IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF DEFENSE, *et al.*,

Defendants.

No. 14-cv-1589 (EGS)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT FBI'S RENEWED MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This case arises from over 40 separate Freedom of Information Act ("FOIA") requests seeking various records relating to the September 11, 2012, attacks on the United States' facilities in Benghazi, Libya. Over the course of several years, Plaintiffs, Accuracy in Media, Inc. and several individuals who are members of the Citizens Committee on Benghazi (collectively "Plaintiffs"), and Defendants, United States Department of Defense ("DOD"), United States Department of State ("State Department"), the Central Intelligence Agency ("CIA"), and the Federal Bureau of Investigation, a component of the United States Department of Justice ("FBI"), have worked together to narrow the issues requiring judicial resolution. In 2018, the parties cross-moved for summary judgment and the court ultimately awarded summary judgment to Defendants on all remaining issues except with respect to the FBI's *Glomar* response to Plaintiffs' request for certain FD-302 interview reports and corresponding handwritten interview notes. The FBI subsequently withdrew its *Glomar* response and processed Plaintiffs' request.

After identifying and reviewing the records covered by the FBI's *Glomar* assertion, the FBI invoked Exemption 7(A) to withhold the records in full because release of the records could reasonably be expected to interfere in the agency's ongoing investigation of the Benghazi attacks, as well as prospective prosecutions of individuals involved in those attacks. In addition, the FBI, in consultation with the State Department and CIA, determined that portions of the records are also exempt from disclosure pursuant to Exemptions 1, 3, 5, 6, 7(C), 7(E), and 7(F). As explained more fully below, the FBI and, where appropriate, the State Department and CIA, have logically and plausibly articulated the bases for their withholdings. Accordingly, the FBI has satisfied its obligations under the FOIA and is entitled to summary judgment.

BACKGROUND

I. Procedural History

Plaintiffs initiated this lawsuit in September 2014. *See generally* Compl., ECF No. 1 (Sept. 19, 2014). The case originally involved over 40 separate FOIA requests submitted to Defendants. *See generally id.*; *see also* Second Am. Compl., ECF No. 31 (Jun. 24, 2015). Over the course of several years, the parties worked together to narrow the issues requiring judicial resolution and in 2018 cross-moved for summary judgment on the issues then remaining in dispute. *See* Joint Mot. to Am. Briefing Schedule, ECF No. 65 (Mar. 2, 2018) (identifying issues remaining in dispute); Defs.' Mot. for Summ. J., ECF No. 68 (May 10, 2018); Pls.' Cross-Mot. for Summ. J., ECF No. 71 (Jun. 25, 2018). Plaintiffs also filed a motion for leave to propound an interrogatory to DOD. *See* Pls.' Mot. to Propound Interrogatory to DOD, ECF No. 73 (Jun. 25, 2018). Thereafter, the Court referred the case to a magistrate judge and the case was assigned to Magistrate Judge Deborah Robinson. *See* Minute Order (Jan. 7, 2019); Docket Entry (Jan. 7, 2019).

During the pendency of the parties' cross-motions, Plaintiffs further narrowed the issues in dispute to include dropping their claims against the State Department. *See* Joint Status Report ¶ 3, ECF No. 81 (Mar. 21, 2019). At that point, only five issues remained to be decided: (1) whether DOD conducted an adequate search for certain records; (2) whether DOD properly withheld classified maps identifying the positions of military assets in the Mediterranean; (3) whether the CIA had properly redacted information contained in records relating to an investigation by the CIA Inspector General; (4) whether the FBI had properly issued a *Glomar* response regarding Plaintiffs' request for FD-302 reports and corresponding handwritten notes of certain interviews the FBI allegedly conducted following the Benghazi attacks; and (5) whether to grant or deny Plaintiffs'

motion to propound an interrogatory to DOD. *See* Magistrate's Report and Recommendation ("R&R"), at 2-3, ECF No. 83 (Aug. 27, 2020).

Magistrate Judge Robinson recommended summary judgment be awarded to Defendants on all issues except with respect to the FBI's *Glomar* response. *See* R&R at 33. She also recommended that Plaintiffs' motion to propound an interrogatory be denied. *See id*. The FBI subsequently withdrew its *Glomar* response and informed the Court that it would search for and process records that would have been covered by the *Glomar* assertion. Defs.' Notice Regarding R&R at 1, ECF No. 86 (Sept. 10, 2020).

By letter dated February 17, 2021, the FBI informed Plaintiffs that it had identified records responsive to their request. *See* Declaration of Michael G. Seidel, Section Chief, Record/Information Dissemination Section, FBI (hereafter "Seidel Decl.") ¶ 8 & Exhibit B. The FBI stated it had determined, after consultation with the State Department and the CIA, all of the identified responsive records are protected in full from disclosure pursuant to Exemptions 1, 3, 5, 6, 7(A), 7(C), 7(E), and 7(F). *See id.*

On November 28, 2022, the Court adopted Magistrate Judge Robinson's recommendations, granting Defendants' motion for summary judgment with respect to DOD and CIA and denying as moot Defendants' motion for summary judgment with respect to the FBI's *Glomar* response. *See* Mem. Op. at 20, 24, 27-28, ECF No. 92 (Nov. 28, 2022); Order, ECF No. 93 (Nov. 28, 2022). The Court also denied Plaintiffs' motion to propound an interrogatory to DOD. *See* Mem. Op. at 29; Order, ECF No. 93. The Court further ordered the parties to submit a status report by January 20, 2023, indicating whether any disputes remain regarding the FBI's FD-302 interview reports. *See* Order, ECF No. 93.

The parties' informed the Court on January 20, 2023, that Plaintiffs challenge the FBI's withholding of the responsive FD-302 interview reports. *See* Joint Status Report at 2, ECF No. 94 (Jan. 20, 2023). The Court thereafter set a briefing schedule for the FBI's renewed motion summary judgment. Minute Order (Feb. 22, 2023).

II. The FBI's Search For Responsive Records

The FBI's *Glomar* response encompassed Plaintiffs' request for records reflecting survivors' accounts, including FD-302 interview reports and corresponding handwritten notes of interviews, conducted September 15-16, 2012, in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities. *See* Seidel Decl. ¶ 5; Joint Mot. to Am. Briefing Schedule at 5; Am. Compl. ¶ 126(8), ECF No. 31 (Jun. 24, 2015).

To locate records covered by its withdrawn *Glomar* response, the "FBI identified the pending investigative files pertaining to the Benghazi attacks" "[u]sing the results of the FBI's initial search of its databases for responsive records[.]" Seidel Decl. ¶ 9. Those initial searches consisted of index searches of its case management systems—the Central Record System ("CRS") and Sentinel—utilizing a string search and a three-way phonetic breakdown of the following search terms: "Benghazi Attack," "Benghazi," "Benghazi Special Mission and Annex Attacks," "Attack Consulate Benghazi," "Attack Benghazi," "Benghazi Assault," "John Christopher Stevens," and "Christopher Stevens." First Declaration of David M. Hardy, ECF No. 18-1 (hereinafter "First Hardy Decl."), ¶¶ 20, 22 (attached as Exhibit A to Seidel Decl.). The FBI reviewed the pending investigative files and located responsive FD-302 interview reports and attachments, including handwritten interview notes. Seidel Decl. ¶ 9. "Given the passage of time between the FBI's initial search and the change in the FBI's *Glomar* position, the FBI confirmed

with its Counterterrorism Division that all responsive FD-302 interview reports and attachments, including handwritten notes, had been located. *Id.*

STANDARD OF REVIEW

"Most FOIA cases are appropriately resolved on motions for summary judgment." *Gilliam v. U.S. DOJ*, 128 F. Supp. 3d 134, 138 (D.D.C. 2015) (citing *Brayton v. Off. of the U.S. Trade Rep.*, 641 F3d 521, 527 (D.C. Cir. 2011)). Courts review agency responses to FOIA requests *de novo*. *See* 5 U.S.C. § 552(a)(4)(B). Summary judgment is warranted when an agency "demonstrates that no material facts are in dispute, [that] it has conducted an adequate search for responsive records, and [that] each responsive record that it has located has either been produced to the plaintiff or is exempt from disclosure" under one of the Act's enumerated exemptions. *Miller v. U.S. DOJ*, 872 F. Supp. 2d 12, 18 (D.D.C. 2012) (citing *Weisberg v. U.S. DOJ*, 627 F.2d 365, 368 (D.C. Cir. 1980)); *see also August v. FBI*, 328 F.3d 697, 699 (D.C. Cir. 2003) (describing the Act's "nine enumerated exemptions . . . designed to protect those 'legitimate governmental and private interests' that might be 'harmed by release of certain types of information.'").

To demonstrate the adequacy of its search, an agency may submit non-conclusory affidavits that explain in reasonable detail the scope and method of the agency's search. *Steinberg v. U.S. DOJ*, 23 F.3d 548, 551 (D.C. Cir. 1994). These affidavits are afforded a "presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents." *Safecard Servs. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (internal citations omitted).

As to an agency's withholdings, a court may award summary judgment solely on the basis of agency affidavits that "describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption[s],

and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith." *Larson v. U.S. Dep't of State*, 565 F.3d 857, 865 (D.C. Cir. 2009) (quoting *Miller v. Casey*, 730 F.2d 773, 776 (D.C. Cir. 1984)). This is not a high bar: "Ultimately, an agency's justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.'" *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007) (quoting *Gardels v. CIA*, 689 F.2d 1100, 1105 (D.C. Cir. 1982) and *Hayden v. NSA*, 608 F.2d 1381, 1388 (D.C. Cir. 1979)).

ARGUMENT

I. The FBI Conducted An Adequate Search

"The adequacy of an agency's search is measured by a 'standard of reasonableness,' and is 'dependent upon the circumstances of the case.'" *Schrecker v. U.S. DOJ*, 349 F.3d 657, 662 (D.C. Cir. 2003) (citation omitted). An agency has performed an adequate search for records responsive to a FOIA request when it "make[s] 'a good faith effort to conduct a search for the requested records, using methods which can reasonably be expected to produce the information requested." *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (quoting *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). "There is no requirement that an agency search every record system[;]" an agency need only search those systems in which it believes responsive records are likely to be located. *Oglesby*, 920 F.2d at 68.

The Seidel and First Hardy declarations demonstrate that the FBI made a "good faith effort to conduct a search for the requested records, using methods which can reasonably be expected to produce the information requested." *Nation Magazine*, 71 F.3d at 890 (citation omitted). The FBI initially conducted index searches of its two case management databases—the CRS and Sentinel—using broad search terms, including the term "Benghazi," and located the pending investigative files pertaining to the Benghazi attacks. *See* First Hardy Decl. ¶ 22; Seidel Decl. ¶ 9. Following

the withdrawal of its *Glomar* assertion, the FBI reviewed the investigative files it had previously identified and located responsive FD-302 interview reports and attachments, including handwritten interview notes. Seidel Decl. ¶ 9. To ensure that it had located all responsive records, the FBI subsequently consulted with its Counterterrorism Division and confirmed that all responsive records had been located. *Id.* Accordingly, the FBI's search was reasonable, and the Court should find that the agency has satisfied its search obligations under the FOIA.

II. The FBI Properly Withheld In Full, On A Categorical Basis, The Requested Records Pursuant To Exemption 7(A).

FOIA Exemption 7 permits the withholding of "records or information compiled for law enforcement purposes" to the "extent one or more listed risks are present." *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1113 (D.C. Cir. 2007) (quoting 5 U.S.C. § 552(b)(7)). Exemption 7(A) is one of Exemption 7's six subdivisions and exempts from disclosure records or information that "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). As the D.C. Circuit has explained, "Exemption 7(A) reflects the Congress's recognition that law enforcement agencies ha[ve] legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it [comes] time to present their case." *Citizens for Resp. & Ethics in Wash. v. U.S. DOJ* ("*CREW*"), 746 F.3d 1082, 1096 (D.C. Cir. 2014) (quotation omitted).

To establish the applicability of Exemption 7(A), an agency must make a two-part showing. First, as with all of Exemption 7's subdivisions, the agency must demonstrate that the records were "compiled for law enforcement purposes." 5 U.S.C. § 552(b)(7). Reflecting its role as "the primary investigative agency of the federal government," *Pinson v. U.S. DOJ*, 245 F. Supp. 3d 225, 250 (D.D.C. 2017), the FBI "need only 'establish a rationale nexus between [an] investigation and one of the agency's law enforcement duties and a connection between an individual or an

incident and a possible security risk or violation of federal law'" to "show that . . . disputed documents were 'compiled for law enforcement purposes'" and thus come within the purview of Exemption 7. *Blackwell v. FBI*, 646 F.3d 37, 40 (D.C. Cir. 2011) (quoting *Campbell v. U.S. DOJ*, 164 F.3d 20, 32 (D.C. Cir. 1998)).

The Seidel declaration establishes the requisite nexus, explaining that the FD-302 interview reports and attachments, including handwritten interview notes "were compiled in furtherance" of the FBI's "law enforcement mission to investigate" the "potential crimes and/or possible threats to national security" relating to the "attacks on U.S. Government personnel and facilities in Benghazi, Libya." Seidel Decl. ¶ 10. The FD-302 interview reports and attachments, including handwritten interview notes, were thus compiled for law enforcement purposes and, as such, satisfy the threshold requirement of Exemption 7.

Second, an agency must "demonstrate that 'disclosure (1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.'" *CREW*, 746 F.3d at 1096 (quoting *Mapother v. U.S. DOJ*, 3 F.3d 1533, 1540 (D.C. Cir. 1993)). The latter two prongs of this analysis—pending or reasonably anticipated enforcement proceedings—typically may be satisfied by pointing to a pending investigation or proceeding. *Id.* at 1098; *see also Manning v. U.S. DOJ*, 234 F. Supp. 3d 26, 33 (D.D.C. 2017) (quoting *Juarez v. U.S. DOJ*, 518 F.3d 54, 59 (D.C. Cir. 2008) ("[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of that evidence, Exemption 7(A) applies.")). Examples of records that are protected by Exemption 7(A) include "records [that] could disclose to individuals under investigation the identities of potential witnesses, the content of the government's evidence and trial strategy and the focus of the investigation." *CREW*, 746 F.3d at 1098. The "general principle of deference to

the executive on national security issues" that applies to the withholding of records under Exemptions 1 and 3 applies to the withholding of records under Exemption 7(A). *Ctr. for Nat'l Sec. Studies v. U.S. DOJ*, 331 F.3d 918, 928 (D.C. Cir. 2003).

In justifying its withholding of the FD-302 interview reports and attachments, including handwritten interview notes, the FBI cannot explain its invocation of Exemption 7(A) on a document-by-document basis. That is because doing so would itself reveal information that would interfere with the agency's ongoing investigation of the Benghazi attacks and future prosecution of those involved in the attacks.[1] *See* Seidel Decl. ¶ 13. Providing details, including a description of the contents of the interview reports and the total volume of responsive records, would itself reveal sensitive and closely held FBI information not just to Plaintiffs and the public, but to witnesses and present and future subjects of this ongoing investigation. *See id.* ¶¶ 14-15. As the Seidel declaration explains, disclosure of such information would reveal information about the scope and focus of the ongoing investigation, which "could be detrimental to the success" of the pending investigation and anticipated prosecutions by "permitting [investigative] subjects" to "judge whether their activities are likely to be detected," which in turn, would allow them to change their behavior or "employ countermeasures to avoid detection" or scrutiny. *Id.* ¶¶ 13-15, 17. Disclosure would also permit investigative subjects and other individuals to "formulate strategies to contradict evidence presented in Court proceedings." *Id.* Accordingly, the FBI has invoked Exemption 7(A) on a categorical basis, over all responsive records, after first reviewing the

[1] The FBI, through the Record/Information Dissemination Section, contacted the case agents for the Benghazi investigation and the case agents reported that the "investigation into the 2012 Benghazi Attack remains ongoing" and further noted that the FBI "continues to pursue all logical leads to identify and investigate those individuals who helped perpetrate, assist, or otherwise support the 2012 attack." Seidel Decl. ¶ 13.

records, assigning them to a function category, and attesting to the harms that would result from the release of the functional category of documents. *See id.* ¶¶ 15-20.

The D.C. Circuit has long recognized that, in cases like this one, an agency may proceed in this manner—by "grouping documents into relevant categories that are sufficiently distinct to allow a court to grasp 'how each . . . category of documents, if disclosed, would interfere with the investigation,'" without providing document-specific information. *Bevis v. U.S. Dep't of State*, 801 F.2d 1386, 1389 (D.C. Cir. 1986) (quoting *Campbell v. HHS*, 682 F.2d 256, 265 (D.C. Cir. 1982)); *accord Manning*, 234 F. Supp. 3d at 35 ("Such a document-by-document approach is not required, however, when invoking Exemption 7(A). Instead, '[c]ategorical withholding is often appropriate under Exemption 7(A).'" (quoting *CREW*, 746 F.3d at 1098)); *Judicial Watch, Inc. v. DHS*, 59 F. Supp. 3d 184, 193-94 (D.D.C. 2014) (information properly withheld pursuant to categorical invocation of Exemption 7(A) where providing detailed description of investigative documents withheld would undermine the interests DHS and FBI sought to protect). In fact, the Supreme Court itself has endorsed this approach, acknowledging that the text of Exemption 7(A) "contemplate[s] that certain generic determinations might be made" to withhold documents on a categorical basis in appropriate cases. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 223-24 (1978). The FBI's decision to invoke Exemption 7(A) on a categorical basis is, therefore, justified by the harms outlined in the Seidel declaration, which would result from explaining the agency's withholdings on a document-by-document basis.

Consistent with the procedures that have been endorsed by the Supreme Court and implemented by the D.C. Circuit, *see id.*; *Bevis*, 801 F.2d at 1389, *CREW*, 746 F.3d at 1098, the FBI reviewed all responsive records and assigned them to a single functional category in order to provide the Court with sufficient information to "trace a rational link between the nature of the

document and the alleged likely interference" with law-enforcement proceedings that justifies its withholding. *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 789 F.2d 64, 67 (D.C. Cir. 1986); *see also* Seidel Decl. ¶¶ 15-16, 18.

The Seidel declaration explains, in reasonably specific detail, that the responsive FD-302s and attachments, including handwritten interview notes, fall within the functional category of "Evidentiary/Investigative Materials." Seidel Decl. ¶ 17. FD-302s are "internal FBI forms in which evidence is often documented, usually the results of FBI interviews." *Id.* ¶ 15(i). The handwritten notes attached to FD-302s "usually memorialize the recollections of a Special Agent during an interview and are later used to draft the interview summary in an official FD-302." *Id.* ¶ 15(ii). Other attachments to FD-302s may include "documents pertaining to the topic of an interview" or "documents provided by the individual being interviewed." *Id.* Here, all of the responsive FD-302s and attachments contain information "gathered through witness interviews." *Id.* ¶ 17. The FBI acknowledges that "some information pertaining to the Benghazi attacks has been made public," however, "the FBI has not disclosed the identities of the individuals that were interviewed within the scope of the investigation or revealed specific investigative information related to the focus and content" of the interviews, as memorialized in the FD-302s and attachments. *Id.* ¶ 14.

As a general matter, evidence is pertinent and integral to any investigation and its premature disclosure could reasonably be expected to interfere with a pending investigation. That principle remains true in the context of the FBI's ongoing investigation of the Benghazi attacks. Premature release of the FD-302 interview reports and attachments would, as noted above, reveal the scope and focus of the investigation: the number and identities of witnesses and cooperators; the identities of individuals the FBI is investigating, why, and for what specific activities; the

identifies of persons of investigative interest, such as persons who possess information relevant to the investigation; and the participation and cooperation of other law enforcement agencies. Seidel Decl. ¶¶ 17, 19. Disclosure of this information could harm and thus interfere with the ongoing investigation and prospective prosecutions in at least three ways: (1) witnesses, cooperators, persons who possess information relative to the investigation, FBI and other law enforcement personnel could "be targeted for potential intimidation and/or physical harm," which could have a chilling effect of their willingness to participate in any future enforcement proceedings related to the investigation; (2) investigative subjects and other third parties could "improperly utilize the information" contained in the records "to counteract evidence developed by investigators, alter or destroy potential evidence, and/or create false evidence"; and (3) investigative subjects and other third parties could use the information contained in the records to "circumvent investigators" by "evad[ing] detection." *Id.* ¶ 19.[2]

The FBI's articulation of the interference that reasonably could be expected to occur if the FD-302s and attachments, including handwritten interview notes, were released justifies its categorical withholding of the records. Indeed, courts in this circuit have upheld the FBI's categorical invocation of Exemption 7(A) over comparable evidentiary materials where similar concerns about potential harm to ongoing investigations and pending or anticipated enforcement proceedings exist. *See Manning*, 234 F. Supp. 3d at 36 (upholding FBI's categorical invocation of Exemption 7(A) over a category of records titled "Evidentiary/Investigative Materials"); *see also Farahi v. FBI*, Civ. A. No. 15-2122 (RBW), 2022 WL 17338008, at *7 & n.5 (D.D.C. Nov.

[2] The State Department also invoked Exemption 7(A) to protect the FD-302s and attachments from premature disclosure. *See* Kootz Decl. ¶ 26. In so doing, the State Department echoed the FBI's predictions of interference, explaining that disclosure could "reveal logistical details that would allow perpetrators to discover or anticipate the FBI's movement of personnel and destroy or tamper with evidence useful to the FBI's investigation." *Id.*

30, 2022) (upholding FBI's categorical invocation of Exemption 7(A) over a category of records titled "Evidentiary/Investigative Materials" that included witness statements); *Tipograph v. U.S. DOJ*, 83 F. Supp. 3d 234, 239-40 (D.D.C. 2015) (same); *Owens v. U.S. DOJ*, Civ. A. No. 04-1701 (JBD), 2007 WL 778980, at *8 (D.D.C. Mar. 9, 2007) (upholding the FBI's categorical invocation of Exemption 7(A) to withhold investigative records from a functional category of "Evidentiary Documents," reasoning that, among other things, disclosure could "reveal 'the size, scope, and direction of [the] investigation,' or . . . permit suspects to avoid arrest and prosecution, 'destroy or alter evidence, fabricate fraudulent alibis, and take other actions to frustrate the government's case'" (quoting *Boyd v. U.S. DOJ*, 475 F.3d 381, 386 (D.C. Cir. 2007)). Accordingly, the FBI properly invoked Exemption 7(A) to categorically withhold the responsive records in full.

III. The FBI Properly Invoked Exemptions 1, 3, 5, 6, 7(C), 7(E), And 7(F) To Withhold Portions Of The Responsive Records

The FBI also properly withheld portions of the responsive FD-302s and attachments, including handwritten interview notes, on its behalf and on behalf of the State Department and the CIA pursuant to Exemptions 1, 3, 5, 6, 7(C), 7(E), and 7(F). *See* Seidel Decl. ¶¶ 56-57; Declaration Timothy J. Kootz, the Director of the Office of Information Programs and Services of the State Department (hereinafter "Kootz Decl.") (attached to Seidel Decl. as Exhibit C); Declaration of Vanna Blaine, Information Review Officer, Litigation Information Review Office, CIA (hereinafter "Blaine Decl.") (attached to Seidel Decl. as Exhibit D). Of course, the Court need not consider the propriety of the FBI's invocation of these exemptions if the Court concludes, as it should, that the FBI properly invoked Exemption 7(A) to withhold, on a categorical basis, the responsive records in full. *See, e.g.*, *Am. Civil Liberties Union v. U.S. Dep't of Defense*, 628 F.3d 612, 623 n.3 (D.C. Cir. 2011) ("We reiterate that the government need prevail on only one [FOIA] exemption; it need not satisfy both.").

A. Portions of The Records are Exempt From Disclosure Pursuant to Exemption 1

FOIA Exemption 1 protects from disclosure records that are "(A) specifically authorized under criteria established by an Executive [O]rder 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 operative classification order for purposes of Exemption 1 is Classified National Security Information, Executive Order No. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009) (hereinafter "E.O. 13,526"), which sets forth the substantive and procedural criteria that an agency must follow to properly invoke the exemption. E.O. 13,526 provides that, for information to be properly classified, four requirements must be met: (1) an "original classification authority" must have classified the information; (2) the information must be "owned by, produced by or for, or be under the control of the United States Government;" (3) the information is within one of eight protected categories listed in section 1.4 of the E.O.; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in a specified level of damage to the national security, and the original classification authority is able to identify and describe the damage. E.O. 13,526 § 1.1(a)(1)-(4).

An agency "may establish the applicability of Exemption 1 by affidavit (or declaration)." *Judicial Watch v. U.S. Dep't of Defense*, 715 F.3d 937, 940 (D.C. Cir. 2013). Because agencies have "unique insights" into the adverse effects that might result from public disclosure of classified information, the courts must accord "substantial weight" to an agency's affidavits. *Larson*, 565 F.3d at 864 (citation omitted); *see also King v. U.S. DOJ*, 830 F.2d 210, 217 (D.C. Cir. 1987). In according such deference, "a reviewing court must take into account . . . that any affidavit or other agency statement of threatened harm to national security will always be speculative to some extent,

in the sense that it describes a potential future harm." *Wolf*, 473 F.3d at 374 (citation and internal quotation marks omitted). Indeed, the "text of Exemption 1 itself suggests that little proof or explanation is required beyond a plausible assertion that information is properly classified." *Morley v. CIA*, 508 F.3d 1108, 1124 (D.C. Cir. 2007).

The FBI properly invoked Exemption 1 on behalf of the State Department and the CIA to protect classified information contained in portions of the responsive records. The Kootz and Blaine declarations amply demonstrate that the requirements of E.O. 13,526 have been satisfied.

First, both Mr. Kootz and Ms. Blaine hold original classification authority and have determined that the information withheld under Exemption 1 is currently and properly classified at the SECRET level. Kootz Decl. ¶¶ 2, 12; Blaine Decl. ¶¶ 3, 12. Second, each declarant has verified that the withheld information is owned by, was produced by or for, and is under the control of the U.S. Government. Kootz Decl. ¶ 12; Blaine Decl. ¶ 12. Third, the Kootz and Blaine declarations establish that the withheld information falls within or more of the categories described in Section 1.4 of E.O. 13,526, namely Section 1.4(b) (foreign government information); Section 1.4(c) (information pertaining to intelligence activities and/or intelligence sources and methods); and Section 1.4(d) (information pertaining to foreign relations or foreign activities of the United States, including confidential sources). Kootz Decl. ¶ 13; Blaine Decl. ¶ 12. Finally, as discussed below, Mr. Kootz and Ms. Blaine confirm that the unauthorized disclosure of the withheld information reasonably could be expected to result in serious damage to the national security and they each describe the expected damage to the extent possible on the public record. Kootz Decl. ¶¶ 13-21; Blaine Decl. ¶ 12, 14-17.

1. E.O. 13,526 § 1.4(b) – Foreign Government Information

Section 1.4(b) of E.O. 13,526 authorizes the classification of "foreign government information[,]" which is defined as "information provided to the United States Government by a foreign government or governments . . . with the expectation that the information, the source of the information, or both are to be held in confidence." E.O. 13,526 §§ 1.4(b); 6.1(s). The disclosure of such foreign government information "'is presumed to cause damage to national security.'" *Darui v. U.S. Dep't of State*, 798 F. Supp. 2d 32, 41 (D.D.C. 2011) (quoting E.O. 13,526 § 1.1(d)).

The FBI on behalf of the State Department properly invoked Exemption 1 to protect information that was provided to the State Department "by a foreign government in confidence[,]" which the State Department's "Diplomatic Security officers relayed to the FBI during interviews concerning the September 11, 2012, attacks." Kootz Decl. ¶ 18. As explained in the Kootz declaration, release of this information "would cause foreign officials to believe that U.S. officials are not able or willing to observe the confidentiality expected in such interchanges[,]" which in turn "would weaken the relationship with the government that provided the information, as well as other countries considering sharing similar information with the United States in the future." *Id.* This harm supports the presumption that release of the foreign government information could cause damage to national security because the "ability to obtain information from foreign governments is essential to the formulation and successful implementation of U.S. foreign policy." *Id.* ¶ 17. The information provided to the State Department by a foreign government is thus "currently and properly classified" and exempt from disclosure under Exemption 1. *Id.* ¶ 18; *see also Am. Civil Liberties Union v. U.S. Dep't of State*, 878 F. Supp. 2d 215, 223 (D.D.C. 2012) (upholding Exemption 1 withholding where disclosure could "degrade the confidence in the

United States' ability to maintain the confidentiality of information . . . and damage the United States' relationship with foreign governments").

2. E.O. 13,526 § 1.4(c) – Information Pertaining to Intelligence Activities and Intelligence Sources and Methods

The FBI on behalf of the State Department and the CIA properly invoked Exemption 1 to protect information contained in portions of the responsive records pertaining to intelligence activities and intelligence sources and methods.

The State Department withheld certain information in the responsive records that "relate[] directly to intelligence activities, sources, or methods," including "details relating to the names of sources who assisted the United States government during the attack, as well as methods used to respond to the attack." Kootz Decl. ¶ 19. Disclosure of the information "could enable foreign governments or persons, or entities opposed to U.S. foreign policy objectives, to identify U.S. intelligence activities, sources, or methods, and to undertake countermeasures that could frustrate the ability of the U.S. Government to acquire information necessary to the formulation and implementation of U.S. foreign policy." *Id*.

The CIA withheld classified details regarding the Agency's operational equipment, the names of sources who assisted U.S. personnel during the attack, and the methods used to transport CIA personnel to safety during the attack. Blaine Decl. ¶ 16. These details would "reveal CIA's sources and methods, including operational techniques, resources, capabilities, and vulnerabilities." *Id.* The disclosure of this information would assist "[t]errorist organizations, foreign intelligence services, and other hostile groups" in "thwart[ing] CIA activities and attack[ing] the United States and its interests." *Id.* Indeed, "[t]hese groups search continually for information regarding the activities of the CIA" and "devise ways to defeat CIA activities from seemingly disparate pieces of information." *Id.*

Given these predictions of harm, both agencies determined that disclosure of the withheld information concerning intelligence activities and intelligence sources and methods could reasonably be expected to result in serious damage of national security. Kootz Decl. ¶ 19; Blaine Decl. ¶ 16. Accordingly, the State Department and the CIA have demonstrated that the requirements of E.O. 13,526 have been satisfied.

3. E.O. 13,526 § 1.4(d) – Information Pertaining to Foreign Relations or Foreign Activities of the United States

The FBI on behalf of the State Department properly invoked Exemption 1 to protect information contained in portions of the records pertaining to foreign relations. Specifically, the State Department withheld information concerning "both confidential sources" and "sensitive aspects of U.S. foreign relations, including, in particular, issues relating to identifying potential threats to U.S. national security." Kootz Decl. ¶ 21.

"Release of information revealing confidential sources reasonably could be expected to risk the safety" of those individuals. *Id.* Further, disclosure of the information that was shared with U.S. officials "has the potential to inject friction into, or cause damage to, a number of [the United States'] bilateral relationships with countries whose cooperation is important to U.S. national security, including some in which public opinion might not currently favor close cooperation with the United States." *Id.* Indeed, because "[d]iplomatic exchanges are premised upon, and depend upon, an expectation of confidentiality[,]" *id.* ¶ 20, "[f]ailure to preserve the expected confidentiality could jeopardize future access not only to the sources of the withheld information, but also to others who might provide sensitive information to U.S. officials that is important to U.S. national security interests[,]" *id.* ¶ 21. Accordingly, the withheld information is currently and properly classified and is, therefore, exempt from release under Exemption 1.

B. Portions of the Records are Exempt From Disclosure Pursuant to Exemption 3

FOIA Exemption 3 exempts from disclosure information that is protected by a separate 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." 5 U.S.C. § 552(b)(3). The "purpose of Exemption 3 [is] to assure that Congress, not the agency, makes the basic nondisclosure decision." *Ass'n of Retired R.R. Workers v. U.S. R.R. Retirement Bd.*, 830 F.2d 331, 336 (D.C. Cir. 1987). As such, "Exemption 3 presents considerations distinct and apart from the other eight exemptions," in that its "applicability depends less on the detailed factual contents of specific documents[.]" *Id.* Rather, courts evaluate whether an agency has properly invoked Exemption 3 using a two-prong test. *See CIA v. Sims*, 471 U.S. 159, 167-68 (1985). First, a court must determine whether the statute qualifies as an exempting statute under Exemption 3; second a court must decide whether the withheld material falls within the scope of the exempting statue. *See id.*

Here, the FBI invoked Exemption 3 on its own behalf and on behalf of the CIA to withhold information concerning intelligence sources and methods pursuant to Section 102A(i)(l) of the National Security Act of 1947, as amended by the Intelligence Reform and Terrorism Presentation Act of 2004, 50 U.S.C. § 3024(i)(l). Seidel Decl. ¶ 21; Blaine Decl. ¶ 20. The statute authorizes members of the Intelligence Community, including the FBI and CIA, under the direction of the Director of National Intelligence, to "protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 3024(i)(l); *see also* Seidel Decl. ¶¶ 21-23; Blaine Decl. ¶¶ 19-20. The D.C. Circuit has long recognized the National Security Act as an exempting statute under Exemption 3. *See Am. Civ. Liberties Union*, 628 F.3d at 619 (citing prior holding that Section 102A(i)(l) qualifies as an Exemption 3 statute); *see also Brick v. U.S. DOJ*, 358 F. Supp. 3d 37,

47-48 (D.D.C. 2019) (citing *Sims*, 471 U.S. at 167; *DiBacco v. U.S. Army*, 795 F.3d 178, 197 (D.C. Cir 2015)). The FBI has satisfied the first prong of the *Sims* inquiry.

The Seidel and Blaine declarations demonstrate the FBI likewise satisfies the second prong of the *Sims* inquiry. In the context of the National Security Act, the D.C. Circuit has interpreted the second prong of the *Sims* test "broadly," holding that "an agency may withhold information" if it demonstrates the information "'relates to intelligence sources and methods[]' or 'can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods[.]'" *Judicial Watch, Inc. v. U.S. Dep't of State*, 373 F. Supp. 3d 142, 148 (D.D.C. 2019) (quoting *Larson*, 565 F.3d at 865 and *Halperin v. CIA*, 629 F.2d 144, 147 (D.C. Cir. 1980)). An agency's "burden is a light one," as courts have "'consistently deferred to executive affidavits predicting harm to national security, and have found it unwise to undertake searching judicial review.'" *Am. Civil Liberties Union*, 628 F.3d at 624 (quoting *Ctr. for Nat'l Sec. Studies*, 331 F.3d at 927).

The Seidel declaration explains that the information withheld pursuant to Exemption 3 would reveal intelligence sources and methods used across the Intelligence Community and thus falls within the scope of the National Security Act. Seidel Decl. ¶¶ 21-24. The Blaine declaration similarly explains that the National Security Act applies to all of the CIA information protected by Exemption 1 because disclosure of the information "would tend to reveal information that concerns intelligence sources and methods." Blaine Decl. ¶ 20. Accordingly, because the withheld information "relates to intelligence sources and methods" or "can reasonably be expected to lead to unauthorized disclosure intelligence sources and methods," *Judicial Watch*, 373 F. Supp. 3d at 148 (quotations omitted), the FBI properly withheld the information under Exemption 3.

C. Portions of the Records are Exempt From Disclosure Pursuant to Exemption 5

The FBI properly invoked Exemption 5 to protect from disclosure internal draft documents consisting of investigative handwritten interview notes attached to the responsive FD-302 interview reports. Seidel Decl. ¶¶ 30-31. FOIA Exemption 5 exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." 5 U.S.C. § 552(b)(5). Thus, as a threshold matter, to invoke the exemption, a record must be of the type intended to be covered by the phrase "inter-agency or intra-agency memorandums." *Id.* Here, the Seidel declaration confirms the handwritten interview notes were taken by FBI Special Agents and "shared intra-agency[.]" Seidel Decl. ¶ 31. As such, all information withheld pursuant to Exemption 5 satisfies the threshold requirement of the exemption. *See Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001) (stating that the "source [of the withheld information] must be a Government agency").

Exemption 5 applies to records that would normally be protected from disclosure in civil discovery. *See Burka v. Dep't of Health & Human Servs.*, 87 F.3d 508, 516 (D.C. Cir. 1996). Among the privileges encompassed by Exemption 5 is the deliberative process privilege. *Id.* The deliberative process privilege applies to "decisionmaking of executive officials generally," and protects documents containing deliberations that are part of the process by which government decisions are formulated. *In re Sealed Case*, 121 F.3d 729, 737, 745 (D.C. Cir. 1997). The purpose of the privilege is to "prevent injury to the quality of agency decisions" by, among other things, "avoid[ing] public confusion that may result from disclosure of rationales that were not ultimately grounds for agency action." *Thelen v. U.S. DOJ*, 169 F. Supp. 3d 128, 138 (D.D.C. 2016) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975)) (citing *Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982)).

To fall within the scope of the deliberative process privilege, a document must be both predecisional and deliberative. *Coastal States Gas Corp. v. U.S. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was "generated before the agency's final decision on the matter." *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 786 (2021). "To establish that a document is predecisional, the agency need not point to an agency final decision, but merely establish what deliberative process is involved, and the role that the documents at issue played in that process." *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 35 (D.D.C. 2000) (citing *Formaldehyde Inst. v. HHS*, 889 F.2d 1118, 1223 (D.C. Cir. 1989)).

A document is "deliberative" if it was "prepared to help the agency formulate its position." *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786. The privilege therefore applies broadly to "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp.*, 617 F.2d at 866. Further, Exemption 5 applies if "disclosure of even purely factual material would reveal an agency's decision-making process." *Russell*, 682 F.2d at 1048 (citation omitted).

The handwritten interview notes attached to the responsive FD-302s consist of the shorthand notes of Special Agents taken during the verbal interviews of third-party witnesses. Seidel Decl. ¶ 30. The interview notes contain information conveyed by a third-party witness the Special Agent notetaker determined warranted noting for purposes of further analysis and consideration, as well as the Special Agent's "thoughts, ideas, impressions and interpretations." *Id.* The Special Agent then uses the interview notes to prepare the official FD-302, which is the form the FBI uses to record information obtained through witness interviews. *Id.* ¶¶ 15, 30. The

contents of the handwritten interview notes are "fleshed out and distilled during the editorial process for the creation of the official FD-302" and "may not reflect the entire scope of information covered during the interview." *Id.* ¶ 30. Content not appearing in the handwritten interview notes may be added to the official FD-302 during the editorial process. *Id.* Conversely, there may be information, thoughts, impressions, and interpretations that appear in the handwritten interview notes that do not appear in the official FD-302 because it was distilled or the Special Agent ultimately concluded during the editorial process that it was not pertinent to the investigation. *Id.*

In essence, the handwritten interview notes are drafts documents subject to change that precede the creation and finalization of the official FD-302 interview reports. *See* Seidel Decl. ¶¶ 30-31; *see also U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786 ("[a] draft is, by definition, a preliminary version of a piece of writing subject to feedback and change."). As the Supreme Court recently explained, courts must evaluate draft documents for purposes of application of the deliberative process privilege "in the context of the administrative process which generated them[,]" and "consider whether the agency treats the document as its final view on the matter." *U.S. Fish & Wildlife Serv.*, 141 S. Ct. at 786 (citations omitted). "[A] document that leaves agency decisionmakers free to change their minds does not reflect the agency's final decision" and thus are properly characterized as deliberative. *Id.* (quotation omitted).

Here, the FBI views the handwritten interview notes as preliminary, non-final documents that serve as the basis for the official FD-302 interview report. Seidel Decl. ¶¶ 15, 30-31. As discussed above, the contents of the handwritten interview notes are not, necessarily, fully reflected in the official FD-302s because Special Agents may, during the editorial process, add information to the FD-302s not contained in the handwritten notes or flush out noted information to provide a more fulsome accounting. *See id.* ¶ 30. Conversely, Special Agents may distill noted

information to provide a more succint accounting or ultimately decide that certain initial thoughts, impressions, and interpretations are not pertinent to the investigation and thus do not warrant inclusion in the official FD-302 interview report. *See id*. Given that the FD-302 interview reports—not the underlying handwritten interview notes—serve as the official record of witness interviews, there is no question that the handwritten interview notes attached to the FD-302s are draft documents properly characterized as predecisional and deliberative.

Furthermore, the portions of the handwritten interview notes containing the initial thoughts, impressions, and interpretations of the Special Agent notetaker are also unquestionably "deliberative" because they "reflect the personal opinions of the [Special Agent notetaker] rather than the [final position] of the agency." *Coastal States Gas Corp.*, 617 F.2d at 866.

Factual information contained within the handwritten interview notes is also properly characterized as "deliberative" because it reveals the FBI's deliberative process in preparing and finalizing the FD-302s. As explained above, the interview notes reflect the Special Agent notetaker's determination regarding which facts conveyed during the interview warranted notation and, of those facts, which facts should be included in the official FD-302 interview report and whether the facts selected for inclusion should be flushed out or distilled. *See* Seidel Decl. ¶ 30. The handwritten interview notes thus "reflect an 'exercise of judgment as to what issues are most relevant[,]'" *Hardy v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 243 F. Supp. 3d 155, 170 (D.D.C. 2017) (quoting *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 641 F.3d 504, 513-14 (D.C. Cir. 2011)), for inclusion in the official FD-302 interview reports. Disclosure of the factual information contained in the interview notes would, therefore, expose the FBI's predecisional and deliberative decision-making process with respect to preparation of the official FD-302 interview reports. It is "[f]or this reason [that] interview notes and summaries are routinely

found to be subject to Exemption 5." *Id.* at 169 (collecting cases); *see also Huddleston v. FBI*, No. 4:20-cv-00447, 2022 WL 4593084 at *18 (E.D. Tex. 2022); *Abramyan v. U.S. Dep't of Homeland Sec.*, 6 F. Supp. 3d 57, 66-67 (D.D.C. 2013); *Phillips v. Immigr. & Customs Enf't*, 385 F. Supp. 2d 296, 303 (S.D.N.Y. 2005).

Special Agents "rely heavily on individual assistance through interview" and "must have the freedom to take notes freely and quickly without fear of release to the general public causing an opportunity to distort and/or misconstrue the words the [S]pecial [A]gent has penned." Seidel Decl. ¶ 31. Accordingly, disclosure of the predecisional and deliberative handwritten interview notes would result in the following foreseeable harm. Disclosure "would have a chilling effect on [S]pecial [A]gents' willingness to document their thoughts, impressions, interpretations, and in some instances, investigative strategies, which is imperative to their ability to prepare the official FD-302 interview report memorializing the interview." *Id.* "Such a result would lead to FD-302 reports that are less comprehensive and thus less helpful to the FBI's investigative process." *Id.* Disclosure of the handwritten interview notes would also reveal the Special Agents' "internal deliberations[,]" including the "sorting [of] a multitude of ideas and, at times, investigative strategies considered at the time of the interview, but later determined not relevant or []effective[,]" which could result in "self-censorship" thereby degrading the quality of agency decisions by depriving decisionmakers "of fully explored options developed from robust debate" and analysis. *Id.* ¶¶ 28, 31. Finally, disclosure "would also create public confusion as it will reveal information noted in the handwritten interview notes that [S]pecial [A]gents later determined was not necessary for inclusion" in the official FD-302 interview report. *Id.* ¶ 31.

Accordingly, the FBI properly invoked Exemption 5 to withhold the predecisional and deliberative handwritten interview notes attached to the responsive FD-302 interview reports.

D. Portions of the Records are Exempt From Disclosure Pursuant to Exemption 6 and Exemption 7(C)

FOIA Exemptions 6 and 7(C) protect the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 7(C) is the law enforcement counterpart to Exemption 6 and protects from disclosure "law enforcement records or information" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." *Id.* § 552(b)(7)(C).

Both Exemptions 6 and 7(C) "require agencies and reviewing courts to 'balance the privacy interests that would be compromised by disclosure against the public interest in the release of the requested information.'" *Braga v. FBI*, 910 F. Supp. 2d 258, 266 (D.D.C. 2012) (quoting *Beck v. U.S. DOJ*, 997 F.2d 1489, 1491 (D.C. Cir. 1993)). "The privacy interest at stake belongs to the individual, not the government agency, . . . and 'individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity[.]'" *Thompson v. U.S. DOJ*, 851 F. Supp. 2d 89, 99 (D.D.C. 2012) (quoting *Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984)) (citing *U.S. DOJ v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 763-65 (1989)). The D.C. Circuit has held "categorically that, unless access to the names . . . of private individuals appearing in files within the ambit of Exemption 7(C) is necessary in order to confirm or refute compelling evidence that the agency is engaged in illegal activity, such information is exempt from disclosure." *SafeCard Servs.*, 926 F.2d at 1206.

On the other side of the inquiry, the "only relevant 'public interest in disclosure' to be weighed in this balance is the extent to which disclosure would serve 'the core purpose of . . . FOIA,' which is 'contribut[ing] significantly to public understanding *of the operations or activities*

of the government.'" *Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994) (quoting *Reps. Comm.*, 489 U.S. at 775); *see also Kishore v. U.S. DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008). "This inquiry, moreover, should focus not on . . . general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker*, 349 F.3d at 661 (citing *King*, 830 F.2d at 234). "It is a FOIA requester's obligation to articulate a public interest sufficient to outweigh an individual's privacy interest, and the public interest must be significant." *Thompson*, 851 F. Supp. 2d at 99 (citing *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004)).

Although Exemptions 6 and 7(C) both require agencies and reviewing courts to undertake the same weighing of interests, the balance under Exemption 7(C) "tilts more strongly towards nondisclosure" because its "privacy language is broader than the comparable language in Exemption 6." *Bartko v. U.S. DOJ*, 79 F. Supp. 3d 167, 172 (D.D.C. 2015) (quoting *Reps. Comm.*, 489 U.S. at 756); *compare* 5 U.S.C. § 552(b)(6) (protecting from disclosure information which "*would* constitute a *clearly unwarranted* invasion of personal privacy" (emphasis added)), *with* 5 U.S.C. § 552(b)(7)(C) (protecting from disclosure information that "*could reasonably be expected to* constitute an unwarranted invasion of personal privacy" (emphasis added)). These phrasing differences reflect Congress's choice to provide "greater protection" to law enforcement materials than to "personnel, medical, and other similar files." *Bartko*, 79 F. Supp. 3d at 172 (citing *Reps. Comm.*, 489 U.S. at 756); *Martin v. U.S. DOJ*, 488 F.3d 446, 456 (D.C. Cir 2007) ("The Supreme Court has observed that the statutory privacy right protected by Exemption 7(C) is not so limited as others." (citing *Reps. Comm.*, 489 U.S. at 762)). Thus, Exemption 7(C) "establishes a lower bar for withholding material [than Exemption 6]." *Am. Civil Liberties Union*, 655 F.3d 1, 6 (D.C. Cir. 2011) (citation omitted).

Here, the FBI on its own behalf and on behalf of the State Department invoked Exemption 6 in conjunction with Exemption 7(C) to withhold the names and identifying information[3] of five categories of individuals: (1) FBI Special Agents and professional staff; (2) personnel from non-FBI federal agencies, including State Department personnel; (3) third parties merely mentioned in the FD-302 interview reports and attachments, including identifying information of a foreign government official and other foreign nationals; (4) persons of investigative interest; and (5) local law enforcement personnel. *See* Seidel Decl. ¶¶ 37-43; Kootz Decl. ¶¶ 31-33. The FBI also invoked Exemption 6 on behalf of the CIA to withhold the names and personally identifying information of "individuals who provided significant assistance to CIA personnel in response to the [Benghazi] attack[s]." Blaine Decl. ¶ 23.

1. FBI Special Agents and Professional Staff

The FBI invoked Exemptions 6 and 7(C) to protect the names and identifying information of FBI Special Agents and professional staff "responsible for conducting, supervising, and maintaining" the investigation into the Benghazi attacks. Seidel Decl. ¶ 37. In assessing whether there is a privacy interest in this information, the FBI determined that disclosure may "seriously prejudice" the Special Agents' "effectiveness in conducting other investigations or performing their day-to-day work." *Id.* ¶ 38. Disclosure may also "trigger hostility" toward a particular Special Agent because persons targeted by the investigation and/or persons sympathetic to those targeted, "could seek to inflict violence" or seek other types of "revenge" on a special agent based on his or her participate in the investigation. *Id.* The same holds true for professional staff. *See id.* ¶ 39. Additionally, given the fact that professional staff are in "positions of access to

[3] Personally identifying information includes "dates of birth, places of birth, social security numbers, work addresses, [] work numbers[,]" Seidel Decl. ¶ 34 n.3, as well as cell phone numbers and email addresses, Kootz Decl. ¶ 32.

information regarding" the investigation, disclosure could subject professional staff to "harassing inquiries" for information about the investigation. For these reasons, the FBI determined that its Special Agents and professional staff "maintain substantial privacy interests in not having their identities disclosed." *Id.*

On the public interest side of the balance, the FBI determined that "there is no public interest served by disclosing" the names and identifying information of its Special Agents and professional staff because "their identities would not, themselves, significantly increase the public's understanding of the FBI's operations and activities." *Id.* ¶¶ 38-39.

As this Court recently noted, "[r]edaction of the names of federal law enforcement officers and support personnel under similar circumstances has been routinely upheld." *Braun v. United States Postal Serv.*, No. 18-cv-2914 (EGS), 2022 WL 602445, at *5 (D.D.C. Mar. 1, 2022) (citing *Pray v. U.S. DOJ*, 902 F. Supp. 1, 3 (D.D.C. 1995), *aff'd in relevant part*, 1996 WL 734142 (D.C. Cir. Nov. 20, 1996); *Lesar v. U.S. DOJ*, 636 F.2d 472, 487 (D.C. Cir. 1980)); *see also Dalal v. U.S. DOJ*, No. 16-cv-1040 (TJK), 2022 WL 17092863, at *21 (D.D.C. Nov. 21, 2022) (observing that "courts have repeatedly found that it is proper to withhold names and other identifying information about law-enforcement officers and government officials under Exemption 7(C)" (collecting cases)). Because the Special Agents and professional staff have a substantial privacy interest and release of their identifying information would not further enlightened the public about the FBI's performance of its duties, the FBI properly withheld that information under Exemptions 6 and 7(C) as a clearly unwarranted invasion of personal privacy.

2. Personnel from Non-FBI Federal Agencies

The FBI invoked Exemptions 6 and 7(C) to withhold the names and identifying information of personnel from non-FBI federal government agencies who provided information to or otherwise

assisted the FBI in the investigation of the Benghazi attacks. Seidel Decl. ¶ 40. The FBI also invoked Exemptions 6 and 7(C) on behalf of the State Department to protect the names and identifying information of State Department personnel. *See* Kootz Decl. ¶ 32. In so doing, the FBI determined that the "rationale for protecting the identities" of government employees other than the FBI's Special Agents and professional staff "is the same . . . rationale for protecting the identities of FBI employees[:]" disclosure that these individuals provided assistance to the FBI "would seriously impair their effectiveness in assisting or participating in future FBI investigations" and could "trigger hostility towards them." Seidel Decl. ¶ 40. Similarly, the State Department determined that releasing the identities of its personnel and other federal government officials could "reasonably subject them to harassment, intimidation, unwanted attention, and/or unsolicited communications." Kootz Decl. ¶ 32. As such, both agencies determined that these individuals maintain substantial privacy interests in not having their identities disclosed in the context of the FBI's Benghazi investigation. Seidel Decl. ¶ 40; Kootz Decl. ¶ 32.

Both the FBI and the State Department also determined there is no public interest in the disclosure of the identities of personnel from the State Department and other federal agencies who assisted the FBI in its investigation because the information would not shed light on the operations and activities of the FBI, the State Department, and other federal agencies. Seidel Decl. ¶ 40; Kootz Decl. ¶ 32. Accordingly, the FBI properly withheld this information under Exemptions 6 and 7(C). *See Sellers v. U.S. DOJ*, 684 F. Supp. 2d 149, 160 (D.D.C. 2010) ("The D.C. Circuit has consistently held that Exemption 7(C) protects the privacy interests of all persons mentioned in law enforcement records, including investigators, suspects, witnesses, and informants." (quoting *Fischer v. U.S. DOJ*, 596 F. Supp. 2d 34, 47 (D.D.C. 2009); *Schrecker*, 349 F.3d at 661; *Nation Magazine*, 71 F.3d at 894)); *Banks v. U.S. DOJ*, 757 F. Supp. 2d 13, 19 (D.D.C. 2010) (same).

3. Third Parties Merely Mentioned in the Responsive Records

The FBI invoked Exemptions 6 and 7(C) on its behalf and on behalf of the State Department to withhold names and identifying information of third parties merely mentioned in the FD-302 interview reports and attachments, including the identifying information of a foreign government official and other foreign nationals. Seidel Decl. ¶ 41; Kootz Decl. ¶ 32. The Seidel declaration explains that these individuals "were tangentially mentioned in conjunction with FBI investigative efforts" and are "not of investigative interest to the FBI." Seidel Decl. ¶ 41. The individuals mentioned in the records because they aided the CIA in response to the Benghazi attacks also arguably fall within the FBI's invocation of Exemption 7(C) for this category of individuals. *See* Blaine Decl. ¶¶ 23-24.

In conducting the balancing test, the FBI found these individuals had a substantial privacy interest because the "extremely negative connotation" association with a FBI investigation carries would subject them to "possible harassment or criticism" and the "focus of derogatory inferences and suspicion[.]" *Id.* The State Department concurred with this determination, finding that releasing the names of these individuals would "expose their association with the U.S. Government, which would put them at an increased risk of harm." Kootz Decl. ¶ 32; *see also* Blaine Decl. ¶ 23. Indeed, as the D.C. Circuit has recognized, "[i]t is surely beyond dispute that the mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation." *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (citation omitted); *see also Cong. News Syndicate v. U.S. DOJ*, 438 F. Supp. 538, 541 (D.D.C. 1977) (stating that "an individual whose name surfaces in connection with an investigation may, without more, become the subject of rumor and innuendo"). For this reason, courts routinely uphold agencies' decisions to withhold identifying information of third parties merely mentioned

in law enforcement records. *See, e.g.*, *Negley v. FBI*, 825 F. Supp. 2d 63, 70-73 (D.D.C. 2011), *aff'd* 2012 WL 1155734 (D.C. Cir. Mar. 28, 2012); *McGehee v. U.S. DOJ*, 800 F. Supp. 2d 220, 233-34 (D.D.C. 2011).

On the public interest side, "third-party identifying information is 'the type . . . [that] is simply not very probative of an agency's behavior or performance.'" *Woods v. U.S. DOJ*, 968 F. Supp. 2d 115, 122 (D.D.C. 2013) (quoting *Mays v. DEA*, 234 F.3d 1324, 1327 (D.C. Cir. 2000)). In fact, the FBI concluded disclosing the names and identifying information of the third parties merely mentioned in the responsive records would "not significantly increase the public's understanding of the operations and activities of the FBI" and, as a result, there was no "public interest that would override" these individuals' substantial privacy interests. Seidel Decl. ¶ 41; *see also* Kootz Decl. ¶ 33; Blaine Decl. ¶ 24. The FBI, therefore, properly withheld this information under Exemptions 6 and 7(C).

4. Persons of Investigative Interest

The FBI invoked Exemptions 6 and 7(C) to protect the names and identifying information of third parties who are of "investigative interest to the FBI." Seidel Dec. ¶ 42. The FBI determined that these individuals have substantial privacy interests because "[b]eing identified as a subject of FBI investigative interest carries a strong negative connotation and [] stigma, whether or not these individuals ever committed criminal acts." *Id.* As a result, disclosure of the identities of these individuals could "subject them to harassment or embarrassment, as well as undue public attention." *Id.* Disclosure could also "result in professional and social repercussions, due to resulting negative stigmas." *Id.* For this reason, courts have long recognized that "third parties who are of investigative interest to the FBI" "have a significant privacy, as well as safety, interest in not having their identities disclosed[.]" *Tamayo v. U.S. DOJ*, 932 F. Supp. 342, 344 (D.D.C.

1996); *see also Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (recognizing "individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity," and "[p]rotection of this privacy interest is a primary purpose of Exemption 7(C)"); *SafeCard Servs.*, 926 F.2d at 1205 (quoting *Bast v. U.S. DOJ*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)) ("Exemption 7(C) 'affords broad[] privacy rights to suspects.'").

As for the public interest in this information, the FBI determined that the substantial privacy interests outweighed any public interest because disclosure "would not significantly increase the public's understanding of the FBI's performance of its mission." Seidel Decl. ¶ 42. Accordingly, the FBI properly invoked Exemptions 6 and 7(C) to withhold this information. *See Tamayo*, 932 F. Supp. at 344 (protecting from disclosure the identities of "third parties of investigative interest to the FBI, DEA, and the Customs Service" under Exemption 7(C)).

5. Local Law Enforcement Personnel

The FBI invoked Exemptions 6 and 7(C) to withhold the names and identifying information of "local law enforcement employees who were acting in their official capacities and aided the FBI" in its investigation of the Benghazi attacks. Seidel Decl. ¶ 43. As with FBI's Special Agents and professional staff, the FBI determined the local law enforcement employees have substantial privacy interests because disclosure of their names and identifying information could subject them to "unnecessary and unwelcome harassment" and "could cause them to be targeted for reprisal." *Id.* The FBI further determined that releasing this information would "serve no public interest because it would not shed light on the operations and activities of the FBI." *Id.* The FBI thus properly withheld this information pursuant to Exemptions 6 and 7(C). *See Dalal*, 2022 WL 17092863, at 21 (upholding FBI's invocation of Exemption 7(C) to protect from disclosure the names and identifying information of local law enforcement personnel); *Lasko v. U.S. DOJ*, 684

F. Supp. 2d 120, 133 (D.D.C. 2010) (upholding the protection of the identities of DEA agents and local enforcement officers); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93-94 (D.D.C. 2010) (upholding FBI's withholding of "information likely to identify . . . state and local law enforcement personnel"); *see also Wilson v. DEA*, 414 F. Supp. 2d 5, 14 (D.D.C. 2006) ("Deletion of the names of federal, state and local law enforcement personnel under similar circumstances is routinely upheld.").

6. Individuals who Provided Assistance to the CIA

The FBI invoked Exemption 6 on behalf of the CIA to protect the names and identifying information of individuals who provided significant assistance to CIA personnel in response to the Benghazi attacks. Blaine Decl. ¶ 23. In considering these individuals privacy's interests, the CIA determined that disclosure of their identifying information "could subject these individuals to harassment and hostility, and could cause certain organizations or foreign governments to take retaliatory action" against them or their family and friends. *Id.* Further, disclosure of this information "places in jeopardy other individuals with whom these individuals had contact during the relevant time period." *Id.*

In contrast, the CIA found that "there is no public interest to be served by disclosing" the "identities of these individuals, or information that would allow them to be identified" because the information "w[ould] not shed light on the conduct of the Agency's activities or operations beyond what [has] already be[en] disclosed to the public." *Id.* ¶ 24. Disclosure would thus "constitute a clearly unwarranted invasion of these individuals' personal privacy." *Id.* Given the lack of public interest in this information, the withheld information is exempt under Exemption 6.

E. Portions of the Records are Exempt From Disclosure Pursuant to Exemption 7(E)

Exemption 7(E) authorizes withholding of information compiled for law enforcement purposes if release of the information "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." 5 U.S.C. § 552(b)(7)(E). Congress intended that Exemption 7(E) protect law enforcement techniques and procedures from disclosure, as well as techniques and procedures used in all manner of investigations after crimes or other incidents have occurred. *See Henderson v. Off. of the Dir. of Nat'l Intel.*, 151 F. Supp. 3d 170, 176 (D.D.C. 2016) (citing 132 Cong. Rec. H9466 (daily ed. Oct. 8, 1986)). The range of "law enforcement purposes" covered by Exemption 7(E) includes not only traditional criminal law enforcement duties, but also proactive steps taken by the Government designed to maintain national security. *See Ctr. for Nat'l Sec. Studies*, 331 F.3d at 926. Further, "the exemption is written in broad and general terms" to avoid assisting lawbreakers. *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1193 (D.C. Cir. 2009).

"There is some disagreement in the courts as to the proper reading of Exemption 7(E)"—specifically, whether the "risk circumvention of the law" requirement that "clearly applies to records containing guidelines . . . also applies to records containing 'techniques and procedures.'" *Citizens for Resp. & Ethics in Wash. v. U.S. DOJ*, 160 F. Supp. 3d 226, 241-42 (D.D.C. 2016) (quoting 5 U.S.C. § 552(b)(7)(E)). However, the D.C. Circuit has stressed that the risk-of-circumvention requirement sets a "low bar." *Blackwell*, 646 F.3d at 42; *see also Mayer Brown*, 562 F.3d at 1193. The agency need not make a "highly specific . . . showing" of risk-of-circumvention of the law, but only "demonstrate logically how the release of the requested information might create" such a risk. *Blackwell*, 646 F.3d at 42 (citation omitted). Nor must the agency demonstrate "an actual or certain risk or circumvention" of the law; rather the agency need only show "the chance of a reasonably expected risk." *Mayer Brown*, 562 F.3d at 1193.

The FBI invoked Exemption 7(E) on its own behalf and on behalf of the State Department to protect four categories of non-public information: (1) sensitive investigative file numbers; (2) the focus of the investigation; (3) surveillance techniques; and (4) investigative techniques related the protection of the U.S. diplomatic mission abroad. *See* Seidel Decl. ¶¶ 44-54; Kootz Decl. ¶ 34.

1. Sensitive Investigative File Numbers

The FBI's investigative "file numbering convention identifies the investigative interest or priority" given to its investigations. Seidel Decl. ¶ 47. The file numbers contain three parts. The first part "consist of FBI file classification numbers which indicate the types of investigative/intelligence gathering programs to which the[] files pertain." *Id.* Releasing this information would reveal the "types of investigative techniques and procedures available to [the] FBI" and "non-public facets of the FBI's investigative strategies" which in turn would "provide criminals and foreign adversaries the ability to discern the types of highly sensitive investigative strategies the FBI is pursing whenever such file classification numbers are present . . . in FBI investigative records." *Id.* The second part contains "office of origin codes," the disclosure of which "would provide critical information about where and how the FBI detected particular criminal behaviors or national security threats" and would reveal investigative and intelligence gathering initiatives in varying areas of FBI investigative responsibility. *Id.* ¶ 48. The third part "consists of the numbers given to the unique investigative initiatives the[] files were created to memorialize." *Id.* ¶ 49. Disclosure of these numbers would "provide criminals and foreign adversaries with a tracking mechanism by which they can place particular files/investigations within the context of larger FBI investigative efforts." *Id.* "Continued release" of these numbers would "provide criminals with an idea of how FBI investigations may be interrelated and when, why, and how the FBI pursued different investigative strategies." *Id.* Such information could be

used to evaluate, among other things, "how the FBI responds to different investigative circumstances[.]" *Id.*

Because "repeatedly releasing" investigative file numbers would allow "criminals and foreign adversaries to obtain an exceptional understanding of the body of investigative intelligence available to the FBI; and where, who, what and how it is investigating certain detected activities[,]" disclosure would risk enabling these groups to circumvent the law by "predict[ing] FBI investigations and structure[ing] their behavior to avoid detection and disruption[.]" *Id.* ¶ 50. "Because the FBI has explained how criminals could use" the sensitive investigative file numbers "to avoid detection, the FBI has shown a risk of circumvention from disclosure" that justifies the invocation of Exemption 7(E). *Callimachi v. FBI*, 583 F. Supp. 3d 70, 89-90 (D.D.C. 2022).

2. Focus of Specific Investigation

The FBI withheld information that would reveal the focuses of its Benghazi investigation. Seidel Decl. ¶ 51. Releasing this information would alert "investigative targets" to the "FBI's interest in their activities, allowing them to take active measures to conceal" or "destroy evidence or modify their behavior to avoid future investigative scrutiny." *Id.* Disclosure would also "provide criminal elements, terrorist, and/or foreign adversaries a preview of how the FBI will respond to similar investigative situations, allowing them to preemptively deploy countermeasures to disrupt FBI investigative efforts of their own, unrelated activities." *Id.* Further, disclosure of the focuses of the Benghazi investigation would "reveal key information about FBI intelligence gathering capabilities[,]" which "could enable terrorists to discover non-public details about FBI intelligence/evidence gathering methods, and help them determine how they might modify their operational security to deprive the FBI of such critical intelligence/evidence." *Id.* ¶ 52.

Disclosing the focuses of specific counterterrorism investigations, such as the investigation into the Benghazi attacks, could, therefore, "enable criminals to circumvent the law" by, among

other things, "thwart[ing] FBI efforts to investigate their activities; stunt[ing] the FBI's broader strategies for pursuing interrelated investigations;" including its intelligence gathering strategies and capabilities. *Id.* ¶ 53. Accordingly, the FBI properly invoked Exemption 7(E) to protect from disclosure the focuses of its investigation into the Benghazi attacks. *See Reps. Comm. for Freedom of Press v. FBI*, No. 17-cv-1701 (RC), 2022 WL 13840088, at *8 (D.D.C. Oct. 21, 2022) (upholding FBI's invocation of Exemption 7(E) to protect the "points of focus in [] particular investigations" because releasing such information "would necessarily reveal [the FBI's] techniques and procedures" and noting that "courts in this District routinely allow the FBI to protect this kind of information"); *see also Callimachi*, 583 F. Supp. 3d at 92 (finding the FBI properly invoked Exemption 7(E) to protect information about the focus of the FBI's investigation).

3. Surveillance Techniques

The FBI invoked Exemption 7(E) to protect from disclosure "information concerning the targets, locations, and monitoring utilized in surveillance operations" utilized by the agency in investigating the Benghazi attacks. Seidel Decl. ¶ 54. The techniques the FBI used "to conduct these surveillance operations are the same techniques" the agency currently uses in criminal and national security investigations. *Id.*

Although it is "publicly known that the FBI and other law enforcement agencies engage in different types of surveillance in investigations[,]" it is not difficult to comprehend that disclosing non-public details about the FBI's surveillance techniques could risk circumvention of the law. As the Seidel declaration explains, releasing "non-public details about who, when, how, and under what circumstances the FBI conducts surveillance would allow current and future subjects of FBI investigations and other potential criminals to develop and utilize countermeasures to defeat or avoid different types of surveillance operations, []rendering the techniques useless to the FBI and

other law enforcement agencies." Seidel Decl. ¶ 54. "This is especially true because the success of investigative surveillance hinges" on the ability to remain undetected. *Id.* Given that releasing the "non-public details about the FBI's methodology for conducting surveillance could potentially jeopardize the FBI's ability to operate surveillance covertly" and thus "risks circumvention of the law[,]" the FBI properly withheld information about its surveillance techniques pursuant to Exemption 7(E). *See Showing Animals Respect & Kindness v. U.S. Dep't of Interior*, 730 F. Supp. 2d 180, 199-200 (D.D.C. 2010) (upholding the invocation of Exemption 7(E) to protect files revealing "specific details of surveillance techniques" because disclosure "could comprise [the agency's] ability to conduct future investigations").

4. Investigative Techniques Related to Protection of U.S. Diplomatic Mission

The FBI invoked Exemption 7(E) on behalf of the State Department to withhold information revealing investigative techniques related to the protection of the U.S. diplomatic mission abroad. Kootz Dec. ¶ 34. "These techniques[,"] which are not known to the public, "implicate operational security force protection concerns and the U.S. Government's ability to conduct relationships with and obtain information from foreign governments and foreign government services." *Id.*

Disclosure of this information "would effectively reveal the operational details of the security of the U.S. compound that protects the U.S. diplomatic mission from threats, thus risking the defeat of such security measures in the future." *Id.* Indeed, "individuals could harness this information to identify and exploit security vulnerabilities at U.S. Government compounds, risking the safety of U.S. Government employees." *Id.* Disclosure "could [also] allow individuals to interfere with ongoing and future investigations into attacks on U.S. Government compounds and personnel." *Id.* At bottom, release of the non-public details of these techniques "would nullify their effectiveness, risk[ing] future criminal and terrorist activity" and the safety of U.S.

Government compounds abroad. *Id.* Such a result would "make the U.S. Government more vulnerable, especially in the context of the continued and increased unrest in the Middle East," thereby risking the very circumvention of the law Exemption 7(E) was designed to protect. *Id.*; *see also Milner v. Dep't of Navy*, 562 U.S. 562, 582 (2011) (Alito, J. concurring) (observing that "terrorism prevention and national security measures . . . are vital to effective law enforcement efforts"). This information is, therefore, properly protected from disclosure under Exemption 7(E). *See, e.g. Bigwood v. U.S. Dep't of Defense*, 132 F. Supp. 3d 124, 153 (D.D.C. 2015) (adopting magistrate judge's recommendation to uphold DOD's invocation of Exemption 7(E) to protect information concerning Force Protection Conditions that set forth the measures to be taken in response to terrorist threats).

F. Portions of the Records are Exempt From Disclosure Pursuant to Exemption 7(F)

FOIA Exemption 7(F) authorizes the withholding of information compiled for law enforcement purposes if release of the information "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(F). "That language is very broad . . . . Disclosure need not *definitely* endanger life or physical safety; a reasonable expectation of endangerment suffices." *Pub. Emps. for Envtl. Responsibility v. U.S. Section, Int'l Boundary & Water Comm'n, U.S.-Mexico*, 740 F.3d 195, 205 (D.C. Cir. 2014). Exemption 7(F) is similar to Exemption 7(E) in that it provides an "absolute" exemption from disclosure, unlike Exemption 7(C), which requires balancing private interests against public interests. *Raulerson v. Ashcroft*, 271 F. Supp. 2d 17, 29 (D.D.C. 2002).

The FBI invoked Exemption 7(F) on behalf of the State Department to withhold details of threats against U.S. Government employees. Kootz Decl. ¶ 36. As the Kootz declaration explains, the State Department has determined that the "nature of the threats against these employees gives rise to a reasonable expectation that release" of the information would place the employees at risk.

Id. Details relating to foreign nationals employed by or associated with the U.S. Government were also withheld because identifying their association with the U.S. Government, the Benghazi Special Mission, or the investigation into the attacks "could expose them to threats to their lives or personal safety. *Id.* The FBI's withholding of this information pursuant to Exemption 7(F) is logical and should, therefore, be upheld. *Wolf*, 473 F.3d at 374-75.

IV. The FBI Has Produced All Reasonably Segregable Information

FOIA requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b)(9). A court may "rely on government affidavits that show with reasonable specificity why documents withheld pursuant to a valid exemption cannot be further segregated." *Juarez*, 518 F.3d at 61 (citation omitted). Here, the FBI determined after reviewing the responsive records that, with the exception of a reasonably detailed description of the types of responsive records and the functional category the records fall within, the disclosure of additional information could reasonably be expected to interfere with the agency's ongoing investigation of the Benghazi attacks and prospective prosecutions resulting from the investigation. Seidel Decl. ¶ 58; *see also id.* ¶¶ 10-20. The FBI has thus satisfied its segregability obligations under the FOIA. *See Sussman*, 494 F.3d at 1117.

CONCLUSION

For the foregoing reasons, the Court should grant Defendant FBI's renewed motion for summary judgment.

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