

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5235
(C.A. No. 04-814)

ACCURACY IN MEDIA, INC., Appellant,)
)
v.)
)
CENTRAL INTELLIGENCE AGENCY, Appellee.)
)
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**APPELLANT'S OPPOSITION TO APPELLEE'S
MOTION FOR SUMMARY AFFIRMANCE**

Pursuant to Rule 27 of the Circuit Rules of the United States Court of Appeals for the DC Circuit, Accuracy in Media, Inc. ("AIM" or "plaintiff"), respectfully submits this opposition to the Motion for Summary Affirmance ("*Motion*") submitted by Appellee ("CIA" or "defendant").

Summary disposition is appropriate where "no benefit will be gained from further briefing and argument of the issues presented" (*Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-98 (D.C. Cir. 1987), or where "the merits of this appeal are so clear as to make summary affirmance proper." *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980). This is not such as case.

Appellant's statement of issues to be raised in this appeal asks this Court to review the District Court's holdings regarding (1) the absence of responsive

records, (2) the adequacy of the CIA's search of its operational records, as well as its description of that search, and (3) the weight to be afforded to the CIA's motive for withholding records on unrepatriated POWs after Operation Homecoming in 1973.

Failure to produce records. AIM's first two issues posit that "the absence of responsive records is so enormous and wide-ranging as to raise substantial doubts regarding the CIA's search, rendering summary judgment inappropriate," and that "the quantity of positive indications of overlooked materials raises substantial doubts regarding the CIA's search."

The CIA observes that "a search is not unreasonable because it fails to produce all relevant material" (*Meeropol*, 790 F.2d. at 952-53), and that the CIA's affidavits are accorded a presumption of good faith "which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents." *Mobley*, 806 F.3d at 581 (D.C. Cir. 2015). Plaintiff agrees.

But, notwithstanding the fundamental question being not "whether there might exist any other documents responsive to the request, but rather whether the search for those documents was adequate" (*Steinberg v. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994)), the absence of identification of responsive records can be so wide-ranging as to be highly probative of the inadequacy of the government's search. If a review of the record created by affidavits "raises substantial doubt," as

to a search's adequacy, "particularly in view of 'well defined requests and positive indications of overlooked materials,'" summary judgment would not be appropriate. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999, quoting *Founding Church of Scientology v. Nat'l. Sec. Agency*, 610 F.2d 824, 837 (D.C. Cir. 1979).

There is a tipping point where "positive indications of overlooked materials" overcomes the presumption of good faith otherwise available to the agency. This is such a case. The paucity of the CIA's production, compared to the records clearly in its possession, is uncontroverted. Plaintiffs' affidavits contain a plethora of examples of operations, events and activities that surely generated relevant records.

The CIA seeks to limit its live-sighting reports to the 1,400 first-hand such reports that it supplied to the Select Committee, even though its records far exceeds that tranche. "The total number of first-hand and hearsay live sighting reports and other related reports is more than 15,000 since 1975.¹

¹ See *Plaintiff's Motion for Summary Judgment*, ECF 312 at 4: [T]he total number of first-hand and hearsay live sighting reports and other related reports is more than 15,000 since 1975... at least 1,400 first-hand reports, and as many as 2,000 second-hand reports.

See also *id.* note 17 at 9, quoting *Sanders Aff.* ¶ 13, quoting 1991 *Senate Foreign Staff Report, An Examination of U.S. Policy Toward POW/MIAs*: The original plan of the Minority Staff was to review ... "live-sighting" reports ... firsthand narratives by witnesses who believe that they have seen

Pilots and navigators were particularly targeted never to be repatriated, some of whom were transferred to Russia.² The CIA has records of at least a dozen reconnaissance or rescue operations (*see* note 16 *infra.*). It has imagery,³ including

American military personnel alive in various locations in Southeast Asia. ... For Vietnam...at least 1,400 such reports, including reports that have been received up until the publication of this report in May, 1991.

And see id. at 13, quoting *Smith Aff.* ¶ 9: "Investigators on the Senate Select Committee found literally thousands of live-sighting reports over the years from the end of the war into the 1990s."

² *See Sanders Aff.*, ECF 258-3 ¶¶ 20-21: POW-related information from CIA debriefings of various Soviet defectors...The produced document C06002273 from 1999 also refers to additional information from Soviet sources that has not been produced. CIA analysis of the statement by Dmitri Volkogonov... whose widely-publicized comments on a "KGB-assigned mission and plan to 'transfer knowledgeable Americans (POWs in Vietnam) to the USSR'" is also referenced in the 2016 production.

See also McDaniel Aff., ECF 258-1 ¶¶ 10-11: It was not long after I began to "speak out" in 1986 that I received a late-night phone call from a National Security Council official confirming that we did indeed still have living American POWs in Southeast Asia. I was admonished to "be patient" and advised that we would have them home "in two or three years, plus"...

³ *Plaintiff's Motion for Summary Judgment*, ECF 258, at 7, quoting *O'Shea Aff.*: The government had "vast studies of these camps in Laos, derived from SOG operations, Imagery Intelligence ...and much agent reporting from... operations and CIA operatives reporting on the Americans held in these camps in Laos."

See also O'Shea Aff. Docket 182-6 ¶¶ 1-2: The Central Intelligence Agency (CIA) holds never released documents relating to American servicemen Prisoners of War and Missing in Action in Southeast Asia, and at least one camp believed to hold these servicemen after March 1973.... The CIA continues to withhold information on the preparation for the mission, team

distress signals known only to the POWs.⁴ Its intelligence includes information on the communist's two-tier prison system.⁵ The CIA tracked POWs.⁶ It used

progress reports, photographs taken at the camp and the debriefing of reconnaissance team members.

⁴ *Plaintiff's Motion for Summary Judgment*, ECF 258 note 13 at 7, quoting *Hrdlicka Aff.* ¶ 19: "In 1992, I then called Lorenzo Burroughs, a government satellite imagery expert, about this imagery. I asked him whether any authenticator codes were picked up with it. He responded that there were around ten."

See also Hendon Aff., Docket 95-45 ¶ 21: "During the closed briefings... Dussault explained to the senators what the CIA personnel had said about the June 5, 1992, SEREX imagery.... and then stunned those present by declaring that, while recently reviewing 1988 imagery of Laos, he and his associates had discovered nineteen four-digit numbers that matched the four-digit authenticators of known MIAs..."

⁵ *Plaintiff's Motion for Summary Judgment*, ECF 258, at 17: Additionally... the Director of Operations maintained files "detailing our certain knowledge of the second tier prison system in Laos, and the numbers of American POWs being held there"... But the Agency declined to search those records.

⁶ *Plaintiff's Statement of Material Facts*, ECF 258-5 ¶ 112: "While searching for records in the Library of Congress, [Mrs. Hrdlicka] found a report that the government had been tracking 23 POWs in 1984... Another 1984 report... reflects that the CIA believed the number to be 20, not 23." *Hrdlicka Aff.* ¶¶ 41-42, citing Exhibits 32, 45.

mercenaries to gather intelligence.⁷ It collaborated with other agencies.⁸ And it has records of communist offers to sell POWs back to America.⁹

⁷ *Plaintiff's Motion for Summary Judgment*, ECF 312 at 8: Defendant has released no records of the activities of the *Military Assistance Command Vietnam, Studies and Observations Group*. The CIA has a large volume of records on its mercenaries, in its "indigenous personnel" files...so a sufficient *Vaughn* index would address its search of those records.

⁸ *Id.* note 4 at 4: *See Affidavit of Carol Hrdlicka ("Hrdlicka Aff.")* ¶¶ 37, 46: "There are numerous intelligence reports showing live POWs all over Laos after Homecoming 1973... there are proximately 350 US military and civilians listed as missing in action in Laos. Of this total, approximately 215 were lost under such circumstances that the Patriotic Laotian Front (PLP) probably has information regarding their fate... *Hrdlicka Aff.* ¶ 60.

See also Id. ¶ 132: "[I]n 1986... the National Security Council... confirm[ed] that we did indeed still have living American POWs in Southeast Asia." *McDaniel Aff.* ¶ 10.

And see Id. ¶ 49: "A DIA document dated December 30, 1980 refers to a meeting held that same day at which representatives of the DIA, the CIA, and the NSA were present.... It also related that a Vietnamese source had informed the CIA of a North Vietnamese POW camp, with coordinates, photography, and Americans, in August 1980. Although the CIA was present ... I have received no CIA records regarding this meeting, including the referenced 'overhead photography.'" *Hall Aff.* ¶ 72.

⁹ *Sanders Aff.*, ECF 258-3 ¶ 23: CIA analysis and support of the effort in 1984-5 ...to respond to an alleged Vietnamese offer to sell American POW/MIA remains and, potentially, living POWs to the United States. ... NSC staffer Richard Childress, with the concurrence of the National Security Advisor, traveled to Vietnam and "intended to fund the initiative with either CIA or private funds," ... such a sensitive foreign policy initiative could not have occurred without CIA documentation being produced, especially as the White House was considering the use of "CIA funds" for the transaction.

CIA Records of POWs held in Laos. The CIA ran the war in Laos, as ambassador to Laos William Sullivan testified:

The CIA was in charge of the war [in Laos], not the military. The military helped out a little bit on the side, particularly through the provisions of air assets, but the military had very few people on the ground except for forward air controllers, which were very good, and some air attaches, whereas the Central Intelligence Agency had several hundred people on the ground in Laos.

Plaintiffs' Statement of Material Facts, ECF 258-5 ¶ 173.

"[I]n both Bangkok and Vientiane all live sighting reports that came into the embassy went directly to the CIA Station Chief." *LeBoutillier Aff.*, ECF 83-13 ¶12. Defendant committed to addressing the issue of its live-sighting reports in Laos in its *Vaughn* index, but entirely failed to do so. *See also Hall Aff.* ECF 261 ¶ 122, "Witnesses before the Select Committee testified repeatedly to the involvement of CIA field stations in Vietnam, Laos, Cambodia, and Thailand, in the gathering of information about POW/MIAs."

Defendant has extensive records¹⁰ on POWs incarcerated in Laos,¹¹ the existence of whom was admitted by both governments. In 1992, satellite imagery

¹⁰ *Sanders Aff.*, ECF 258-2 ¶ 12: [I]t was widely known that the Pathet Lao were holding many other U.S. POWs. The absence of names on the U.S. POW list handed over by the North Vietnamese of Americans captured in Laos and held by the Pathet Lao was one of the great blunders of the Paris Peace Accord negotiations and caused great confusion and emotional duress among family members of missing and captured personnel."

See also Plaintiff's Motion for Summary Judgment, ECF 258, at 13: "Witnesses before the Select Committee testified repeatedly to the involvement of CIA field stations in Vietnam, Laos, Cambodia, and Thailand, in the gathering of information about POW/MIAs." *Hall Aff.* ¶ 122.

And see Smith Aff., ECF 258-4 ¶ 5: Secretary Laird went into even more detail saying that the Pentagon had "solid information, such as letters or direct contacts, with about 20 airmen who survived in Laos after their planes were shot down."

¹¹ *Plaintiff's Statement of Material Facts*, ECF 258-5 ¶ 131, 134, 128: Exhibit 141 ... is a Memorandum regarding ten POWs held... states, in part: "[Redacted] worked at the prison where ten Americans were reportedly being held. ... [Redacted] learned that the American had been in [unintelligible] Dang prison since about March 1984." The CIA withholds additional records regarding these POWs, including their probable identities, and fates. *Hall Aff.* ¶ 110. Exhibit 127 ... is a CIA Intelligence Report regarding a 1986 sighting of POW in Laos... The CIA has failed to provide any further information..." *Hall Aff.* ¶ 89. Exhibit 126 ... is a CIA Memorandum re six POWs held in Laos, 1983... Exhibit 124... is a Memorandum re six POWs held in Laos... According to [redacted] there were 23 American prisoners of war (POW's) detained in the camp.' ... Exhibit 125 is a CIA Memorandum re six POWs held in Laos... '[redacted] saw a total of six alleged U.S. prisoners of war (POW's) at a detention camp in a small valley of Thao La Hamlet... He said the camp held about 50 such POW's...

was leaked that undermined the government's long-standing position, or policy, very publicly. In his book, *An Enormous Crime, The Definitive Account of American POWs Abandoned in Southeast Asia*, former U.S. Rep. Billy Hendon (R-NC) recounts the October 6, 1992, *NBC Dateline* segment, at 452-53:

SCOTT: (Voiceover) DATELINE has obtained this computer-enhanced photograph, taken by an American spy satellite in January, 1988, in a rice paddy in Northern Laos, the letters U-S-A are clearly distinguishable. But what is chilling to some Pentagon analysts is the symbol below. (Document showing rudimentary U-S-A spelling)

* * *

MR. HENDON: And I have talked to the people in charge of the compartmented program, that—that deals with the escape and evasion symbol that was in the satellite photography. And they say, "Hey, no question. That's an American flier."

SCOTT: This is list of distress signals American flyers were told to display on the ground if shot down...

MR. HENDON: That can only be a US pilot telling you, "Get me out of here." That's all it can mean.

SCOTT: And he's saying that in January of 1988?

MR. HENDON: Absolutely.

See generally Hendon Aff., ECF 95-45.

The 1992 story in *US News & World Report* included an image of a "walking K" distress symbol, taken in the Sam Neua area of Laos, where David Hrdlicka was being held. "The government should have notified me," writes his wife, Carol, "But I had to read about it in the magazine." *Hrdlicka Aff.*, ECF 261-1 ¶ 17. The Senate Select Committee's 1993 Report, at p. 200, recounts, "These possible distress symbols, several of which match pilot distress symbols used during the war, span a period from 1973 to 1988, and as late as June 1992."

A more recent example of CIA records on the issue of POWs held in Laos is presumably the CIA's brief to President Obama before he addressed the Lao National Cultural Hall, in Vientiane, in 2016. The President's remarks included:

I realize that having a U.S. president in Laos would have once been unimaginable. Six decades ago... It was a secret war, and for years, the American people did not know. ...Over nine years—from 1964 to 1973—the United States dropped more than two million tons of bombs here in Laos—more than we dropped on Germany and Japan combined during all of World War II. It made Laos, per person, the most heavily bombed country in history.

* * *

... I'm pleased that, as a result of this visit, we will increase our efforts and bring more of our missing home to their families in America.

Plaintiff's Motion for Summary Judgment, ECF 312 note 6 at 14.

Defendant's *Vaughn* index is silent on any search for records on POWs held in Laos.

Description of the search. AIM raises the issue of "[w]hether the CIA's public explanation of its search of its operational records was made to the greatest extent possible." (Defendant misstates the issue as "Appellant's contention that the Agency's search of its operational files must have been 'made to the greatest extent possible.'" *Motion* at 7.)

The CIA avers that it "cannot provide additional detail about the designated file series in an unclassified setting, [but] I can assure the Court that they are carefully and tightly defined to ensure that they serve the specific

operational purposes." *CIA Motion for Summary Judgment*, ECF 271 at 4, citing *Shiner Decl.* The CIA asserts that "it could not provide specific detail on the public record as to how the Agency's databases are structured and searched." *Motion* at 11. Is the CIA asserting that its obligations to describe its search of repositories of operational records—exempt from the FOIA—is less onerous than for its search for records that are subject to the FOIA? If so, it should explain that position, or perhaps submission of an affidavit *in camera* would be appropriate. The District Court recognized the issue, but, like the defendant, communicated no particulars. *See Mem. Op.* ECF No. 385 at 9, 11:

The Court holds the CIA's description is adequate, especially considering the circumstances of this case, wherein the Court has ordered the CIA to search its operational files.

* * *

[T]his case involves unique circumstances that further counsel ruling in favor of the CIA. The Court ordered the CIA to search its operational files. ECF No. 340. Operational files are typically exempt from search, review, or disclosure under the National Security Act of 1947. 50 U.S.C. § 3141(a); *Morley*, 508 F.3d at 1116. It is only because this Court applied one of the Act's limited exceptions that the CIA needed to search its operational files here. ECF No. 340 at 3; 50 U.S.C. § 3141 (f)(4). The CIA rightfully points out the sensitive national security nature of its operational files. *Supp. Vanna Blaine Decl.* ¶ III. 1. Thus, requiring an even more detailed description would be delicate matter.

In any event, summary disposition would seem to be an inappropriate procedure to resolve the issue.

The CIA declares that "[i]t is also no mystery what systems the Agency searched." *Motion* at 16. But *Defendant's Response to Plaintiff's Statement of Material Facts not in Genuine Dispute* belies that assertion. Defendant responded to plaintiff's facts, *inter alia*, that, "given the Agency's national security mandate" the "Agency is not required to name the components or offices searched... the Agency is not required to name the records systems searched... the Agency is not required to identify indices or sub-indices searched." ECF 383 at 1-2. The CIA simply declared that "[a]ny database where operational files related to Plaintiffs' request could reasonably have been located were searched in the course of this review." *Motion* at 16.

Aside from giving its perfunctory word that it searched an unknown number of relevant databases, the *only* information that the CIA provides, aside from the search terms, is that the search had no date range, that it included an unspecified number of hard-copies, that an unspecified number of "hits" resulted in a review of those records, and that it located no responsive records whatsoever. This circumstance would seem to be analogous to the District Court's ruling in this matter when the Court held that an earlier CIA search had been inadequately described because as the CIA had provided "no information regarding how the search used to locate the records produced... occurred." *Hall*, 668 F. Supp. 2d at 184.

The District Court addressed the specifics of one database in its discussion of records reportedly in the repositories of the "Director of Operations files" or the "Executive Registry Files of CIA." The Court appears to conclude that records generated by these components are not operational files.¹²

Search terms. The CIA used the following search terms, "in various combinations;" "prisoners of war," "MIA," "missing in action," "Vietnam," "task force," "House Special POW," and "image." *Motion* at 10.

If "Vietnam" is an appropriate search term, "Laos" is as well.

The CIA's search should include the names of facilities known to house American POWs,¹³ including Nhom Marrott—the subject of Lynn O'Shea's book,

¹² *Mem. Op.* ECF No. 385 at 7: "Toll recounts this meeting in his affidavit. *Id.* Carver told Toll that the SOG archives were routinely ferried from the White House to CIA headquarters at Langley where he said they would likely remain, either in the "Director of Operations files" or the "Executive Registry Files of CIA." *Id.* at 16–18. Furthermore, Carver also stated that, even if the files had been destroyed, there would be a record of them." *And see id.* note 3 at 8: "Plaintiffs' assertion that 'the Agency declined to search' the systems mentioned by Mr. Toll for responsive records that they believe to be within the SOG archives is thus even further off base. *Pls. Mem.* 7–8. The CIA was only required to search its operational files."

¹³ *See Plaintiffs' Statement of Material Facts* ECF No. 258-5; Tran Phu prison in Haiphong, North Vietnam ¶¶ 29, 39, Dong Vai (Dong Mang) prison (*id.*), camp in Sam Neua Laos (¶¶ 50,103), or Tan Lap Prison, Vinh Phu Province, North Vietnam (¶ 92), facilities in the towns of Mahaxy, Pha Kateom, Laos (*id.* ¶ 114), or in Son Tay, Vietnam (*id.* ¶ 119).

"Abandoned in Place,"¹⁴ or the code names of a dozen rescue or reconnaissance operations—for which it has provided *no* responsive records. *See* note 16 *supra*. Nor has the CIA provided any records of POWs transferred to Russia, North Korea, or China.¹⁵

After being order to search the 1,711 names on the Primary Next-of-Kin list, the CIA produced records on 11 of those names. But that was before defendant was ordered to search its operational records. So, the CIA should now conduct that search of those names in its operational records repositories.

¹⁴ *O'Shea Aff.* Docket 182-6 ¶¶ 1-2: The Central Intelligence Agency (CIA) holds never released documents relating to American servicemen... [POW/MIA]... in Southeast Asia... the CIA gathered intelligence... and imagery of a prison camp located in the Nhom Marrott District of Khammouane Province Laos. According to intelligence reports approximately 18-30 American Prisoner of War were held at this camp... between January and May 1981. The CIA dispatched a least one reconnaissance team to the camp location... The CIA continues to withhold information on the preparation for the mission, team progress reports, photographs taken at the camp and the debriefing of reconnaissance team members.

¹⁵ *See e.g., McDaniel Aff.* ¶ 12: After his May 19, 1967, shoot down and capture, James Kelly Patterson, "an expert in the use of his aircraft's state-of-the-art electronics system being used to defeat Vietnam's Russian-made missile defense system" was shipped to a closed Russian military region dedicated to missile research and testing.. *See also Hall Aff.* ECF No. 260 ¶ 88: "Exhibit 99 is a CIA Report...It relates: 'There had been 12 American POWs at the site but in 1985 five of the Americans POWs were moved to the Soviet Union....'".

Laos. AIM's fourth listed issue in its statement of issues is "[w]hether the CIA's explanation of its search must include whether it searched its repositories of operational records concerning POWs held in Laos." The answer appears to be that it did search for information on POWs held in Vietnam, but not in Laos. A search of the name "David Hrdlicka," and *Operation Duck Soup*, in the relevant repository would surely yield responsive records.¹⁶

¹⁶ *Plaintiffs' Statement of Material Facts*, Oct. 21, 2016, ECF 258-5 ¶ 61. Defendant withholds records on *Operation Thunderhead*, a 1972 White House-approved escape plan from the "Hanoi Hilton." *Id.* ¶ 62. It withholds records concerning *Operation Pocket Change*, the planned rescue of POWs held in Laos, and the 1972 *Son Tay* raid, a plan to try to rescue up to 60 POWs held in Laos ...*Id.* ¶ 65. Disclosure would reveal a wealth of information on David Hrdlicka. *Duck Soup* was a CIA run attempt to rescue him. There was a "raft of CIA cables" concerning Hrdlicka, and a June 1990 report on his sighting. *Id.* ¶¶ 57, 59. There is a great deal of intelligence regarding multiple reconnaissance and rescue attempts at a POW camp near Nhom Marrot, Laos... *Id.* ¶¶ 63, 64. Nor has the CIA disclosed any information on *Operation Blackbeard*, *Oak*, *Nantucket*, *Vesuvius One*, *Sunstune Park*, *Gunboat*, *Bright Light*, *Project Alpha*, or *Project Corona*. *Id.* ¶ 115.

See also Plaintiff's Statement of Material Facts, ECF 258-5 ¶ 64: A December 5, 1991 DIA memorandum states that JSOC (Joint Special Operations Command) was involved in planning the 1981 operation for the reconnaissance in support of a rescue of POWs at Nhom Marrot.... an inter-agency meeting was held.... "JSOC, JCS, CIA, and NSA attended." *Id.* at Bates 62. When JSOC argued that Delta should perform the reconnaissance for this mission, the CIA insisted that it had jurisdiction over the reconnaissance. *Hrdlicka Aff.*, ECF 258-5 ¶ 75.

Motives for withholding. Plaintiff's appeal also raises the issue of "[w]hether the District Court gave due weight to the CIA's motives to withhold its records that were generated after Operation Homecoming in 1973."

On January 23, 1973, government policy on the issue was established, on national television, with President Nixon's announcement that the Paris Peace Accords had brought a close to the Vietnam War, and that "all our boys are on the way home." But it was not true. Communists withheld 678 POWs as collateral for payment of the approximately \$3.5 billion in war reparations that President Nixon had promised. The money never came, and the POWs never came home. This history appears in the record in this case.

While this action has been at issue for 19 years, the history of various efforts for full disclosure is 50 years old. Since Operation Homecoming, numerous individuals, including former POWs, organizations, Congressional Committees, and journalists, have advocated for the government to reveal what it knows of the fate of these Americans. The CIA's recalcitrance in this regard is well-established, and is the subject of two Executive Orders, Nos. 12812 and 13526, which mandate review and disclosure.

Here, every one of defendant's disclosures of post-Operation Homecoming records inculcates the government in knowingly abandoning its citizens—*An*

Enormous Crime—as Rep. Billy Hendon aptly named his book. And full disclosure could have a demoralizing effect on the Armed Forces.

The Court's analysis of the veracity of CIA's declarations should be viewed in the greater context of the matter.

CONCLUSION

The CIA has records of at least a dozen reconnaissance or rescue operations, as well as imagery of distress signals known only to the POWs. It gathered intelligence on the communist's two-tier prison system, and collected thousands of live sighting reports. It used mercenaries to gather intelligence, collaborated with other agencies, and it has records of communist offers to sell POWs back to America. The CIA ran the war in Laos, and all live sighting reports that came into the embassy went directly to the CIA. Yet, defendant's *Vaughn* index does not even mention that country.

The CIA's robust intelligence-gathering on POWs did not cease in 1973 with establishment of the government policy—"all our boys are on the way home." Defendant now claims that its search of its operational records reveals that it has obtained no intelligence whatsoever on any of the abandoned 678 Americans, at least since the aforementioned embarrassing imagery was leaked in 1992.

Even if defendant were justified in not identifying the repositories of operational records, it can state whether the repositories searched include records

of the Director of Operations, or of the Executive Registry. The CIA can disclose whether its search would encompass repositories of records of its collaborations with the Defense Intelligence Agency, or Military Assistance Command Vietnam-Special Operations Group (MACVSOG), or the National Security Council, or the State Department. The CIA can state whether it searched its repositories of the President's Daily Briefings, or records of its use of mercenaries to gather intelligence, or communist offers to sell POWs back to America.

WHEREFORE, Plaintiff/Appellant Accuracy in Media, Inc., respectfully prays that the Court deny Appellee's Motion for Summary Affirmance.

Date: June 20, 2023.

Respectfully submitted,

/s/ John H. Clarke

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2023, the foregoing motion was served upon Appellee's counsel by filing it using the Court's Electronic Case Filing System.

/s/ John H. Clarke

CERTIFICATE OF COMPLIANCE

The text for this motion is prepared using 14-point Times New Roman typeface. The text of this motion consists of 4,755 words, as calculated by counsel's word processor.

/s/ John H. Clarke