

NCS/IRO.¹ In addition, I refer the Court to the Scott A. Koch declaration,² as well as the Mary Ellen Cole declaration ("Cole Declaration"),³ the Supplemental Mary Ellen Cole declaration ("Supplemental Cole Decl."),⁴ and the Elizabeth Anne Culver declaration ("Culver Declaration").⁵

3. As NCS IRO and Records Validation Officer ("RVO"), I am authorized to assess the current, proper classification of CIA information, based on the classification criteria of the applicable Executive orders as well as all applicable CIA regulations. Through the exercise of my official duties, I am familiar with the facts in this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

4. In Part I, I will justify the CIA's withholdings for the Item 4 and Item 5 coordination documents. In Part II, I will justify the CIA's withholdings and the search the CIA conducted with respect to three names pertaining to

¹ Declaration of Ralph S. DiMaio (1:04-cv-00814-HHK, Document 109, filed 10/20/2008).

² Declaration of Scott A. Koch (1:04-cv-00814-HHK, Document 54-1, filed 10/30/2006).

³ Declaration of Mary Ellen Cole (1:04-cv-00814-HHK, Document 148, Exhibit 7, filed 8/23/2010).

⁴ Supplemental Declaration of Mary Ellen Cole (1:04-cv-00814-HHK, Document 157-1, filed 2/1/2011).

⁵ Declaration of Elizabeth Anne Culver (1:04-cv-00814-HHK, Document 169-1, filed 7/18/2011).

Item 5 of Plaintiffs' FOIA request.⁶ In Part III, I will address the status of all outstanding Item 5 referral documents.

I. ITEMS 4 & 5: COORDINATION DOCUMENTS

5. Information that originates with another agency, the disclosure of which would affect the interests or activities of such agency, is subject to either referral or coordination⁷ under § 3.6 of Executive Order 13526.⁸ For purposes of this section, I will address all Item 4 and Item 5 CIA-originated documents that required coordination with other agencies, in addition to justification for all CIA withholdings in the documents.

6. A total of one hundred sixty-seven (167) documents were subject to coordination for Item 4 because the information they contained would affect the interests or activities of one or more of the following federal entities: National Security Agency ("NSA"), United States Department of Defense ("DoD") and the United States

⁶ Plaintiff Roger Hall provided these names to the CIA in April 2011.

⁷ A "referral" occurs when the CIA possesses a document that originated with another agency. In such a case, the CIA transmits the document to the originating agency for a direct response to the requester. A "coordination" occurs when a CIA-originated document contains information the disclosure of which would affect the interests or activities of another agency, and the CIA contacts that agency to obtain guidance on whether to release or withhold the information. The CIA responds to the FOIA requester in a coordination.

⁸ On 29 December 2009, President Obama signed Executive Order 13526, which superseded Executive Order 12958, as amended, on 27 June 2010. See 75 Fed. Reg. 707 (Jan. 5, 2010).

Department of State ("DoS"). See Cole Decl., ¶55. In addition, a total of nineteen (19) documents were subject to coordination for Item 5 because the information they contained would affect the interests or activities of one or more of the following federal entities: the Defense Intelligence Agency ("DIA"), the National Security Council ("NSC"), NSA, DoD and DoS. See Supplemental Cole Decl., ¶5.

7. The CIA confirmed that each agency completed its review of the Item 4 and Item 5 coordination documents. Accordingly, for Item 4, the CIA is releasing two (2) documents in full and one hundred sixty-five (165) documents in part to Plaintiffs. For Item 5, the CIA is releasing nineteen (19) documents in part to Plaintiffs.⁹ These electronic copies are the only known documents that

⁹ As further set forth in the corresponding Vaughn index (Exhibit B), coordination document C00466067 is responsive to both items 4 and 5. Accordingly, the CIA is releasing one copy of C00466067 with one corresponding Vaughn index entry. Additionally, as noted in the Supplemental Cole Decl. (¶5), the CIA determined that document C00495762, which is responsive to Item 5 and was sent to another Government agency on 21 January 2011 for coordination, was also responsive to Item 4 of Plaintiffs' FOIA request. The CIA had withheld the document in full in response to Item 4, as noted in the Vaughn index filed on 23 August 2010 in this case, but, upon further review, the CIA determined that the document contained reasonably segregable information. See Supplemental Cole Decl., ¶5. Coordination of this document is now complete and the CIA is releasing it in part to Plaintiffs. See Exhibit B; see also Supplemental Cole Decl., ¶5.

the CIA could reasonably determine are responsive to the Court's Order.¹⁰

8. The purpose of the following section is to justify all CIA withholdings from the released in part Item 4 and Item 5 coordination documents. The other federal agencies that withheld information from the documents will justify their redactions in separate declarations submitted directly to the Court. The CIA provided Plaintiffs with the non-exempt portions of the Item 4 and Item 5 coordination documents by letter dated 30 November 2011. See Exhibit A.

A. APPLICABLE FOIA EXEMPTIONS

9. Attached as Exhibit B, and incorporated by reference herein, is a Vaughn index which contains a detailed description of the Item 4 and Item 5 documents which were subject to coordination with other federal agencies. The Vaughn index describes, to the extent possible in an unclassified manner, the withheld information as to each document, states the applicable FOIA exemptions, and explains why the applicable FOIA exemptions justify withholding information from these responsive documents. Due to the large number of documents, the

¹⁰ This body of responsive records includes certain documents with preexisting redactions and some information that is not clearly readable. However, these records are the documents responsive to the Court's Order. See also Cole Decl., ¶ 54.

Vaughn index contains additional detailed information to address the withholdings specific to each document. Thus, I will not address the withholdings in each document separately in this supplemental declaration. However, additional justification describing the CIA's withholdings in the Item 4 and Item 5 coordination documents, in addition to the Vaughn index, is set forth below.

i. FOIA Exemption (b)(1)

10. FOIA exemption (b)(1) provides that agencies need not disclose materials 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).

11. The authority to classify information is derived from a succession of Executive orders, the most recent of which is Executive Order 13526.¹¹ Consistent with Section 1.1(a) of Executive Order 13526, and in my capacity as NCS

¹¹ I have determined that in processing Plaintiffs' FOIA request, the CIA made proper classification decisions pursuant to Executive Order 12958, as amended, which was the Executive Order in effect at the time the classification decisions at issue were made. Executive Order 12958 was amended by Executive Order 13292, and all further citations to Executive Order 12958 in this declaration are to the Order as amended by Executive Order 13292. See Executive Order 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003); Executive Order 12958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 204 (West Supp. 2009). This declaration further attests that the information withheld by the CIA in this case pursuant to FOIA exemption (b)(1) remains currently and properly classified under Executive Order 13526.

IRO, I have determined that all of the CIA information withheld from the Item 4 and Item 5 coordination documents pursuant to FOIA exemption (b)(1) is currently and properly classified.

12. Section 6.1(i) of Executive Order 13526 defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form." Section 6.1(cc) of the Executive Order defines "national security" as the "national defense or foreign relations of the United States."¹²

13. Section 1.1(a) of the Executive Order provides that information may be originally classified under the terms of this Order only if all of the following conditions are met:

- (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 this order; and

¹² Executive Order 12958 provides identical definitions for the terms "classified national security information" or "classified information" and "national security." See Executive Order 12958, §§ 6.1(h), 6.1(y).

(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, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

Exec. Order 13526, § 1.1(a).¹³

14. *Original classification authority* - Section 1.3(a) of the Executive Order provides that the authority to classify information originally may be exercised only by the President and the Vice President; agency heads and officials designated by the President; and United States Government ("USG") officials delegated this authority pursuant to section 1.3(c). Section 1.3(b) of the Executive Order provides that original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL. Section 1.3(c)(2) provides that TOP SECRET original classification authority may be delegated only by the President; the Vice President; or an agency head or official designated pursuant to section 1.3(a)(2) of the Executive Order.

15. In accordance with section 1.3(a)(2), the President designated the Director of the CIA as an official

¹³ Identical language is also found in section 1.1(a) of Executive Order 12958.

who may classify information originally as TOP SECRET.¹⁴

Under a written delegation of authority pursuant to section 1.3(c)(2), I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification, declassification, and release decisions. With respect to the released in part Item 4 and Item 5 coordination documents from which the CIA withheld information pursuant to FOIA exemption (b)(1), I determined they contain information that is currently and properly classified as CONFIDENTIAL, SECRET or TOP SECRET by an original classification authority.

16. *U.S. Government information* - Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the USG.¹⁵

With respect to the released in part Item 4 and Item 5 coordination documents from which the CIA withheld information pursuant to FOIA exemption (b)(1), I determined the documents and the information contained therein are

¹⁴ Order of President, Original Classification Authority, 75 Fed. Reg. 735 (Jan. 5, 2010). This Order succeeded the prior Order of the President, Designation under Executive Order 12958, 70 Fed. Reg. 21,609 (Apr. 21, 2005), reprinted in 50 U.S.C.A. § 435 note at 226-27 (West Supp. 2009).

¹⁵ Executive Order 13526, § 1.1(a)(2). Identical language appears in section 1.1(a)(2) of Executive Order 12958.

owned by the USG, produced by the USG, or under the control of the USG.

17. *Categories in Section 1.4 of the Executive Order*
- Executive Order 13526 addresses classification of information relating to intelligence and national security. Section 1.4(b) provides that information shall be classified if it includes foreign government information. Section 1.4(c) provides that information shall be classified only when it includes, *inter alia*, information concerning "intelligence activities (including covert action), intelligence sources or methods, or cryptology." Moreover, section 1.4(d) provides that information may be classified if it concerns "foreign activities of the United States."¹⁶ Regarding the released in part Item 4 and Item 5 coordination documents from which the CIA withheld information pursuant to FOIA exemption (b)(1), I determined they contain information concerning the CIA's intelligence activities, sources, and methods, as well as information concerning the foreign activities of the United States and/or foreign government information. I further describe this information and its relation to the national security below. I will also demonstrate that the unauthorized

¹⁶ Executive Order 12958 likewise permits classification of information pertaining to these categories. See §§ 1.4(b), 1.4(c) and 1.4(d).

disclosure of this information could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of the Executive Order.

18. *Damage to the National Security* - Section 1.2(a) of Executive Order 13526 provides that information shall be classified at one of three levels if the unauthorized disclosure of the information reasonably could be expected to cause damage to the national security and the original classification authority is able to identify or describe the damage. Information shall be classified TOP SECRET if its unauthorized disclosure reasonably could be expected to result in *exceptionally grave damage* to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in *serious damage* to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in *damage* to the national security.¹⁷

19. Regarding the CONFIDENTIAL, SECRET and/or TOP SECRET information withheld in the Item 4 and Item 5 coordination documents pursuant to FOIA exemption (b)(1), I determined disclosure of this information reasonably could

¹⁷ Identical language regarding classification levels appears in section 1.2(a) of Executive Order 12958.

be expected to cause damage, serious damage or exceptionally grave damage to the national security. I further describe this classified information and its relation to foreign government information, CIA intelligence activities, sources, methods, and foreign activities below.

20. *Proper purpose* - With respect to the information the CIA has withheld pursuant to FOIA exemption (b)(1) relating to foreign government information, CIA intelligence activities, sources, methods, and foreign activities, I have determined that no information 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.¹⁸

21. *Proper classification* - I have determined that the CIA information relating to foreign government information, intelligence activities, sources, methods and foreign activities, described herein, has been classified in accordance with the substantive and procedural

¹⁸ See Executive Order 13526, § 1.7(a).

requirements of Executive Order 13526 and that this information is currently and properly classified.¹⁹

(a) The CIA Redacted Information that Would
Reveal CIA Intelligence Sources

22. The CIA withheld information in the coordination documents that would reveal identifying information about CIA sources, including intelligence liaison sources, such as name, date of birth, place of birth, occupation, place of residence, names of friends, names of relatives, marital status and/or information about various locations frequented by such sources. The disclosure of this information would significantly harm the national security by damaging the CIA's relationships with those who serve as CIA sources. The primary mission of the CIA is to gather intelligence from around the world that can be used by the President and other Government officials in making national security decisions. To do this, the CIA must often depend upon information that can only be gathered from knowledgeable clandestine human intelligence sources under an arrangement of lasting secrecy.

23. Notwithstanding the passage of time since these documents were created, the disclosure of the withheld

¹⁹ I have also determined that in processing Plaintiffs' FOIA request, the CIA made proper classification decisions pursuant to Executive Order 12958, which was the Executive Order in effect at the time the classification decisions at issue were made.

information would have the damaging effect of suggesting to the CIA's sources that the CIA is unable or unwilling to observe an agreement of secrecy over time. This perception could discourage sources from entering into any kind of relationship with the CIA, thus preventing the collection of information from these sources. Of course, intelligence sources can be expected to furnish information to, and cooperate with, the CIA only when they are confident that the CIA can and will do everything in its power to prevent the public disclosure of their cooperation, and that their cooperation will remain secret. The loss of such intelligence sources, and the accompanying loss of the critical intelligence that they provide, could seriously and adversely affect the national security of the United States.

24. In the cases of foreign nationals abroad who have cooperated with the CIA in intelligence-related activities, official confirmation of that cooperation could cause the target government to take retaliatory action against that person, or, if he or she is no longer alive, against surviving family and friends. More importantly, it places in realistic jeopardy every individual with whom the foreign national has had contact. Indiscretion with regard to a single source in the chain of intelligence sources can

ravage an entire spectrum of sources. The damage occasioned by the disclosure of a single source is thus incalculable.

25. These concerns are present even if the information at issue does not specifically identify the CIA source by name. In many cases, the very nature of the information that the source communicates necessarily tends to reveal the identity of the source because of the limited number of individuals with access to the information. Accordingly, special precautions are taken to protect a source's identity even if that source is not identified by name in a given document.

26. In sum, if the CIA were not able to protect the source revealing information at issue, sources could reasonably be expected to conclude that the CIA is unable to protect the confidentiality surrounding their affiliation with the CIA. They could conclude that cooperation with the United States entails the risk that, at some unknown later date, the United States will make an official acknowledgement of clandestine activity in that country and, thus, jeopardize their careers, families, or even lives. To betray such confidentiality would seriously damage the CIA's ability to retain present sources, recruit

new sources, and provide the best intelligence possible to the nation's policymakers.

(b) The CIA Redacted Information that Would
Reveal CIA Intelligence Methods

27. Generally speaking, intelligence methods are the means by which the CIA accomplishes its mission. Intelligence methods include the basic business practices and methodological "tools" used by the CIA to accomplish its mission. Significantly, the term "intelligence methods" is not limited to sophisticated techniques and electronic devices. "Intelligence methods" also include, *inter alia*, innocuous appearing facts such as where the CIA operates or has operated, the different types of "cover" used by CIA employees, and how long the CIA operated in a particular part of the world. Also, it should be emphasized that, in order to protect a particular intelligence method from disclosure, the CIA must protect the information produced by that method. The CIA must protect from public disclosure not only the information it has collected using a given method, but also the *lack of information* it has collected, as this may indicate a potential weakness or vulnerability in the CIA's operations.

28. In this case, the CIA redacted information from the items 4 and 5 coordination documents that would reveal classified intelligence methods the CIA uses to collect, communicate and evaluate intelligence. In addition, the CIA redacted information relating to locations in certain parts of the world where the CIA operates or has operated. The disclosure of this information would provide the United States' adversaries with insight into how the CIA collects, communicates, evaluates, and compiles intelligence, and how it disseminates that intelligence to other governmental entities. Such a disclosure could allow hostile governments, intelligence agencies, and other adversaries to influence and potentially manipulate the CIA's intelligence collection and analysis.

29. The CIA must also protect seemingly mundane intelligence methods from disclosure, including dissemination control and classification markings. These markings, which indicate restrictions placed upon the dissemination of particularly sensitive information, may reveal or highlight areas of particular intelligence interest, sensitive collection sources or methods, or foreign sensitivities. To avoid highlighting information that reveals such matters, the CIA withholds dissemination control markings and markings indicating the classification

levels and controls of individual paragraphs or specific bits of information. Otherwise, if the CIA were to withhold dissemination control and classification markings only in cases where the accompanying information indicates a special intelligence interest, a particularly sensitive method, or a foreign liaison relationship, the CIA would focus public attention on those sensitive cases.

30. Accordingly, disclosure of the intelligence methods withheld from the items 4 and 5 coordination documents could be of assistance to those who wish to detect, penetrate, counter or evaluate CIA activities in ways inimical to United States security. Information revealing classified intelligence methods was therefore properly withheld pursuant to FOIA exemption (b)(1).

(c) Foreign Activities of the United States

31. Among the most critical sources and methods in the collection of foreign intelligence are the relationships that the United States maintains with the intelligence and security services of foreign countries. Through these intelligence liaison relationships, the CIA can collect intelligence and provide to national security and foreign policy officials information that is critical to informed decision making - information that the CIA cannot obtain through other sources and methods. From some

of the documents that reveal classified intelligence methods, the CIA withheld classified information concerning the foreign activities of the United States. Disclosure of this information reasonably could be expected to cause damage, serious damage or exceptionally grave damage to the national security.

32. Foreign governments provide critical assistance to CIA operations under the condition that their assistance is kept secret. Like the revelation of information revealing individual human sources, disclosing the fact of a clandestine foreign liaison relationship would suggest to all other foreign liaison services and foreign government officials that the CIA is unable or unwilling to observe an agreement of secrecy. This perception could cause liaison services and government officials to limit their provision of information to, or cooperation with, the CIA, or even to end the relationship altogether, thus causing the USG to lose valuable foreign intelligence. Moreover, this perception could discourage foreign governments from entering into any kind of relationship with the CIA.

33. As such, official acknowledgement by the CIA of a past or current liaison relationship, or revelation of information by the CIA that implicates a past or current relationship, with a foreign intelligence service or a

foreign government official could result in a significant loss of intelligence information for the United States. Since liaison relationships offer the United States a force-multiplier for its intelligence collection activities, disclosure of the information at issue reasonably could be expected to cause damage, serious damage or exceptionally grave damage to the national security. The information was, therefore, properly withheld pursuant to FOIA exemption (b)(1).

(d) Foreign Government Information

34. Item 4 coordination documents C00466388, C00473351, C00495577, C00567550 and C00495589 contain information provided to the United States by a foreign government, the disclosure of which would breach express promises of confidentiality made to a foreign government. Disclosure of such information would also reveal the foreign governments' cooperation and could lead to negative diplomatic consequences. As a result, disclosure of the foreign government information in these documents could be expected to cause serious or exceptionally grave damage to the national security. The information is, therefore, properly withheld pursuant to FOIA exemption (b)(1).

35. In sum, the information withheld from the items 4 and 5 coordination documents pursuant to FOIA exemption

(b)(1) concerns foreign government information, intelligence sources and methods and/or the foreign activities of the United States. This information is classified because its unauthorized disclosure reasonably could be expected to result in damage, serious damage or exceptionally grave damage to the national security. Moreover, all of the CIA information that is exempt from disclosure pursuant to FOIA exemption (b)(1) is also coextensively protected from disclosure under FOIA exemption (b)(3), as discussed further below.

(e) Exemption from Automatic
Declassification at 25 years

36. Executive Order 13526 provides that all classified records that are more than 25 years old and otherwise have been determined to have permanent historical value shall be automatically declassified.²⁰ Such information, however, is exempt from automatic declassification per § 3.3(a) if it includes "information, the release of which should clearly and demonstrably be expected to: reveal the identity of a confidential human

²⁰ As stated in footnote 13, above, on 29 December 2009, President Obama signed Executive Order 13526, which superseded Executive Order 12958 on 27 June 2010. The standards set forth in Executive Order 12958 for exemption from automatic declassification at 25 years are the standards that apply to the coordination documents, since Executive Order 12958 was the Executive Order in effect when the classification decisions at issue were made. The documents would nonetheless remain exempt from automatic declassification under Executive Order 13526, however, as set forth in this declaration. See also Executive Order 12958, § 3.3(a).

source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source; or impair the effectiveness of an intelligence method currently in use, available for use, or under development."²¹ Id. § 3.3(b)(1). As explained below, the items 4 and 5 coordination documents that contain classified information older than 25 years, as identified in the Vaughn index, are exempt from automatic declassification pursuant to the Order.

37. The CIA has established several major declassification review and release programs. Under the Agency's FOIA and Privacy Act Declassification Review Program, information responsive to FOIA requests is reviewed to determine whether the information is currently and properly classified.

38. I have determined that the information withheld pursuant to FOIA exemption (b)(1) which is older than 25 years falls within categories of information exempt from automatic declassification listed in § 3.3(b) of the Executive Order. First, the information, if released, should clearly and demonstrably be expected to reveal the identities of human intelligence sources. For instance,

²¹ See also Executive Order 12958 at 3.3(b)(1).

the withheld CIA information in these documents is precise as to time, date, and place of collection that, combined with the fact that only a limited number of individuals would have had access to such information, disclosure of the documents would necessarily tend to reveal the identity of the sources at issue. Given the specificity of the source-revealing information, and recognizing that foreign intelligence services are capable of gathering and analyzing information from myriad sources, disclosure of this information could leave sources and their families perpetually vulnerable to discovery and retribution.

39. Furthermore, release of the withheld information would impair the effectiveness of CIA intelligence methods, many of which remain in use today. As noted above, the documents describe, in great detail, the practices of the CIA, the means by which the CIA planned or carried out specific activities, as well as information regarding the relative success of particular methods. These detailed descriptions would greatly assist foreign intelligence services and other adversaries in thwarting U.S. intelligence activities, thereby significantly degrading the usefulness to the CIA of the described intelligence methods. In sum, I have determined that the classified information at issue that is older than 25 years remains

currently and properly classified and, therefore, exempt from disclosure pursuant to FOIA exemption (b)(1).²²

ii. FOIA Exemption (b)(3)

40. The items 4 and 5 coordination documents that were released in part to Plaintiffs contain information disclosing CIA intelligence sources, methods, organizational information, functions, and details concerning personnel employed by the CIA, among other information as detailed in the Vaughn index. See Exhibit B. This information is statutorily exempt from disclosure under FOIA exemption (b)(3).

41. FOIA exemption (b)(3) provides that the FOIA does not apply to matters that are:

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 the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.²³

²² The information withheld pursuant to exemption (b)(1) which is older than 25 years is likewise exempt from automatic declassification under Executive Order 12958. As described above, the limited number of individuals who would have had access to the information at issue, as well as the detailed nature of the information itself, demonstrates that disclosure could be expected to reveal the identities of human intelligence sources. Similarly, the documents provide considerable insights into how the CIA has used various techniques to carry out specific activities in furtherance of its intelligence gathering mission. If disclosed, this information could be expected to reveal the application of intelligence methods. See Executive Order 12958 § 3.3(b)(1).

²³ 5 U.S.C. § 552(b)(3) (2006).

I have determined that the National Security Act of 1947, 50 U.S.C. § 403-1, as amended, and the Central Intelligence Agency Act of 1949 ("CIA Act"), 50 U.S.C. § 403g, as amended, are the withholding statutes applicable to this case.

42. *National Security Act of 1947 - Section 102A(i)(1)* of the National Security Act, as amended, provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." 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, and consistent with section 1.6(d) of Executive Order 12333,²⁴ the CIA is authorized to protect CIA sources and methods from unauthorized disclosure. I have determined that disclosure of exempt information withheld from the documents would reveal the names of CIA employees, including covert employees; information regarding CIA clandestine human intelligence sources;

²⁴ Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. §401 note at 25 (West Supp. 2009), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008), requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure . . .[.]"

information regarding CIA intelligence methods, including methods the CIA uses to assess and evaluate intelligence and to inform policy makers and other government officials; intelligence liaison sources; and information identifying the countries in which the CIA operated or targeted for intelligence activities, among other CIA intelligence methods as outlined in the Vaughn index. See Exhibit B. Accordingly, the CIA relies on the National Security Act to withhold information that would reveal intelligence sources and methods.

43. *Central Intelligence Agency Act of 1949 - Section 6 of the CIA Act, as amended, provides:*

In the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the . . . [CIA] shall be exempted from . . . the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.

50 U.S.C.A. § 403g (West Supp. 2007). As one of the CIA's primary functions is to collect intelligence through human sources and by other appropriate methods, section 6 of the CIA Act authorizes the CIA to withhold information related to its core functions. Moreover, CIA employees' names and personal identifiers (for example, employee signatures,

employee identification numbers, or initials), titles, file numbers, and internal organizational information are specifically protected from disclosure by the CIA Act. I have determined that the items 4 and 5 coordination documents contain information such as the names of CIA employees, including covert employees; names and identifying information of covert CIA installations; the names and signatures of CIA employees; CIA employee identification numbers; internal CIA organizational information, including the names of CIA components, the names and designations of certain files, CIA numbers and dissemination control markings among other information as described in the Vaughn index. See Exhibit B.

Accordingly, Section 6 of the CIA Act, and, thus, FOIA exemption (b)(3), unambiguously protect this information from disclosure.

44. In contrast to Executive Order 13526, and predecessor orders, the CIA's statutory requirements under the National Security Act and the CIA Act to further protect intelligence sources and methods do not require the CIA to identify or describe the damage to the national security that reasonably could be expected to result from their unauthorized disclosure. Nonetheless, the information withheld pursuant to FOIA exemption (b)(3) is

the same as the information relating to intelligence sources and methods withheld pursuant to FOIA exemption (b)(1). Thus, damage, serious damage or exceptionally grave damage reasonably could be expected to result from the disclosure of this information as set forth above.

iii. FOIA Exemption (b)(6)

45. FOIA exemption (b)(6) provides that the FOIA's information release requirements do not apply to "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."²⁵ The FOIA's protection of personal privacy is not impacted by the type of record in which an agency stores its information. FOIA exemption (b)(6) is designed to protect information in official Government records, even if the information is not embarrassing or of an intimate nature.

46. In this case, the CIA withheld information in the items 4 and 5 coordination documents on the grounds that it qualifies as "personnel" or "similar" files pursuant to FOIA exemption (b)(6). As described further below, and also in the Vaughn index (Exhibit B), the individuals identified in the documents have a significant privacy interest in the withheld information; the public does not

²⁵ 5 U.S.C. § 552(b)(6) (2000).

have an interest in the disclosure of the withheld information; and the disclosure of the individuals' information would constitute a clearly unwarranted invasion of the individuals' personal privacy.

47. The information withheld from the items 4 and 5 coordination documents may be protected from disclosure under FOIA exemption (b)(6) because the individuals identified in the documents have a significant privacy interest in the information. This information includes names of individuals and other identifying information, such as date of birth, place of birth, social security number, blood type, place of residence, names of family members or religious affiliation. There is no overriding public interest that requires disclosure of this information. Unlike information concerning decisions made or actions taken by CIA employees, this data would not shed light upon the operations or activities of the Government. Likewise, the information would not contribute to the public understanding of the thoroughness, scope, intensity, or creativity of the Government's efforts to locate POW/MIAs.

48. The information withheld pursuant to FOIA exemption (b)(6) also includes the names of, and other identifying information about, CIA employees. Disclosing

the names of CIA employees, some of whom served undercover,²⁶ could subject the individuals to intense questioning from a variety of sources such as the media, family, friends, neighbors and others. In addition, by revealing that certain employees served at the CIA in senior positions, the withheld information could also place the individuals and their families in danger from those seeking retribution against the CIA. There is no overriding public interest that requires the disclosure of the names of, or identifying information about, the CIA officers at issue. The names of particular employees are not fundamental to understanding the operations or activities of the Government, nor will such information shed light upon the thoroughness, scope, intensity, or creativity of the Government's efforts to locate POW/MIAs.

49. Therefore, even if some minimal public interest could be found in disclosure of the personal information at issue, the balance would still tilt dramatically against disclosure. Disclosure of the personal information could expose the individuals and their families to unnecessary public scrutiny, certainly violating the personal privacy of those persons. Because the strong privacy interests

²⁶ To the extent that the information redacted pursuant to exemption (b)(6) exposes certain officers' classified affiliation with the CIA, this information is coextensive with withholdings pursuant to exemptions (b)(1) and (b)(3).

involved outweigh the negligible public interest, if any, in disclosure, the CIA has properly withheld the information under FOIA exemption (b)(6).

B. SEGREGABILITY

50. The CIA conducted a review of the released in part items 4 and 5 coordination documents to determine whether meaningful, reasonably segregable, non-exempt portions of documents could be released; no documents were denied in full. The CIA made this determination regarding segregability based upon a careful review of the aforementioned coordination documents, both individually, and as a whole. Specifically, the CIA conducted a line-by-line review of each coordination document to ensure it properly withheld information pursuant to FOIA exemptions. The items 4 and 5 coordination documents that were released in part contain no additional reasonably segregable non-exempt information. Accordingly, the CIA released any information that was reasonably segregable and not otherwise exempt in the coordination documents.

II. ITEM 5: NEW SEARCH

51. On 14 April 2011, Plaintiff Roger Hall ("Hall") sent the CIA three new privacy waivers, two of which pertained to individuals whose names Hall explains were "not previously submitted to the CIA," per Item 5 of his

2003 FOIA request. See Culver Declaration, Exhibit A.

Only one of the individuals listed in the 14 April 2011 letter, Capt. Peter Richard Matthes ("Matthes"), was also named in Item 5 of Plaintiffs' 2003 FOIA request and was therefore subject to this litigation. Had Hall submitted additional identifying information (e.g. social security number, date of birth) about Matthes earlier, Matthes would have been included in the CIA's search of the 31 individuals previously conducted and completed. See Supplemental Cole Decl., ¶¶1-10. Although Hall provided the CIA with Matthes' information at this very late date, the CIA nonetheless conducted a search²⁷ for Matthes in the CIA Automated Declassification and Release Environment (a.k.a. CADRE). By contrast, the other two individuals named in Hall's 14 April 2011 letter, Hugh M. Fanning ("Fanning") and Charles Joseph Scharf ("Scharf"), are new names which Hall is attempting to insert into this case without submitting a proper FOIA request. However, as mentioned in the Culver Declaration (¶¶7-8), in an effort to bring this case to a final conclusion, and noting that Hall has provided additional identifying information (e.g. date of birth, social security number) for these

²⁷ For additional information about Item 5, the search process and databases searched, I refer the Court to the Supplemental Cole Decl., ¶¶3-4.

individuals, the CIA agreed to conduct a search of these two new names even though the CIA has no legal obligation to do so absent a proper FOIA request.

52. As previously described in the Cole Declaration (§75) and Supplemental Cole Decl. (§§3-4), CIA personnel who have access to CADRE and who are qualified by training and practice to search those records in the course of their professional duties conducted a search in CADRE, using the names as provided by Plaintiffs, as search terms. CIA personnel, while considering the additional identifying information provided by Plaintiffs, reviewed the search results to determine responsiveness. As a result of this search, the CIA located seven (7) responsive records²⁸ that originated with other federal Government agencies and are therefore subject to referral in accordance with section 3.6 of Executive Order 13526. On 21 September 2011, the CIA sent the originating agencies a notice of the referral documents that need to be processed. The CIA further advised the originating agencies to respond directly to the Plaintiffs upon completing their review of the referral documents. See Exhibit C.

III. ITEM 5: REFERRALS

²⁸ The responsive seven (7) documents are identified as: C00800075, C00488405, C00488608, C00488720, C00495839, C01341002 and C01341022.

53. As previously explained in the Supplemental Cole Decl. (§§4-5), in response to its search, the CIA located responsive documents that originated with other federal Government agencies and were therefore subject to referral. The CIA also located nineteen (19) CIA-originated documents containing the equities of other government agencies which, as explained above, the CIA released to Plaintiffs on 30 September 2011. See supra, §§5-33 and §§36-50. Accordingly, this section will only address the status of the remaining Item 5 referral documents.

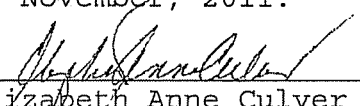
54. On 21 January 2011, the CIA sent each originating agency a notice of the referral documents that needed to be processed. See Exhibit D. The CIA further advised the originating agencies to respond directly to the Plaintiffs upon completing their review of the referral documents. Id. Specifically, the referral documents included forty-eight (48) DoD originated documents; three (3) NSA originated documents; twenty (20) DIA originated documents; and one (1) document that was sent to the DoS as a referral but was subsequently determined to be one of the 19 Item 5 coordination documents.²⁹

²⁹ Due to an administrative error, the CIA sent an Item 5 coordination document to the DoS as a referral document. Upon re-review of the document, the CIA confirmed that the document is a CIA-originated document that needed to be coordinated with the DoS. The CIA has

55. In September 2011, the CIA followed up with the DoD and NSA about the Item 5 referral documents. On 27 September 2011, the NSA advised that the review is nearly complete and that it hopes to approve and finalize the referral documents by the end of the month. See Exhibit E. On 29 November 2011, the DOD advised that it anticipates completion of the review of its referral documents, along with the DIA referred documents, within the next 20-30 days. See Exhibit F. Accordingly, the CIA has taken affirmative steps to ensure that the aforementioned agencies received the referrals and will directly respond to Plaintiffs in the event their response remains outstanding.

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

Executed this 30th day of November, 2011.



Elizabeth Anne Culver
Information Review Officer
National Clandestine Service
Central Intelligence Agency

completed its coordination with the DoS and released C03357576, in part, to Plaintiffs on 28 September 2011. See also, Exhibit B.