

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-814 (RCL)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

PLAINTIFFS' STATEMENT
OF MATERIAL FACTS NOT IN GENUINE DISPUTE

Under Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7(h), plaintiffs Roger Hall, Accuracy in Media, Inc., and Study Solutions Results, Inc., respectfully submit this Statement of Material Fact to which there is no Genuine Issue.

1. In 2003, plaintiffs submitted a Freedom of Information Act ("FOIA") request to the Central Intelligence Agency ("CIA"). The Request sought the following eight items of information:

1. Southeast Asia POW/MIAs (civilian or military) and detainees, who have not returned, or whose remains have not been returned to the United States, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia.
2. POW/MIAs sent out of Southeast Asia (for example, to China, Cuba, North Korea, or Russia).
3. Prepared by and/or assembled by the CIA between January 1, 1960, and December 31, 2002, relating to the status of any United States POWs or MIAs in Laos, including but not limited to any reports, memoranda, letters, notes or other documents prepared by Mr. Horgan or any other officer, agent or employee of the CIA for the Joint Chiefs of Staff, the President, or any federal agency.
4. Records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing.

5. Records relating to 44 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, attachment 1, and records relating to those persons who are named on attachment 2, the Prisoner of War/Missing Personnel Office's list of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them.
6. All records on or pertaining to any search conducted for documents responsive to Roger Hall's requests...
7. All records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs, including any search for such records conducted in response to any request by any congressional committee or executive branch agency.
8. All records of whatever nature pertaining to the estimates of fees made in response to the February 7, 2003 Freedom of Information Act request of Mr. Roger Hall and Studies Solutions Research, Inc., and how each estimate was made.

[Docket 114-1 at 3-5.]

2. The CIA did not search its operational files.
3. Regarding its Southeast Asia POW/MIA records, the CIA did not complete its decennial review, together with the declassifications of those records.
4. The CIA did not complete its review and declassification of records under Executive Order 12812.

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Communist policy to hold back POWs

4. The long-standing communist policy holding back POWs in furtherance of political and economic goals. *Sanders Aff.* ¶ 4.

Paris Peace Accords

5. At the peace talks, reparation "negotiations had been extensive, and detailed. A list of specific items was drawn up for the first year of U.S. aid. Among some of the items on the list were... 200,000 metric tons of steel building supplies... between 2,650 and 2,900 tractors, bulldozers and excavators..." *Sanders Aff.* ¶¶ 6-7.

6. Five days after the signing of the Paris Peace Accords, Kissinger hand carried a letter, dated February 1, 1973 to the North Vietnamese Prime Minister which detailed that the Administration pledged approximately \$3.25 billion of grant aid over five years. *Sanders Aff.* ¶ 5. 33.

600 men not repatriated

7. In Operation Homecoming, "527 men returned alive from the war to a well-deserved heroes' welcome. What President Nixon did not tell the American people and the families of the missing was that the American government had numerous classified documents and human intelligence that men were, in fact, still alive in Southeast Asia." *Smith Aff.* ¶ 3.

8. "Two former Secretaries of Defense [Schlesinger and Laird] testified under oath before the Select Committee, that men were left behind." *Smith Aff.* ¶ 5.

9. "[I]n September of 1972... North Vietnam was holding 1205 prisoners of war. This, of course, is critical since only a few months later the Vietnamese released less than half of that number, 527." *Smith Aff.* ¶¶ 10, 14, 17-18.

10. "When the American government withdrew its forces from Vietnam in 1973, it knowingly left hundreds of U.S. POWs in Communist captivity. (See *An Enormous Crime*, Chapter 9)." *Smith Aff.* ¶ 1.

11. Of the 50 or so POWs known to be held in Laos (*Hrdlicka Aff.* ¶¶ 37, 46), only nine were repatriated. The Laotians themselves admitted that they were holding American POWs. *Hrdlicka Aff.* ¶ 48.

US government to refusal to provide war reparations

12. "President Nixon had sent the North Vietnamese a secret letter promising them approximately \$3.5 billion in war reparations. The Vietnamese retained "collateral" for that money. The money never came..." *Smith Aff.* ¶ 4. The U.S. Government declined to pay the promised reparations. *Sanders Aff.* ¶ 10.

13. "[T]here was a highly classified record kept by the Laotians stating that, unless the USG abides by Nixon's 17 points, there will be no information on the missing." *Hrdlicka Aff.* ¶ 38 citing Exhibit 31, 1977 *Intelligence Information Cable*.

14. "There is a 1990 report on David... When the source came forward with this information, he was told there would be no reward." *Hrdlicka Aff.* ¶ 50.

Motives for declaring dead

15. Motives to declare that the POWs are dead include morale among DOD personnel (*Hendon Aff.* Docket 95-45 ¶ 62), to foster peace and reconciliation and trade and investment (*Sanders Aff.* ¶ 10), and to terminate pay (*Hrdlicka Aff.* ¶ 8). "What is really at risk are the reputations and careers of the intelligence officials who participated in and perpetrated this sorry chapter in American history." *Smith Aff.* ¶ 20.

Thousands of live sighting reports

16. "The 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." *Smith Aff.* ¶ 9.

17. The government had over 1,400 first-hand live-sighting reports, and several thousand second hand reports, of Americans being held captive throughout Vietnam and Laos. *Sanders Aff.* ¶ 13.

18. "Since Operation Homecoming in 1973, there have been hundreds of postwar sightings and intelligence reports of Americans being held captive throughout Vietnam and Laos, and numerous secret military signals and codes and messages sent from desperate POWs." *Hendon Aff.* Docket 95-45 ¶ 3.

Policy of withholding records

19. "In a 1982 letter to the National League of Families, the DIA admitted knowledge of POWs, but justified the withholding the information on the grounds that disclosure would be 'counterproductive to our intelligence efforts in this vital area.'" *Hrdlicka Aff.* ¶ 9.

20. "I personally have seen hundreds of classified documents that could and should be released as they pose no national security risk. What is really at risk are the reputations and careers of the intelligence officials who participated in and perpetrated this sorry chapter in American history.... I can state without any equivocation that they are still holding documents that should be declassified. *Smith Aff.* ¶¶ 8, 20.

21. Former Congressman John LeBoutillier has "personal knowledge of several POW-related incidents where the CIA has had documents that have not been publicly acknowledged or released." *LeBoutillier Aff.* Docket 83-15 ¶ 7.

22. Hendon has "personal knowledge of several incidents where the CIA has had intelligence on living POWs that has not been publicly acknowledged and/or released." *Hendon Aff.* Docket 95-45 ¶ 4.

Criminal misconduct, cover-up

23. "In February 1991, Colonel Millard Peck, Chief of the Special Office for Prisoners of War and Missing in Action, resigned. *Colonel Millard Peck's resignation letter, Exhibit 42*... explained the deliberate actions to make sure that no information on live POWs was disseminated, or followed up on. [Colonel Peck wrote]

The entire issue is being manipulated by unscrupulous people in the Government, or associated with the Government... [The Director of the National League of Families]... interferes in or actively sabotages POW-MIA analyses or investigations.... was brought from the "outside." One wonders who she really is and where she came from.... I feel strongly that this issue is being manipulated and controlled at a higher level... to obfuscate the question of live prisoners...

Hrdlicka Aff. ¶ 51.

24. "[Beginning] in September of 1994, [Mrs. Hrdlicka] sent 24 separate complaints to the Inspector General..." *Hrdlicka Aff.* ¶ 55.

25. Exhibit 8 is my then lawyer's list of *Criminal Violations committed by DOD and CIA* agency personnel, at Bates 21. *Id.*

26. "Exhibit 50 is the 1992 *DIA Memoranda re Destruction of POW Records*" *Hrdlicka Aff.* ¶ 64.

Secret military signals and codes and messages sent from POWs

27. "In May of 1991, [Mrs. Hrdlicka] began sending Freedom of Information requests for information concerning David's case. On July 2, 1992, [she] sent another request for reports that [she] had not received. [She] made a specific request for the 'code number' or similar identifier carried by David, for identification in case of shoot-down and capture. There was a serial number identifying David, which was referenced in a government report.... No US government agency has told me what they used for David's identification number." *Hrdlicka Aff.* ¶¶ 14-15.

28. "In 1992, [Mrs. Hrdlicka] called Lorenzo Burroughs, a government satellite imagery expert, about this imagery. [She] asked him whether any authenticator codes were picked up with it. He responded that there were around ten." *Hrdlicka Aff.* ¶ 19.

29. CIA Director Casey shared with Hendon and the Hon. John LeBoutillier "either satellite imagery or aerial photography which showed laundry arranged in the form of escape and evasion codes on the roof of the Tran Phu prison in Haiphong, North Vietnam... and Directory Casey stated that only an imprisoned U.S. flyer could have made the codes on the prison roof." *Hendon Aff.* Docket 95-45 ¶ 8.

30. "Since Operation Homecoming in 1973, there have been hundreds of postwar sightings and intelligence reports of Americans being held captive throughout Vietnam and

Laos, and numerous secret military signals and codes and messages sent from desperate POWs." *Hendon Aff.* Docket 95-45 ¶ 3.

31. "Richard V. Allen... testified to the Senate Committee about seeing in 1981 a photograph of escape and evasion codes stamped in the grass at what was understood to be a Vietnamese prison.... President Reagan launched an operation to investigate the site.... Despite Mr. Allen's testimony about CIA involvement in the preparation for and conduct of this mission, the CIA has failed to release any records pertaining to it." *Hall Aff.* ¶ 81.

Other satellite imagery and photographs

32. "High-quality photographs, audio and video records involving POW/MIA... have [not] been produced, although produced records and declassified CIA documents show they exist." *Sauter Aff.* ¶ 26.

33. In early 1981, Hendon was briefed as a member of the House POW/MIA Task Force by officials regarding a prison camp near Nhom Marrott, Laos, and was "shown aerial/satellite photographs... also confirmed by radio traffic intercepts. American POWs were reliably reported to be in the camp... In addition, an escape and evasion code was imaged inside the camp," which Hendon saw. *Hendon Aff.* Docket 95-45 ¶ 9. Hendon "believes that the CIA is in possession of both the above described satellite imagery and hand held photography." *Hendon Aff.* Docket 95-45 ¶ 3.

34. "Air Force Lt. Col. (then-Major) Henry M. 'Mick' Serex, an electronic warfare officer, went missing on April 2, 1972, when his EB-66, code-named "Bat 21," was shot down over the Demilitarized Zone while accompanying a B-52 strike during the Easter invasion.... Air Force records indicate Bat 21 was hit by a surface-to-air missile while flying at an altitude of approximately twenty-six thousand feet. An intercepted PAVN radio

communication reported the shutdown and stated that PAVN personnel had "sighted orange parachutes in the area." *Hendon Aff.* Docket 95-45 ¶ 12.

35. Before the Senate Select Committee, twenty-six-year veteran Robert G. Dussault testified that "while studying recent (June 5, 1992) satellite imagery of the Dong Val (Dong Mang) Prison north of Hon Gai, he and one of his associates discovered a valid escape and evasion code in a field just west of the prison and above it the name of a missing USAF flight officer. The deputy director would later testify formally what he and his associate had seen:

A. I saw up at the CIA, very clearly to me there was the name S-E-R-E-X.

Q. Capital letters?

A. Yes, and it was in a field just outside the...[Dong Vai Prison], and there was a number above it and there was the name SEREX, and below it, as I remember now, 72/TA/88.

Hendon Aff. Docket 95-45 ¶ 12.

36. "Satellite imagery imaged in 1975 and analyzed in mid-1976 had shown what CIA and DOD photo interpreters believed at the time was a valid USAF/USN Escape and Evasion code at this same Dong Vai (Dong Mang) prison.... In addition, approximately a half dozen postwar HUMINT (human intelligence) reports had told of US POWs being detained at the prison both during and after the war...." in 1976, 1979, and 1982. *Hendon Aff.* Docket 95-45 ¶ 16.

37. "During the closed briefings, held on October 2 and 5 1992, Dussault... stunned those [Senators] 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..." Hendon "believes that the CIA is in possession of this imagery." *Hendon Aff.* Docket 95-45 ¶ 22.

38. Hendon "believes that the CIA is in possession of the original unadulterated satellite imagery described above." *Hendon Aff.* Docket 95-45 ¶ 22.

39. CIA Director Casey shared with Hendon and the Hon. John LeBoutillier "either satellite imagery or aerial photography which showed laundry arranged in the form of escape and evasion codes on the roof of the Tran Phu prison in Haiphong, North Vietnam... and Director Casey stated that only an imprisoned U.S. flyer could have made the codes on the prison roof." *Hendon Aff.* Docket 95-45 ¶ 8.

40. Hendon is "certain the CIA was in possession of this imagery in 1981 and I believe it is still in possession of this imagery." *Hendon Aff.* Docket 95-45 ¶ 8.

41. In early 1981, Hendon was briefed as a member of the House POW/MIA Task Force by officials regarding a prison camp near Nhom Marrott, Laos, and was "shown aerial/satellite photographs... also confirmed by radio traffic intercepts. American POWs were reliably reported to be in the camp... In addition, an escape and evasion code was imaged inside the camp," which Hendon saw. *Hendon Aff.* Docket 95-45 ¶ 9.

42. Hendon "believes that the CIA is in possession of both the above described satellite imagery and hand held photography." *Hendon Aff.* Docket 95-45 ¶ 9.

43. Barry Allan Toll "delivered intelligence materials in our possession... [including] satellite photos depicting explosive intelligence...", the "satellite imagery show[s] secret symbols..." *Toll Aff.* Docket 83-1 at p. 12.

44. "[T]he photographs and intercepts we were shown were CIA documents." "To my knowledge, these documents have never been released by the agency." *LeBoutillier Aff.* Docket 83-15 ¶ 9.

45. "[A]erial photographs" showed POWs which had been abandoned "long after the war's end." *McDaniel Aff.* ¶ 8.

46. Hendon is "certain the CIA was in possession of this imagery in 1981 and I believe it is still in possession of this imagery." *Hendon Aff.* Docket 95-45 ¶ 9.

47. Exhibit 66 is a Select Committee internal memorandum, dated July 8, 1992. Bates 234. It states, in part... "he knew there had been American prisoners in Laos because in 1977 he was part of a special forces team which penetrated Laos to photograph and plant listening devices near a supposedly empty prison or pow camp facility Laos is the CIA's domain. The CIA has not produced the referenced photographs, nor other records associated with this reconnaissance." *Hall Aff.* ¶ 66.

48. "Exhibit 123 (2015) is a CIA Intelligence Report on aerial photography in Laos, September 23, 1992, at Bates 379-80... The CIA has failed to provide the referenced photography, and has provided only photocopies of photography." *Hall Aff.* ¶ 69.

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 at this meeting concerning POWs, I have received no CIA records regarding this meeting, including the referenced 'overhead photography.'" *Hall Aff.* ¶ 72.

50. "Exhibit 67 is a Select Committee internal memorandum of June 16, 1992 (at Bates 236), which includes: 'In January 1988, [REDACTION] Several unusual markings—the letters 'USA' and what resembled a US Air Forces escape and evasion symbol known and a "Walking Kilo" on the ground west of Sam Neua Laos... recently completed analysis

gives us a better understanding ...'" The CIA can provide photo-enhanced imagery of satellite imagery, and the referenced "recently completed," and later, analysis, of the imagery." *Hall Aff.* ¶ 106.

Offer to repatriate POWs for reward

51. "[T]he deposition of Richard Allen, National Security Advisor in the Reagan Administration, and hand written notes regarding an offer to sell to the US 57 men for \$4.5 billion. *See* Affidavit of Roger Hall Exhibits 23(a) and 23(b)." *Hrdlicka Aff.* ¶ 59.

52. "[O]fficials of US AID met with Ed Meese and CIA Director Casey and a shipment of \$200,000 of medical supplies was approved as good faith evidence of our intent to work with the Laotian government... I know the CIA was involved in both the decision to approve and stop these shipments." *LeBoutillier Aff.* Docket 83-15 ¶ 11.

53. "In 1986, White House US Secret Service Agent John Syphrit told Hendon "that, while stationed in the hallway just outside the Oval Office in late January 1981, he observed and heard the following: President Reagan, Vice-President Bush, Director-designate of the CIA William Casey, and National Security Advisor Richard Allen emerged from the Oval Office and, pausing in the hallway, en route to the Cabinet Room, briefly discussed an offer made by the Vietnamese government to the Reagan Administration to trade the American POWs they were holding in return for payment of some four billion dollars." *Hendon Aff.* Docket 95-45 ¶ 25.

54. In 1986, White House US Secret Service Agent John Syphrit told Hendon "that, while stationed in the hallway just outside the Oval Office in late January 1981, he observed and heard the following: President Reagan, Vice-President Bush, Director-designate of the CIA William Casey, and National Security Advisor Richard Allen emerged

from the Oval Office and, pausing in the hallway, en route to the Cabinet Room, briefly discussed an offer made by the Vietnamese government to the Reagan Administration to trade the American POWs they were holding in return for payment of some four billion dollars." *Hendon Aff.* Docket 95-45 ¶ 25.

55. "John Syphrit... overheard CIA Director William Casey inform President Ronald Reagan that the Vietnamese had made an offer to hand over live American POWs in exchange for \$4.5 billion.... Syphrit previously told this to Hendon... Casey instructed a CIA employee to go back to the CIA and bring the confirming documentation to the White House for the President.... I have been provided no... documents which Syphrit says Casey instructed a CIA employee to take to the White House... President Reagan is reported as having told CIA Director William Casey "to do something about it [this offer]" ... This meeting is mentioned in the Senate Select Committee Report at page 32. Exhibit 24 at Bates 92. The CIA has not provided plaintiffs with any records related to this 1981 meeting, or the North Vietnamese offer, or what the CIA (Casey) did in response to President Reagan's directive. *Hall Aff.* ¶¶ 79-80.

56. "John LeBoutillier states that in 1981 and 1982 he visited Laos four times, and that Laotian officials told him that in exchange for certain aid, they would make sure that their people looked for and found missing American POWs. *Id.* He further states that he knows that U.S. AID officials met with Ed Meese and CIA Director Casey, and a shipment of \$200,000 in medical supplies was approved, but that after the first shipment, Robert McFarland ordered a halt to the shipments. He also says that he knew that 'the CIA was involved in both the decision to approve and stop these shipments.' The CIA has not supplied any records relating to these decisions." *Hall Aff.* ¶ 83.

Rescue Operations

57. "On Sept 21, 1992, [Mrs. Hrdlicka] received a letter from Charles Trowbridge, stating that there was no such [Duck Soup] operation associated with the Vietnam Era. In 1995, [she] received documents showing that there was such an operation, called 'Duck Soup,' that mentioned David... It was a CIA run operation. General Secord testified before the Senate Select Committee Hearings to attempts to rescue David, and that there was a 'raft of cables' in the CIA on the rescue attempts." *Hrdlicka Aff.* ¶¶ 19-20.

58. The CIA trained mercenaries for use by the Military Assistance Command Vietnam, Studies and Observations Group, "MACVSOG" or "SOG." Covert SOG teams were routinely inserted into Laos in attempts to locate, and on occasion, to rescue, POWs, from the Laotian "second-tier POW camp system," which held "310 to 350" U.S. POWs after Operation Homecoming. SOG "had extensively detailed, photographed, and ground reconnoissanced throughout the war era." *Toll Aff.* Docket 83-1 at pp. 2-5.

59. Exhibit 103 is a DOD Intelligence Information Report regarding information of a US MIA allegedly alive in Laos, June 1990, at Bates 313-19. The source alleged that he knew of David Hrdlicka's location, other POWs' locations, as well as a possible rescue attempt. The record relates that the outcome of further conversations would be relayed. The record also references four other documents—two letters and two facsimiles (at Bates 318). The CIA has failed to produce the four specifically mentioned documents, as well as associated intelligence gathered, including the planning, and carrying out of multiple rescue attempts, and the planning of the rescue of Hrdlicka by the source." *Hall Aff.* ¶ 116.

60. "Duck Soup" was an attempt to rescue then Captain David Hrdlicka and Captain Charles B. Shelton in the Sam Neua area of Laos... with the assistance of CIA assets..." The CIA failed to produce any records of this rescue mission. *Hall Aff.* ¶ 6.

61. "[A] series of reports, dating from 1966 to 1981 all showing American POWs in captivity in the area of a series of numbered canals along the Trem Trem River... referred to only by name or extract (Sage Brush I and Sage Brush II) deal with POW rescue attempts involving Provincial Reconnaissance Units, CIA paid and trained." *O'Daniel Aff.* Docket 95-44 ¶ 2.

62. "Operation Thunderhead" was a White House-approved escape plan, from the "Hanoi Hilton" in 1972. *McDaniel Aff.* ¶ 7. No records regarding this rescue mission have been produced in this lawsuit.

63. Exhibit 17 at Bates 62 is a December 5, 1991 Memorandum to Bill LeGro from Select Committee Investigators Bob Taylor regarding CIA involvement in the reconnaissance/rescue operation at a suspected POW camp near Nhom Marrot, Laos. This document references proposed satellite imagery, photographs, and related intelligence. I have been provided no imagery, or records on follow-up planning, or operations, or results." *Hall Aff.* ¶ 75.

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.... Later on, an inter-agency meeting was held to discuss what actions to take. "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. *Id.* I have not been provided with

any CIA intelligence, or surveillance, or imagery, other records related to the planning of the Nhom Marrot operation." *Hall Aff.* ¶ 75.

65. "In 1994 and in 1995, I interviewed Admiral Thomas Moorer, former Chairman of the Joint Chiefs of Staff. He told me that in 1972 he had authorized a rescue of 60 POWs in Laos. Admiral Moorer told me that, as planned, this raid was second in complexity only to the Son Tay raid. The rescue attempt was cancelled because of the pending Peace Agreement of January 1973. Admiral Moorer stated that the CIA and the Department of Defense had information on this planned operation, and that I should check with the indigenous personnel files known as Controlled American Source, at the CIA. He said this was a joint CIA DOD operation. I have not received records regarding this planned rescue operation." *Hall Aff.* ¶ 152.

Military Assistance Command, Vietnam—Special Operations Group

66. "MACVSOG was the Military Assistance Command, Vietnam-Special Operations Group... provided intelligence information... The government denied for years the existence of MACVSOG.... Yet, another family member received a letter from DPMO stating that MACVSOG daily summaries are being reviewed for declassification. There was information on POWs in the daily summaries." *Hrdlicka Aff.* ¶ 60.

67. Mr. George Carver of the Central Intelligence Agency served as Special Assistant to three different Directors of the CIA on Vietnam matters, and was on loan from CIA to the Nixon White House serving as Chairman for the Indochina Subcommittee on Intelligence during the critical Nixon years of the Indochina conflict. *Toll Aff.* Docket 83-1 at p. 12.

68. As of 1993, all SOG records had been stored in the "Directorate for Operations in the CIA." These SOG records may have thereafter been "moved to the Director's files...to the Executive Registry Files of CIA." Toll Aff. pp 2-5. "Carver stated that [i]f they moved them out of Operations, historically, they would probably be moved to the Director's files... to the Executive Registry Files of CIA..." (*Id.*) "If the records have been destroyed, there will be a record of it." *Toll Aff.* Docket 83-1 at p. 19.

69. MACVSOG tracked live POWs, in cooperation with the CIA. The CIA failed to provide the records it supplied to MACVSOG. *Hall Aff.* ¶ 5.

Nhom Marrott

70. "From October, 1980 through February, 1981 [LeBoutillier] was briefed, as a member of the House Special POW/MIA Task Force, on the construction in Laos at Nhom Marrott of a prison camp. We were shown aerial reconnaissance photographs showing the month-by-month progress of this construction project... also confirmed by radio traffic intercepts." *LeBoutillier Aff.* Docket 83-15 ¶ 8.

71. "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. During the period March 1979- June 1981, the CIA gathered intelligence, including human intelligence reporting, 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 from September 1980-May 1981 and perhaps beyond. Between January and May 1981 the CIA dispatched a least one reconnaissance team to the camp location to photograph the inmates and gather

intelligence. 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. *O'Shea Aff.* Docket 182-6 ¶¶ 1-2.

72. "At NARA I located a document reporting on the Nhom Marrot Detention Facility, Exhibit 16, a January 28, 1981, DIA Memo for Chairman of the Joint Chiefs of Staff regarding POW Intelligence. It states, in part... 'In November 1980, CIA provided information which corroborates the refugee's report. Overhead imagery has verified the existence of a detention facility at the alleged site. At enclosure is a chronological listing with tabs, which support the belief that U.S. PWs may be detained in Laos.... I will request that CIA prepare a topographical model of the site and surrounding area.... CIA agrees to undertake operation inside Laos to verify presence of Americans.'" [Plaintiffs] have not been provided the 'information provided by a refugee... [about] the detention of U.S. PWs in Laos,' 'CIA information' that corroborates the report, including '[o]verhead imagery,' ground reconnaissance photography, and reports, or the chronological listing with tabs, which support the belief that U.S. PWs may be detained in Laos, nor photographs of the 'topographical model of the site and surrounding area,' nor the product of the CIA's undertaking of operation[s] inside Laos to verify [the] presence of Americans." In fact, the CIA has never acknowledged or released any information on this facility. *Hall Aff.* ¶ 70.

73. "A January 28, 1981 DIA Memorandum for the Chairman Joint Chiefs of Staff, attached as Exhibit 16, recites... 'there are approximately 2,500 Americans unaccounted-for in Southeast Asia... In November 1980, CIA provided information which corroborates the refugee's report. Overhead imagery has verified the existence of a detention facility at the alleged site.... On 17 January 1981, DIA requested that CIA attempt to confirm the

presence of U.S. PWs in Laos.' The enclosure is "CHRONOLOGICAL LISTING, SUBJECT: Nhommarath Detention Facility" (*id.* at Bates 60), which recites intelligence on that POW camp. I have not been provided with the imagery referenced, or CIA Memorandum, appearing on tabs A-F. *See* Bates page 61." *Hall Aff.* ¶ 73.

74. "Exhibit 19, at Bates 65-68, is a March 20, 1981 heavily redacted CIA Intelligence on Nhom Marrot POW camp, which I obtained from the Library of Congress. It is a CIA document reflecting that, based in part on human intelligence, there was a second operation at Nhom Marrot. The memorandum reflects that a second team was awaiting debriefing of a reconnaissance team, and that a review of 'over 900' items regarding US POWs in Laos... This CIA document also refers to a 'series of exchanges between CIA, DIA, NSA [REDACTED] seeking to assure that all possible measures to collect any [REDACTED] of POWs in Nhom Marrot facility.' *Id.* The CIA did not provide me with a copy of this document, nor has it provided me with the other records related to this second Nhom Marrot operation, nor the 900 items reviewed regarding US POWs, unredacted, nor the analysis of those items." *Hall Aff.* ¶ 76.

David Hrdlicka

75. "David Hrdlicka was shot down, and captured, on May 18, 1965. He was alive, in captivity, in Sam Neua, Laos, at the Pathet Lao Headquarters. This is well documented." *Hrdlicka Aff.* ¶ 2.

76. "The government has insisted, for over 20 years now, that David is dead. According to the government, David died in 1966. Next, it claimed that he died in 1967. Lastly, according to the government, David died in 1968. It finally settled on 1968 as the date it "believes" that David died. The press conference that displayed David was held in

1969. The government has no evidence that David is dead.... The absence of any evidence cannot be the basis of declaring someone to have died... There has been no credible evidence to date that proves that David L. Hrdlicka has died. Rather, there have been live sighting reports that show him to be alive in the early 1990s." *Hrdlicka Aff.* ¶¶ 62-63.

77. "In 1996, the POW/MIA families... amend[ed] the Missing Personnel Act... worked for 6 months, at our own expense, to get this legislation passed... required evidence of death before the government could declare a person dead... Another provision would have penalized anyone for lying to service family members about their loved ones. Later, our amendments were repealed, at the behest of Senator John McCain." *Hrdlicka Aff.* ¶¶ 65-66.

78. "Exhibit 100 is a DOD Information Report re Colonel Chaeng, June 1989, at Bates 304-06. The CIA withholds information on General Chaeng, his involvement in with the POW issue, including David Hrdlicka." *Hall Aff.* ¶ 112.

79. "Exhibit 104 is a DIA Cable regarding contact with a Laotian source regarding POW information, June 1990, at Bates 320. This record concerning 'David Hrdlicka and friends' (other POWs), relating that the outcome of further conversations with source will be relayed soon. Source further stated that 'he had information from Colonel Chaeng through with Colonel Boua that Hrdlicka was held in the vicinity of Lak Xai.' The CIA withholds the additional pages of this record, and subsequently obtained information on Hrdlicka 'and friends,' as well as the subsequent intelligence regarding General Chaeng." *Hall Aff.* ¶ 115.

Other records not produced

80. Supporting documents related to the preparation of the 23-page, Top Secret "US Vietnamese Talks on POWs/MIAs During the Nixon, Ford, and Carter Administrations Prepared for Richard Childress, National Security Council," Sep. 23, 1985, have not been produced in this lawsuit. *Sauter Aff.* ¶ 25.

81. CIA analysis and support of the effort in 1984-5 (detailed by the US Senate Select Committee on POW/MIA Affairs, declassified State Department records and other sources) to respond to an alleged Vietnamese offer to sell American POW/MIA remains and, potentially, living POWs to the United States. *Sauter Aff.* ¶ 23. "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," but have not been produced in this lawsuit. *Sauter Aff.* ¶ 23.

82. "[T]he classified file kept by DPMO (Department of POW/MIA) for [Mrs. Hrdlicka's] husband, [had] no cables from CIA, even though General Secord testified that there were a 'mountain of message traffic' on David's case. *See* Affidavit of Roger Hall." *Hrdlicka Aff.* ¶ 56.

83. "Over the years, I have requested any and all documents mentioning Hrdlicka's name. Yet, I am still receiving documents that have not been given to me by the government agencies tasked with investigating David's case." *Hrdlicka Aff.* ¶ 54.

84. "A United Nations Official in Laos in 1981... saw Caucasian men working on a road under armed guards... [who were identified as] American prisoners left over from the War." *LeBoutillier Aff.* Docket 83-15 ¶ 13.

85. "Air Force Lt. Col. (then-Major) Henry M. "Mick" Serex, an electronic warfare officer, went missing on April 2, 1972, when his EB-66, code-named "Bat 21," was shot down over the Demilitarized Zone while accompanying a B-52 strike during the Easter invasion.... Air Force records indicate Bat 21 was hit by a surface-to-air missile while flying at an altitude of approximately twenty-six thousand feet. An intercepted PAVN radio communication reported the shutdown and stated that PAVN personnel had "sighted orange parachutes in the area." *Hendon Aff.* Docket 95-45 ¶ 12.

86. The "detailed" letter attached as Exhibit 5 to Sauter Affidavit, from the head of the CIA to the head of the DIA, would have been written based on staff reports and analysis," which have not been produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 19.

87. CIA records associated with a memo from the Director of the CIA (DCI) to the Deputy Director of Operations (DDO) entitled "Subject: Prisoners of War" and reading: "I'd like a rundown of the present state of our knowledge, leads, and activities with respect to POWs," have not been produced in this lawsuit. *Sauter Aff.* ¶ 22, citing its Exhibit 6.

88. The CIA Memorandum for Dr. Henry A. Kissinger, "Subject: Indication that the Communists Are Holding Previously Unlisted U.S. POWs as a Future Bargaining Tool, March 20, 1973" was not produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 10.

89. The "Memorandum for National Security Advisor Anthony Lake from National Intelligence Officer for East Asia (NIC/CIA), indicating it was 'possible' Hanoi held back US POWs in 1973, and was angry reparations from the U.S. had not been forthcoming," dated December 13, 1993, described elsewhere as: "Memorandum to

Assistant to the President for National Security Affairs Anthony Lake from National Intelligence Officer for East Asia Robert Suettinger, was not produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 11.

90. The "Memorandum for Director of Central Intelligence, Subject: Reevaluation of PW/MIA Information, dated August 13, 1976" was not produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 12.

91. The "Central Intelligence Agency, Director of Intelligence Memorandum, Hanoi and US Prisoners of War June 28, 1971" was not produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 13.

92. The July 1982, document, "Organization and Inmates of Tan Lap Prison, Vinh Phu Province (North Vietnam)" was not produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 14.

93. The "DO Spot Report date 6 January 1981," was not produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 16.

94. The "Memorandum for the Record," dated March 5, 1999 "September 1996 and August 1998 Top Secret memorandum," was not produced in this lawsuit, nor does it appear on the CIA's FOIA Web site. *Sauter Aff.* ¶ 17.

95. The government maintained a "list" of POWs. The CIA has not produced this list. *Hall Aff.* ¶ 3, citing deposition of Ambassador to Laos William Sullivan.

96. "In May of 1965 two American pilots were being held in the home of Communist General Singkapo in Laos.... [Hall] hasn't received any records regarding these POWs." *Hall Aff.* ¶ 8.

97. "[A]n Intelligence Information Report from the Directorate for Plans is a 'Preliminary Debriefing Site for Captured U.S. Pilots in Vinh Phu Province. . . .' Vietnam.... The CIA did not provide me with this record or any other documents pertaining to this debriefing facility or the fate of that POW or any other POWs taken to that facility." *Hall Aff.* ¶ 10.

98. Exhibit 77, Bates 252-253, is a Department of Defense US Prisoners of War in Laos report dated August 1970, regarding Conversation with Phoun Supraseuth POWs and MIAs. The DCM 'EXPLAINED OUR KEEN DISAPPOINTMENT WITH NORTH VIETNAMESE FAILURE TO COOPERATE WITH US AUTHORITIES ON MIAS AND THAT WE SINCERELY HOPED LPF WOULD ADOPT A MORE POSITIVE APPROACH TOWARDS POW/MIA PROBLEM. . . .' Recommendations were made for changes to help bring about recovery of POWs." Plaintiffs have not been provided these recommendations. *Hall Aff.* ¶ 33.

99. "At the Library of Congress [Hall] obtained... "Briefing Board" Reports.... CIA documents concerning information received from all source reports.... information contained therein comes from human sources, photographic surveillance, satellite imagery, etc.... The CIA did not provide copies of these Briefing Boards to me in this case, nor any such reports related to Laos, Burma, Cambodia or other countries. Nor did it identify any "all sources" supporting documentation that the CIA used in compiling the Briefing Board Reports... *Hall Aff.* ¶ 35.

100. An excerpt of Exhibit 70... reasons that since only three POW's from Laos are confirmed held in North Vietnam... a major effort should be made to locate the remaining 227 who are listed as MIA in Laos and may still be in Laos. The CIA has not provided information identifying the 227 MIAs or related to efforts to locate them. *Hall Aff.* ¶ 39.

101. Exhibit 35(a), Bates 156-57 is an August 27, 1971 CIA Intelligence Report states that "Three types of material are enclosed herewith for addition to or comparison with the [redacted] databank of intelligence on POW camps in Laos and adjacent areas." Plaintiffs have not received the referenced "collated bits of information on the various sites," nor "the [CIA] Station's periodic report on POW detention sites." *Hall Aff.* ¶ 43.

102. "During the Vietnam War, the CIA Political Adviser ("POLARD") at the Commander in Chief Pacific ("CINCPAC") was the originator or party to all MIA/POW operations.... See Exhibit 3, at Bates 9-10, May 1972 State Department Cable to SECSTATE re PWs in Laos.... The next page references the attachment—"CICNPAC FOR POLARD" (Commander in Chief Pacific for CIA political advisor) re "Status of PWs in Laos." *Id.* at Bates 10. I have not been provided these or related records, nor any records of CIA communications to and from CINPAC and POLARD." *Hall Aff.* ¶ 47.

103. Exhibit 52 is a March 5, 1973 CIA Intelligence Report. It relates (at Bates 220) that "three captured American pilots, three Tai pilots, and four Lao pilots in the Sam Neua province." The information on which this report is based has not been produced. *Hall Aff.* ¶ 51.

104. "In a March 18, 1973 Memorandum from Chief of Naval Operations to Chairman, Joint Chiefs, re POWs in Laos, from Chief of Naval Operations Admiral E. R. Zumwalt to Admiral Thomas Moorer, (Exhibit 2(d) at Bates 8), Admiral Zumwalt wrote, 'In view of the direct and personal interest the Services have [in the POW] matter,' he recommended that 'the JCS receive a briefing from the CIA on their effort in this area so that we may be confident this important humanitarian issue is receiving appropriate attention.' The CIA has not produced the referenced briefing papers, nor associated

records or communications. The CIA produced no Briefing Board Reports, nor identified, nor correlated, any underlying 'all source' materials, for either Vietnam or Laos, in this litigation. I obtained these Briefing Board Reports, which all regard Vietnam, from various POW family members." *Hall Aff.* ¶ 54.

105. Exhibit 97 is a White House memorandum of conversation between Kissinger and Le Duc Tho, May 23, 1973, at Bates 292-95.... The CIA should release this record completely unredacted." *Hall Aff.* ¶ 55.

106. A document obtained from NARA, circa 1974, Information on the Interagency Prisoner of War Interagency Prisoner of War Intelligence Ad Hoc Committee, Exhibit 35(b) at Bates 158, relates that IPWIC, an interagency committee, was the only intelligence committee responsible for matters relating to POWs, and that 'CIA is the only non-DOD member to IPWIC.'... In this case, the CIA has not provided the records of intelligence on POWs that it supplied to IPWIC." *Hall Aff.* ¶ 56.

107. "Exhibit 35(c), at Bates 159, is a December 4, 1992, CIA letter to Select Committee... 'After reviewing the document for release to the Committee, the Counterintelligence Center (CIC), the successor organization to the CI Staff, appended memorandum commenting on and correcting some of the statements made in the paper of 1975; CIC's memorandum is likewise enclosed....' I have not been provided with the "CIC's memorandum" "appended" memoranda, nor any materials that may have been provided in response to the CIA's offer to "expand on the paper." *Hall Aff.* ¶ 58.

108. "Exhibit 95, CIA Intelligence Report re communist logistical operations in Northern Laos, February 1972, at Bates 287, is missing all pages except the cover-page." *Hall Aff.* ¶ 47.

109. Exhibit 59 is the first page of a CIA Intelligence Report, July 24, 1972, at Bates 227, which relates that 10 POWs were sited in 1967. The balance of this record, three pages, has not been produced. *Hall Aff.* ¶ 49.

Other records of POWs in Laos

110. "Over 500 men were lost in Laos. An Intelligence Report confirms 54 enemy POW camps in Laos. See Affidavit of Roger Hall Exhibit 34." *Hrdlicka Aff.* ¶ 37.

111. "There are numerous intelligence reports showing live POWs all over Laos after Homecoming 1973. Before operation homecoming, in 1971, there were at least 50 POWs in Laos." *Hrdlicka Aff.* ¶ 46, citing Exhibit 38.

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... 'Number of persons in custody: 23 American Prisoners of War.' Another 1984 report... reflects that the CIA believed the number to be 20, not 23." *Hrdlicka Aff.* ¶¶ 41-42, citing Exhibits 32, 45.

113. "The CIA's intelligence gathering regarding POWs in Laos was ongoing. See June 1973 *Joint Chief Memorandum re CIA's Intelligence on POWs in Laos*, Exhibit 47 at Bates 141-47, with the subject, "US prisoners of war in Laos." It states:

[R]eference is made to your memorandum... dated 18 May 1973, which discussed the US PW/MIA situation allows and recommended that a CIA briefing on the subject we provided to the JCS.... CIA continue to conduct an active program to acquire intelligence relative to the status of US MIA personnel. The agency accords PW/MIA matters one of the highest priorities in its overall intelligence collection efforts in SE Asia... CIA has had, and currently conducts, an active program to acquire intelligence related to the status of POW/MIA personnel... carried out by assets, and winds in the organizational structure of CIA station in Laos...

DIA is collaborating closely where appropriate with CIA in regard to the current situation in Laos... At present there are proximately 350 US military and civilians listed as missing in action in Laos.

Hrdlicka Aff. ¶ 67.

114. "Exhibit 98 is a CIA Report of a sighting of 8 to 10 Americans in Laos, Undated, at Bates 297. It states... 'Nine American PWs were held in the vicinity of Mahaxy, a town about 30 miles east of Thakek in central Laos, in September 1973. One report said they were taken to Hanoi in September 1973. Another report said nine Americans were still in the area near a town called Pha Kateom in March 1974.... The nine Americans captured in Laos and released in Operation Homecoming had all been moved out of Laos to Hanoi well before the end of 1972.' The Report mentions a series of other reports on which it is based, but the CIA did not produce these underlying and other related reports." *Hall Aff.* ¶ 149.

Other records of specific operations and locations

115. "Blackbeard was CIA run and had agents with free access to POW camps... [to run] cross border operations" to gather intelligence on POW camps. *O'Daniel Aff.* Docket 95-44 ¶ 15.

116. "CIA also ran a project called OAK.... [that] targeted POW camps in Cambodia and South Vietnam." *O'Daniel Aff.* Docket 95-44 ¶ 15.

117. "CIA run operations into Cambodia were Nantucket, Vesuvius One, Sunstune Park, and Gunboat. All these operations had a priority mission of finding American POW/MIA information. *O'Daniel Aff.* Docket 95-44 ¶ 15.

118. O'Daniel has "read summaries of regular CIA reports showing locations of POW camps in Laos." *O'Daniel Aff.* Docket 95-44 ¶ 16.

119. "CIA also had a controlled American Source giving American intelligence detailed lists of Americans held in Son Tay and probably other prisons in North Vietnam." *O'Daniel Aff.* Docket 95-44 ¶ 17.

120. A CIA Intelligence Information Cable sent on April 8, 1967, reports that three American prisoners were at this location, Houei Vong in Houa Phan Province, and had been moved there from Ban Nakay Teu, in March 1966. Hall has "been provided with no records regarding this transfer or any follow-up intelligence on these three American POWs." *Hall Aff.* ¶ 11.

121. "In my review of publicly released reports and documents from the CIA and other agencies, the following code names have surfaced as the designations for operations related to or connected with POW/MIAs: Bright Light (a DOD collection and reporting system on POWs and prison camps—the CIA would have a corresponding code word), Trail Watch (a CIA project using, among others, Controlled American Sources and "indigenous personnel" to observe POW and military movements on routes in Laos and elsewhere), Project Alpha (an Air Force mission to track the location of POW/MIAs to protect them against inadvertent US bombings—the CIA would have a corresponding code word), Operation Pocket Change (a 1981 plan to reconnoiter—including using photography and listening devices—and rescue those believed held in Laos), Project Corona (an operation to photograph--including imagery taken by satellite--and interpret troop movements in South East Asia, including along the Ho Chi Min Trail), and Duck Soup (the CINPAC, Air America (a CIA proprietary) name for a supply operation also used to rescue POWs, including Colonel Hrdlicka and others from Laos). In each of these operations, there is publicly available evidence of the CIA's involvement. The CIA should have searched under these

names, and under the CIA's own codename for these operations. I have not received any records related to these operations." *Hall Aff.* ¶ 137.

122. "Exhibit 94... is an Intelligence Information Cable regarding the vicinity of a prison camp containing about 20 USAF pilots in Ban Nakay region of Houa Phan province, 1969-1970. [Plaintiffs] have not been given any further information on mentioned 20 Air Force pilots, any follow-up collection activities or intelligence reports." *Hall Aff.* ¶ 27.

123. The Project out of Nakhon Phanom, Thailand, was tasked with selecting targets for bombing strikes, some of which housed POWs, "to prevent American targeting efforts in Laos and North Vietnam... the Project coordinated bombing in "Laos for the CIA to conduct its activities... The CIA has not provided the list of targets or intelligence on known and suspected POWs at all such targets. *Hall Aff.* ¶ 28.

124. Exhibit 72, Bates 244-248, titled Son Tay Raid Timetable of Planning, does not include information on POWs held at that location prior to the raid nor information and found at Son Tay after the raid. *Hall Aff.* ¶ 31.

125. "Exhibit 114 is my notes regarding the Trail Watch Program, which was a program to watch trails that the Vietnamese used to move troops, equipment, and POWs. The CIA has not produced any records regarding the Trail Watch Program as it relates to POWs. The note also regards Moua Chung, a Laotian who was part of the David Hrdlicka rescue. Chung also worked for General Vang Pao, who was a CIA asset. The CIA has not produced any records regarding General Vang Pao." *Hall Aff.* ¶ 146.

Lists of prison sites

126. "It is also clear that the CIA kept a list of suspected prison sites by name and grid coordinates.... [Plaintiffs] have received no such records from the CIA in this case." *Hall Aff.* ¶ 26.

127. "Exhibit 63 at Bates 231 is the first page of an August 10, 1992 'Possible POW/MIA Associated Markings in Southeast Asia... 1976, 1980, 1981, 1992.' The CIA has failed to disclose the balance of this CIA analysis of multiple prison camps over multiple years." *Hall Aff.* ¶ 17.

Additional records of POWs into the 1980s and 1990s

128. "Exhibit 126 (2015) is a CIA Memorandum re six POWs held in Laos, 1983, at Bates 387-88... 'On 25 February 1983, [redacted] information [redacted] that there were four U.S. POW's being held at the Nadeng Prison in the LPDR.'" The CIA has failed to provide any information regarding these live POWs held in Laos. *Hall Aff.* ¶ 86.

129. "Exhibit 124 (2015) is a Memorandum re six POWs held in Laos, undated, at Bates 381-83: 'Circa March 1983, [redacted] a militia chief claimed that there is a Prisoner of War (POW) camp located at the foot of Ngoua Mountain (NCA), approximately 25 kilometers south of Kadon Village. According to [redacted] there were 23 American prisoners of war (POW's) detained in the camp.' The CIA has failed to provide any information regarding these 23 live POWs held in Laos." *Hall Aff.* ¶ 84.

130. "Exhibit 125 (2015) is a CIA Memorandum re six POWs held in Laos, undated, November 2, 1983, at Bates 384-86: 'In late April 1982, [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, Houa Phan Province, in northern Laos (grid coordinates 20 degrees north latitude,

104 degrees east meridian). ... He said the camp held about 50 such POW's who had recently been transferred to the camp from an unknown location.' The CIA has failed to provide any information regarding these live POWs held in Laos." *Hall Aff.* ¶ 85.

131. "Exhibit 141 (2015) is a Memorandum regarding ten POWs held, February 1989, at Bates 412-14. It 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.

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.

133. "Exhibit 38(a) at Bates 177 is a March 1983 CIA Cable regarding Identification of Possible U.S. Prisoner of War camp in Saravanc Province, Lao People's Democratic Republic, reporting that there were '23 American prisoner of war (POWs) detained in the camp....' Exhibit 38(b) at Bates 178 is an undated CIA Cable, which states, in part, 'Identification of Possible U.S. Prisoner of War camp in Saravanc Province, Lao People's Democratic Republic'... The CIA has provided no records regarding the referenced '23 American prisoner of war (POWs)' in Saravanc Province, Laos." *Hall Aff.* ¶ 87.

134. "Exhibit 127 (2015) is a CIA Intelligence Report regarding a 1986 sighting of POW in Laos, December 23, 1986... The CIA has failed to provide any further information on this POW." *Hall Aff.* ¶ 89.

135. "Exhibit 128 (2015) is a CIA Intelligence Report regarding an American hiding in Laos, October 30, 1986, at Bates 391-92... The CIA has failed to provide any further information on this live POW..." *Hall Aff.* ¶ 89.

136. Exhibit 129 (2015) is a CIA Intelligence Report regarding an American hiding in Laos, 24 October 1986... The CIA has failed to provide any further information on this POW." *Hall Aff.* ¶ 91.

137. "Exhibit 130 (2015) is a CIA Intelligence Report regarding 226 POWs held in Laos, September 20, 1986, at Bates 395-96. It states, in part '226 U.S. prisoners of war (POW's) were alive and being held in Laos. ... The period when the alleged POW's were moved into Laos coincided with the mutual cooperation agreement signed between Vietnam and the U.S. on POW/MIA matters.' The CIA has failed to provide any further information on the transfer of these POWs, or any follow-up intelligence on these men, including records on ground reconnaissance operations. *Hall Aff.* ¶ 92.

138. "Exhibit 131 (2015) is a CIA Intelligence Report regarding six POWs held in Laos, September 20, 1986, at Bates 397-98. It relates: '[Redacted], told a member of the Lao resistance and former detention camp inmate that a group of six American Prisoners-of-war (POWs) were still incarcerated at a camp located at Tham Pha Leung (NCA) Cave near Phou Sao (UG 3918) village, Xieng Khouang Province.' The CIA has failed to provide any further information these six POWs, alive in 1986, or their deaths." *Hall Aff.* ¶ 93.

139. "Exhibit 132 (2015) is a CIA Intelligence Report regarding four POWs held in Laos, September 16, 1986, at Bates 399-400. It states: 'In mid-September 1986 [Redacted] reported that her brother had seen four American prisoners-of-war (POWs) in November

1983 in Xieng Khouang Province, Laos.' The CIA has failed to provide any further information these four POWs." *Hall Aff.* ¶ 94.

140. "Exhibit 133 (2015) is a Memorandum regarding seven POWs held in Laos, Undated, at Bates 401-04: 'In a private conversation with friends and relatives in mid-April 1986 [redacted] state that in Mid-March she had seen seven People's Army of Vietnam (PAVN) guards controlling three Caucasians eight kilometers east of Muang Ngoy (TH 5891) along the main road. ... Local residents later told her the men were American prisoners captured prior to 1972.'" *Hall Aff.* ¶ 95.

141. "Exhibit 134 (2015) is a CIA Intelligence Report regarding six POWs held in Laos, September 16, 1986, at Bates 405-06.... 'a group of six American prisoners-of-war (POWs) were still incarcerated at a camp located at Tham Pha Leung (NCA) cave near Phou Sao (UG 3918) village, Xieng Khouang Province.' The CIA has failed to provide any further information these six POWs." *Hall Aff.* ¶ 96.

142. "Exhibit 135 (2015) is a CIA Intelligence Report of two live Americans in Laos, 28 April 1987... The CIA has failed to provide any further information these two POWs." *Hall Aff.* ¶ 97.

143. "Exhibit 101 Alleged location of live American POWs in Luang Prabang province, Laos, w/map, October 24, 1986, at Bates 307-09. It states that '[t]here were seven American POWs as of mid-1986 being detained at a camp near Nam Bac town, Luang Prabang Province, Laos.' The CIA has failed to provide any further information these seven POWs." *Hall Aff.* ¶ 98.

144. "Exhibit 38(d) at Bates 183-84 is a May 2, 1987 CIA Intelligence Information Cable, 'Re allegation of an interrogation center still holding US prisoners of war in an

unknown location in southwest Ha Nam Ninh province in early 1986.' The CIA has provided no records regarding the referenced interrogation center, or the 'US prisoners of war' in Ha Nam Ninh province,' Vietnam." *Hall Aff.* ¶ 103.

145. Exhibit 38(c) at Bates 181-82 is a November 2, 1987 CIA Intelligence Cable, regarding "POW/MIA Reported presence of American POWs in Houa Phan Province, as of January 1987." The cable reads, in part, "[O]ne of the POWs is named [redacted] who was captured on 18 June 1968..." The CIA has provided no records regarding the referenced "POW/MIA in Houa Phan Province," Laos, including his name. *Hall Aff.* ¶ 102.

146. "Exhibit 38(e) at Bates 185 is a November 1987 CIA Intelligence Information Cable, reporting the 'possibility of existence of American POWs in southern Vietnam.' It states: 'Socialist Republic of Vietnam (SRV) official commented in private in late October 1987 that he is certain that there are American Prisoners of War (POW) still being held in remote areas of southern Vietnam...' The CIA withholds additional records regarding the referenced POWs "still being held in remote areas of southern Vietnam." *Hall Aff.* ¶ 105.

147. "Exhibit 142 (2015) is a Memorandum re 20 POWs held in Laos, February 1988, at Bates 415-16. It states: "The first sighting occurred 30 Kilometers north of Sepone. ... Seventeen U.S. Personnel were held in a Montagnard encampment on a small river.... The second sighting was at Kham Ker... Here he met "Moken Domaho" (Donahue?) whom he described as a former USAF bomber pilot and son of "a general" in the seventh fleet. ...The third sighting was at a camp 20 kilometers off the Ho Chi Minh Trail... Twenty-seven U.S. servicemen were incarcerated here within a compound surrounded by four rows

of bamboo fencing." The CIA withholds additional records regarding these POWs, including their names, and fates. *Hall Aff.* ¶ 111.

148. "In June of 1990, the DIA received a report, which states, in part, 'I am talking to Col Chaeng (Brig Gen) PL Commander of the 11th Regiment at Kham Keut, Kham Moname province suspected of holding D. Hrdlicka and friends. The outcome of my conversation will be relayed to you soon.'" *Hrdlicka Aff.* ¶ 11.

149. "In 1992, US News & World Report published an article on 1988 satellite imagery, USA walking 'K,' taken in the Sam Neua area, where David was held. The government should have notified [Mrs. Hrdlicka]. But [she] had to read about it in the magazine. [She] requested the information concerning that report.... [P]ilots were trained to use this 'K' as a distress signal if captured." *Hrdlicka Aff.* ¶¶ 17-18.

150. "Exhibit 140 (2015) is a Memorandum regarding two POWs held in Laos, July 1989, at Bates 411: 'According to [redacted] two American prisoners of war (POW's) are now being held captive in a Leu village in Xian Khoang province near the Vietnamese border. They are being held and guarded by a local village militia group....' The CIA withholds additional records regarding these two POWs, including their names." *Hall Aff.* ¶ 109.

151. "Exhibit 147 (2015) is a Memorandum re POWs held in Laos, October 1989, at Bates 417. It also adds that an unidentified woman said that she saw POW/MIA's in a prison camp at "Dinding" (SIC) and that another unidentified person saw one or more POW/MIA's at Ban "Hoaisan" (sic). The CIA withholds additional records regarding these sightings, including the referenced initial reports." *Hall Aff.* ¶ 113.

152. "Exhibit 138 (2015) is a Memorandum re 14 POWs held in Laos, October 1989, at Bates 409. It states that '[redacted] told the source that there are 14 American POW's being held at Tham Luang, Nachik-Canton in the Viengxai District (VH2949) of Houaphan Province.' The CIA withholds additional records regarding the referenced 14 POWs, including their identities." *Hall Aff.* ¶ 107.

153. "Exhibit 148 (2015) is a Memorandum regarding a POW who fears an escape attempt, 1990, at Bates 418-19: 'Another MIA individual (MFI) is alive and under guard, but is afraid to try to escape. When he was asked if he would like to go home, he replied affirmatively, but said that he would need help to do so.' The CIA withholds additional record regarding this POW, including his name, and fate." *Hall Aff.* ¶ 114.

POWs transferred to Russia, North Korea, China

154. 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. *McDaniel Aff.* ¶ 12.

155. "Exhibit 99 is a CIA Report to the White House Situation Room regarding alleged location of live American POWs in Luang Prabang province Laos mid-1985, 1986, at Bates 303. 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....' The CIA has not provided any... information regarding the POWs mentioned in this document." *Hall Aff.* ¶ 88.

156. "Exhibit 43, Bates 206, is a March 12, 1982, Foreign Intelligence Information Report from the CIA's Domestic Collection Division, claiming Soviet incarceration of U.S.

Vietnam era POWs.... I have not received any records regarding this from the CIA." *Hall Aff.* ¶ 38.

157. "Exhibit 44 is a March 9, 1988 CIA Memorandum regarding "alleged Sightings of American POWs in North Korea from 1975 to 1982." It refers to three reports. One is of "two Americans [observed] in August 1986," and the other is regarding "about 10 military pilots captured in North Vietnam [that] were brought to North Korea." The third report concerns a sighting of 11 "Caucasians," in 1988. The CIA has produced no records regarding any POWs brought to Korea during the Vietnam War." *Hall Aff.* ¶ 99.

158. "Exhibit 38(h), at Bates 189, is a June 1992 Memo to Select Committee re 'President's Daily [CIA] Intel Briefings,' seeking copies of those briefings 'given to the President regarding the possibility of POWs being transferred to the East Bloc after Homecoming.' The author has 'a source who claims to have seen them.' The memo said the CIA had responded that they "are not available to anyone." The CIA has provided few President's Daily Intel Briefings. The CIA should produce all such briefings that address the POW issue. *Hall Aff.* ¶ 121.

159. "In 1993-1995, I spoke with Mr. Harry Pugh, a CIA employee, about American POWs in China. He told me over the telephone that all that all the documentation regarding POWs in China was in the basement of the CIA, and he did not have time to go through it all, and that nobody had gone through it. The record in this case does not reflect a search of this location. The CIA has not acknowledged that it has been in contact with Mr. Pugh." *Hall Aff.* ¶ 142.

CIA records

160. The purpose of Barry Allen Toll's Affidavit is to recount his knowledge of the location specific Top Secret archives pertaining to American POWs during and after the Vietnam War. *Toll Aff.* Docket 83-1 at p. 3.

161. Mr. George Carver of the Central Intelligence Agency served as Special Assistant to three different Directors of the CIA on Vietnam matters, and was on loan from CIA to the Nixon White House serving as Chairman for the Indochina Subcommittee on Intelligence during the critical Nixon years of the Indochina conflict. *Toll Aff.* Docket 83-1 at p. 12.

162. "[T]he nation's most covert, extensive, and productive strategic intelligence operations... directly flowed their product into the Nixon White House, to George's Indochina Committee on Intelligence.... As such, George was the most informed man in the United States on intelligence in Indochina. His knowledge and awareness was virtually unique. *Toll Aff.* Docket 83-1 at p. 12.

163. At a meeting in the White House in 1993, "George [Carver] proffered CIA documents he'd authored, as late as 1975, going to the Director himself, about Americans still held captive in Indochina in the hundreds. I [Toll] provided CIA documents going to the Director himself, in 1967 and 1969, detailing our certain knowledge of the second tier prison system in Laos, and the numbers of American POWs being held there at the time. Their exact coordinates were noted." *Toll Aff.* Docket 83-1 at p. 12.

164. At a meeting in the White House in 1993 Toll asked Carver "'all of those intelligence materials and product flowed directly to you in the Nixon White House, did they not?' and George said 'Yes,'" again. *Toll Aff.* Docket 83-1 at p. 12.

165. Regarding records referenced in the foregoing paragraph, "George [Carver] said, 'I sent them back to Langley for storage, through the DO,' meaning the Directorate for Operations in the CIA. 'That was the arrangement I had,' he continued, 'usually by courier.'" *Toll Aff.* Docket 83-1 at p. 18.

166. Carver stated that [i]f they moved them out of Operations, historically, they would probably be moved to the Director's files... to the Executive Registry Files of CIA..." *Toll Aff.* Docket 83-1 at p. 18.

167. CIA has failed to search the archive of records referenced in the foregoing paragraphs, stored at its Langley facility.

168. "[A]ll live sighting reports that came into the [US] embassy [in Laos] went directly to the CIA Station Chief." *LeBoutillier Aff.* Docket 83-15 ¶ 12.

169. "Exhibit 68, Documents removed from National Archives (Bates 237), dated December 4, 1992, reflects that the CIA removed: 1) CIA memo, 26 Nov 1975 2) CIA memo, 8 Nov 1975 3) CIA memo, 21 Nov 1975 4) DUD [illegible] 1/2 with atchs, 14 Apr CIA memo, 1975. These records are representatives of the many documents that have been removed by the CIA from the Senate Select Committee on POW/MIA Affairs. The CIA must have a record of its handling of these classified records, but has failed to reveal the fate of these records." *Hall Aff.* ¶ 60.

170. Exhibit 69 (at Bates 238), Documents removed from National Archives, dated December 4, 1992 evidences the removal of a 1980 four-page document... The CIA failed to produce this record, and other removed records." *Hall Aff.* ¶ 71.

171. "Admiral Bobby Ray Inman... indicated in his testimony that maps of activities going on in northeast Laos appeared to flow from the CIA to the NSA.... The CIA failed to provide the documentation referenced by Admiral Inman in his deposition." *Hall Aff.* ¶ 82.

172. "In his November 9, 1993 letter to the President from CIA Director, James Woolsey stated that the CIA was withholding 574 documents pertaining to POWs. See Exhibit 1 at Bates 1:

I am reporting on the completion of CIA's review, declassification and release of all relevant documents, files pertaining to American and missing in Southeast Asia in accordance with Executive Order 12812 deadline of 11 November 1993.

To date, 1,766 documents have been forwarded to the Library of Congress, while only 574 documents have been denied. All denied material was withheld based on the need to protect sources and methods, ongoing clandestine operations, negotiations on foreign policy such as the normalization of relations, or privacy issues related to returnees and the families of POWs and MIAs.

The CIA has not indicated that it has provided the referenced 574 documents." *Hall Aff.* ¶ 118.

173. "Asked who was the dominant collector of information in Laos, the CIA or the Department of Defense (DOD), Secord replied, 'CIA, clearly, because of the resources they had on the ground.' Asked who had the best information, the Defense Intelligence Agency or the CIA, Secord replied:

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.

Select Committee Deposition William Sullivan, Ambassador to Laos, Exhibit 7, Bates 22, at 32. Secord's recitation is not consistent with the records provided. *Hall Aff.* ¶ 119.

174. "Prior to testifying before the Senate Committee, [General] Secord was deposed by it. In response to a question about whether any of the intelligence reports that he had reviewed while detailed to the CIA, or in any other position, 'referred to prisoners of war or men who were missing in action,' Secord replied, 'Oh, many, constantly.' Exhibit 9, Select Committee Deposition Richard V. Secord, at Bates 35." *Hall Aff.* ¶ 120.

175. "The CIA has not stated that it searched any overseas field stations for responsive records. 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. I photocopied pages from the Testimony of the Chief of Station, Vientianne, Laos (1970-1973) (Exhibit 26 at Bates 111-19), before it was reclassified, and withheld. The witness was asked to identify a Report, which he characterized as 'a compilation of all' information on POWs. I have not been provided with the referenced CIA Report. Nor have I been provided any CIA records on POW/MIAs from those field stations. And I have not been provided any reclassified depositions." *Hall Aff.* ¶ 122.

176. "Exhibit 40(a) (Bates 200-01) is a April 22, 2008 letter from Kristin Welhelm of the National Archives to me which attaches a list of depositions taken before the Senate Select Committee on POW/MIA Affairs that have been 'withdrawn in full' from public access. *Id.* On April 4, 2016, Ms. Welhelm informed me that the CIA has not declassified any of these depositions. The CIA has not provided me with copies of any of these depositions or justified their withholding." *Hall Aff.* ¶ 139.

177. "Exhibit 41 (at Bates 202) is an April 28, 2008 letter from Archives Specialist Thomas Haughton to me which acknowledges my request for mandatory declassification review of the depositions of John Mason and William Graver, and advises me that it may be necessary for him to send them to the CIA for review. *Id.* I have heard nothing from the National Archives or the CIA." *Hall Aff.* ¶ 140.

178. "Exhibit 42 (at Bates 203-05) is a May 25, 2006 typed Note by the Ms. Wilhelm of the National Archives. It attaches a list of Senate Select Committee depositions on POW/MIAs, which the CIA withheld in full, in response to my request for mandatory declassification review ("MDR"). The CIA has neither provided me with copies or nor accounted for their withholding in this lawsuit." *Hall Aff.* ¶ 141.

179. "Exhibit 84 is my letter to AUSA regarding three additional privacy waivers (at Bates 264), dated April 14, 2011. It releases the names of Hugh M. Fanning USMC, Capt. Peter Richard Matthes, AF, and Capt. Charles Joseph Scharf, AF. These names are not among the 1,711 names that the Primary Next-of-Kin authorized released. The CIA did not specify that it searched for these names." *Hall Aff.* ¶ 150.

180. "It is clear from the information I have set forth above that the CIA was involved in collecting and monitoring such information. In addition, CIA station chiefs testified before the Senate Committee that the CIA had primary responsibility for interviewing all human sources of such intelligence, including refugees during this period. See Exhibit 26, October 1991 Select Committee Deposition COS, Vientiane (1970-1973) Bates 111-19." *Hall Aff.* ¶ 151.

DATE: October 21, 2016.

Respectfully submitted,

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