Debevoise & Plimpton

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
+1 212 909 6000

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VIA ECF

Mark Langer, Esq.
Clerk, District of Columbia Circuit Court of Appeals
E. Barrett Prettyman United States Courthouse and William B. Bryant Annex
333 Constitution Avenue NW, Room 5205
Washington, DC 20001

Re: *Knight First Amendment Institute v. CIA*, et al., No. 20-5045 Submission of Appellee Committee to Protect Journalists Pursuant to FRAP 28(j) and Local Rule 28(f)

Dear Mr. Langer:

Having submitted its reply brief in this matter on November 5, 2020, and concluded oral argument on January 12, 2021, appellant Committee to Protect Journalists ("CPJ") writes to inform the Court of the recently declassified public assessment by the Office of the Director of National Intelligence ("ODNI"), a Defendant-Appellee in this case (attached). The assessment concludes that Saudi Arabia's Crown Prince Muhammad bin Salman approved the operation that resulted in Mr. Jamal Khashoggi's murder. ODNI's assessment casts doubt on its justification, and that of its fellow Defendants-Appellees, for issuing Glomar responses to CPJ.

ODNI has now publicly stated—apparently without fear of jeopardizing intelligence activities, sources, or methods—that it does not "know how far in advance Saudi officials decided to harm [Mr. Khashoggi]." *Assessing the Saudi Government's Role in the Killing of Jamal Khashoggi* at 3 (Attachment 1). ODNI further states that it "do[es] not know whether [the individuals involved in Mr. Khashoggi's murder] knew in advance that the operation would result in Khashoggi's death." *Id.*

These statements reveal clear gaps in the Intelligence Community's (IC) knowledge regarding Mr. Khashoggi's murder—including gaps in prior knowledge of the murder plot relevant to the IC Elements' duty to warn. The first statement clarifies that the IC still does not know when Saudi officials formed an intent to harm Mr. Khashoggi. The second strongly suggests that, as of Mr. Khashoggi's death, the IC was not aware his murderers intended to kill him.

It is difficult to square this public assessment with the Government's position in this case. Defendants-Appellees' brief states that "denying that records exist could expose a lack of . . . intelligence information, tending to reveal . . . either a lack of intelligence interest in particular individuals or collection gaps against certain targets," which "risks harming national security." Appellees' Br. at 17. Yet the assessment publicly admits such gaps. If, as seems clear, ODNI does not believe it will harm national security to reveal these gaps now, it is unclear how it would harm national security for the IC to reveal the same or similar gaps as of the time of Mr. Khashoggi's murder.

Respectfully yours,

/s/ Alexandra P. Swain Esq.

Alexandra P. Swain, Esq.

Enclosure

cc: Counsel of Record (via ECF)