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VIA CM/ECF

March 12, 2021

Mr. Mark J. Langer
Clerk of Court
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Ave., N.W.
Washington, D.C. 20001

RE: *Knight First Amendment Inst. v. CIA*, No. 20-5045
Oral argument held Jan. 12, 2021 (Judges Millett, Katsas, and Walker)

Dear Mr. Langer:

Appellant's March 2, 2021 28(j) letter cites a recently declassified assessment by the Office of the Director of National Intelligence (ODNI), which states that ODNI does not "know how far in advance Saudi officials decided to harm [Mr. Khashoggi]," and does not "know whether [the individuals involved] knew in advance that the operation would result in Khashoggi's death."

These statements long post-date the agencies' processing of responses to plaintiffs' FOIA requests, based on the facts before the agencies, and the district court's rulings on the propriety of withholdings. As a general matter, that subsequent developments might lead an agency to respond differently if the same FOIA request were submitted at a later date does not establish that the agency's initial response was inadequate. *See, e.g., Meeropol v. Meese*, 790 F.2d 942, 959 (D.C. Cir. 1986); *Bonner v. Dep't of State*, 928 F.2d 1148, 1152 (D.C. Cir. 1991).

In any event, ODNI's statements do not undermine the case for affirmance. The information sought through the plaintiffs' original FOIA requests—which would have tended to confirm or deny whether the agencies had "credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at" Mr. Khashoggi—is a far cry from the narrow and limited information disclosed by ODNI. And to the extent ODNI's declassified assessment discloses that ODNI lacks information regarding two discrete pieces of information, that assessment casts no doubt on the scope of the Glomar responses as a whole, which protect information about the government's intelligence sources and targets of intelligence collection at a given point in time, as well as intelligence sources, capabilities, resources, and relationships with domestic or foreign entities. Under the circumstances, remand to the agency would serve no useful function, as it could not result in the disclosure of any additional information other than the specific, limited disclosures already made by ODNI.

Should the Court disagree, however, the government should be given an opportunity to submit new declarations to support its continued withholdings and to explain why the withholding of information remains justified.

Sincerely,

*/s/ Sharon Swingle*

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cc: all counsel (via CM/ECF)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2021, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

*s/ Sharon Swingle*
SHARON SWINGLE