § 3023(b) (designating Director of National Intelligence "head of the intelligence community").

Next, the CPJ argues that—like the Intelligence Agencies—the State Department is part of the Intelligence Community and thus is "positioned to speak on behalf of the entire Intelligence Community on issues related to foreign intelligence." Pl.'s Reply at 13 (citing 50 U.S.C. § 3003(4)(I)). But this is just a reformulation of the claim that one executive agency can speak for another one. Consider *Mobley v. CIA*, where the D.C. Circuit re-affirmed that "disclosure by one federal agency does not waive another agency's right to assert a FOIA exemption." 806 F.3d 568, 583 (D.C. Cir. 2015) (citing *Frugone*, 169 F.3d at 774–75). *Mobley* might be a stronger case for official acknowledgment than *Frugone*, because the CIA had itself acknowledged (mistakenly, it said) the records to the plaintiff before rescinding the acknowledgment as inaccurate. *See id*. at 584. Even so, the D.C. Circuit did not hold that "clerical mistake" against the CIA. *See id*. Or consider *Afshar v. Department of State*, where books by former CIA officials were not "official executive acknowledgments," despite passing the CIA's prepublication review. 702 F.2d 1125, 1133–34 (D.C. Cir. 1983). Even in these less-

attenuated cases, where disclosures passed unofficially through the same agency, the D.C. Circuit upheld the *Glomar* responses. So too here.

Perhaps more tellingly, the CPJ has not identified a single case countering the D.C. Circuit's unequivocal statements that each agency speaks for itself on FOIA disclosure. *See Frugone*, 169 F.3d at 774–75; *Mobley*, 806 F.3d at 583. And times when there *was* official acknowledgment show why the CPJ cannot bridge this gulf. Take *ACLU*, where the CIA refused to confirm or deny whether the Agency had any records related to the use of drones for lethal strikes. 710 F.3d at 425. By 2013, this was an untenable position for the CIA to take. Why? The President, the President's counterterrorism advisor, and even the Director of the CIA had all publicly acknowledged the use of drone strikes against al Qaeda. *See id*. at 429–30. *Those* were official acknowledgments, made by principal officers in the CIA's chain of command. And given them, crediting the CIA's *Glomar* responses would have given the Court's "imprimatur to a fiction of deniability that no reasonable person would regard as plausible." *Id*. at 431.

This is no such fiction. Like *Frugone*, 169 F.3d at 775, there is a substantial difference between the State Department's general press statement, *see* Press Briefing, Dep't of State, *supra*, note 2, and confirmation (or denial) that the Intelligence Agencies had (or did not have) "credible and specific information indicating an impending threat" to Khashoggi that would trigger the duty to warn, *see* Directive 191 ¶ E.1. Indeed, the State spokesperson qualified his statement to protect these same intelligence interests. *See* Press Briefing, Dep't of State ("although I *cannot comment on intelligence matters*, I can say definitively the United States had no advanced knowledge of Jamal Khashoggi's disappearance") (emphasis added). In contrast, the CIA's position in *ACLU* was "neither logical nor plausible" because the many

public statements about drone strikes overlapped entirely with the requested acknowledgment that the CIA "at least had an intelligence interest in such strikes." 710 F.3d at 430.

As a corollary argument, the CPJ argues that news reports confirm the Intelligence Agencies' intercept "of Saudi officials discussing a plan to capture Mr. Khashoggi." *See* Pl.'s Cross-Mot. at 25. But however credible the Committee to Protect Journalists may find news stories sprinkled with juicy tidbits from unnamed sources, the Court is unconvinced. After all, if people believed everything written in newspapers, there would be no need for official confirmation through this FOIA suit.

Although not a *Glomar* case, *Students Against Genocide* is instructive. There, then-Ambassador Madeleine Albright shared classified imagery during a closed-door presentation to the U.N. Security Council, and the government withheld some of that imagery from the FOIA requester. *See* 257 F.3d at 830. Under a related "waiver" doctrine, neither the sharing of that information with the U.N. nor news reports on the issue waived the government's ability to prevent any more disclosure. *See id*. at 836; *id*. at 834 n.9 (plaintiffs did not challenge *Glomar* responses on appeal); *see also ACLU v. DOD*, 406 F. Supp. 2d 330, 332 (S.D.N.Y. 2005) ("evidence revealed in the news media is not sufficient to overcome a *Glomar* response"). All considered, the CPJ has not met its burden of "pointing to specific information in the public domain that appears to duplicate that being withheld." *See Wolf*, 473 F.3d at 378.

That brings us to the Intelligence Agencies' declarations, which persuasively show just how much is at stake to protect national security. ODNI points out that confirming the existence of records related to Khashoggi could alert targets that "specific elements" of the Intelligence Community are employing "certain intelligence sources or methods . . . to collect information on them." Decl. of Patricia Gaviria ("ODNI Decl.") 9–10, ECF No. 34-2. Equally risky,

confirming their non-existence "identifies an area in which ODNI and the IC may lack interest in particular individuals, entities, or subjects, or an inability to obtain information on [them], and potentially confirms the success of any evasive techniques." *Id*.

This dilemma echoes in the other declarations, too. The NSA notes the specific threat to its Signals Intelligence activities, sources, and methods if a confirmation or denial is required. Decl. of Linda Kiyosaki ("NSA Decl.") 9, ECF No. 34-3. The CIA adds that confirmation could threaten "relationships with domestic or foreign entities," while denial could show "a blind spot" that adversaries may try to exploit. Decl. of Antoinette Shiner ("CIA Decl.") 19, ECF No. 34-4. And the FBI says it and the other Intelligence Agencies' positions are necessary because once the use or non-use of a source or method "in a certain situation or against a certain target" is public, "its continued successful use is seriously jeopardized." Decl. of David Hardy ("FBI Decl.") 9, ECF No. 34-5.

So the Intelligence Agencies have shown "the untoward consequences that could ensue were [they] required either to confirm or deny statements made by another agency." *See Frugone*, 169 F.3d at 775. This assessment is due "substantial weight." *See ACLU*, 710 F.3d at 427. And even if the CPJ's claims are true that the Intelligence Community's covert operations in the region are already "widely known," *see* Pl.'s Cross-Mot. at 25, confirmation "would remove any lingering doubts" that foreign states might have, *see Frugone*, 169 F.3d at 774 (cleaned up). More, "the perpetuation of such doubts may be an important means of protecting national security." *See id*. at 774-75. It is not the Court's place to question the Intelligence Agencies' "assessment of harm to intelligence sources and methods." *Students Against Genocide*, 257 F.3d at 835 (citation omitted). Congress entrusted that responsibility to the Director of National Intelligence, "not to the courts." *Id*.; *see* 50 U.S.C. § 3024(i)(1). Finding

ample support for the Intelligence Agencies' *Glomar* responses under Exemptions 1 and 3, the Court will not undercut the deference those agencies are due here.

IV.

The assassination of Jamal Khashoggi was repugnant to humanity. The CPJ understandably seeks answers to explain the killing and protect other journalists from similar reprisals. But the Intelligence Agencies avow that the surest way to preserve the means and methods of intelligence collection against tomorrow's threats is to preserve them today. This is what the law compels and reason dictates. Accordingly, the Court will grant Summary Judgment for the Intelligence Agencies and deny it for the CPJ.[11] A separate order will issue.

Dated: January 6, 2020

TREVOR N. McFADDEN, U.S.D.J.

[11] The Court has considered the CPJ's requests for a motion hearing but finds oral argument unnecessary here. *See* LCvR 78.1.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*, Plaintiffs, v. **CENTRAL INTELLIGENCE AGENCY, *et al.*,** Defendants.	Case No. 1:18-cv-02709 (TNM)

ORDER

Upon consideration of the parties' cross-motions for summary judgment, the pleadings, relevant law, related legal memoranda in opposition and in support, the entire record, and for the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that the Defendants' motion for summary judgment is **GRANTED**; and it is further

ORDERED that the Plaintiff's cross-motion for summary judgment is **DENIED**.

SO ORDERED.

The Clerk of the Court is directed to close the case. This is a final, appealable Order.

Dated: January 6, 2020

TREVOR N. McFADDEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, COMMITTEE TO PROTECT JOURNALISTS,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

NOTICE OF APPEAL

NOTICE is hereby given that Plaintiff Committee to Protect Journalists appeals to the United States Court of Appeals for the District of Columbia Circuit from all aspects of the order and opinion of the Honorable Trevor N. McFadden, entered on January 6, 2020, granting Defendants' Motion for Summary Judgment and denying Plaintiff's Cross-Motion for Summary Judgment (annexed as Exhibit A).

Dated: New York, New York
March 4, 2020

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