

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROBERT MOORE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 20-1027 (RCL)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
_____	)	

PLAINTIFFS' STATEMENT  
OF MATERIAL FACTS NOT IN GENUINE DISPUTE

COME NOW plaintiffs Robert Moore, Jana Orear, Christianne O'Malley, and Mark Sauter, under to Fed. R. Civ. P. 56(c)(1) and Local Civil Rule 7(h), and respectfully submit this Statement of Material Facts as to which there is no Genuine Issue.

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**Inadequate Description of Search**

1. CIA did not name any component searched, and did not name any repository, or system, searched. *Blaine Decl.*, ECF No. 21-2 ¶ 20.

**Failure to Search Operational Records**

2. The CIA Information Act 50 U.S.C. § 3141(a) defines "operational files" and authorizes the CIA Director to designate certain records as "operational," making such records exempt search, review, and disclosure under the FOIA. CIA did not search these "operational files."
3. The CIA did not search the repositories of the records of the National Clandestine Service, or of the Directorate for Science and Technology, or of the Office of Personnel Security.

**Failure to Search for Records Reasonably Described**

4. In response to Item 2 seeking "intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 23.
5. The *CIA Information Report* identified in the foregoing statement references four separate live sighting reports of POWs. *See FOIA Request* ECF No. 9-2 at 3.

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6. In response to Item 7 seeking "intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 26.
7. The subject of the *CIA Information Report* identified in the foregoing statement is "Prisoner-of-War Camps in North Korea and China," subtitled "War Prisoner Administrative Office and Camp Classification." *See FOIA Request* ECF No. 9-2 at 5.

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8. In response to Item 8 seeking "intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 27.

9. The *CIA Information Report* identified in the foregoing statement is regarding a USSR interrogation center in Korea, where, "after interrogation PWs were taken to the USSR," *FOIA Request* ECF No. 9-2 at 5.
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10. In response to Item 9 seeking "intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 28.

11. The *CIA Information Report* identified in the foregoing statement relates that "some PWs listed as missing were in fact turned over to the Soviets," and "will never be released because they will have learned too much about Soviet PW handling techniques." *FOIA Request* ECF No. 9-2 at 6.
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12. In response to Item 11 seeking "intelligence material upon which [the referenced, and attached, *CIA Information Report*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 9.

13. The *CIA Information Report* identified in the foregoing statement states is regarding "information regarding the presence of US prisoners captured during the Korean War" in camps in Komsomolsk, Magadan, Chita, and Irkutsk, USSR. *FOIA Request* ECF No. 9-2 at 6.
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14. In response to Item 14 seeking "intelligence material upon which [the referenced, and attached, *CIA Memorandum*] was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports," CIA responded that the Request "is not reasonably described, as required by the FOIA statute, and, as such, did not conduct any further search related to this request." *Blaine Decl.*, ECF No. 21-2 ¶ 32.

15. The *CIA Memorandum* identified in the foregoing statement, to "US Army Chief, Special Office for Prisoners of War and Missing in Action," referenced two 1980 sightings and one 1988 sighting of "31 Caucasians, possibly American prisoners from the Korean war, in the fall of 1979." *FOIA Request* ECF No. 9-2 at 6.
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16. In response to Item 3 (*FOIA Request* ECF No. 9-2 at 3) attaching a July 15, 1952 *CIA Cross Reference Sheet* on "Location of Certain Soviet Transit Camps for POW from Korea," seeking the referenced:
- (a) July 15 1952 "Basic Communication;"
  - (b) June 24, 1953 "Basic Document;"
  - (c) Information described as "etcetera;"
  - (d) POW information in, or otherwise "Routed to, C.I. File;"
  - (e) POW information related to or bearing the "Cross Reference Number 040;"
  - (f) POW information related to or bearing the "Classification Number 383.6 Korea;"

CIA responded that it "did not conduct a search related to parts (c)-(f) of the request, as CIA believes the scope of the requested items for those parts was not reasonably defined." *Blaine Decl.*, ECF No. 21-2 ¶ 24.

### **Failure to Process Records Previously Released**

17. On September 9, 1999, the CIA released, in part, April 9, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 1.
18. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 22 years ago, and was cited in the Senate Select Committee on POW/MIA Affairs, *Chronology of Policy and Intelligence Matters Concerning Unaccounted for U.S. Military Personnel at the End of the Korean Conflict and During the Cold War*, November 10, 1992 (hereinafter "*Select Committee Chronology*"). *See, e.g., Smith Aff.* ¶ 30.
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19. On April 1, 2010, the CIA released, in part, May 8, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 1.
20. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 11 years ago, and was cited in the *Select Committee Chronology*. *See, e.g., Smith Aff.* ¶ 31.
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21. On August 3, 2011, the CIA released, in part, September 6, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 2.
22. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 10 years ago, and was cited in the *Select Committee Chronology*. *See, e.g., Smith Aff.* ¶ 32.
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23. On May 1, 2014, the CIA released, in part, May 29, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 2.

24. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 7 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 33.

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25. On May 23, 2002, the CIA released, in part, June 27, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 3.

26. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 9 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 34.

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27. The *Select Committee Chronology* includes the following paragraph:

August 11, 1951. The Central Intelligence Agency reports information from a subsource that, according to a North Korean staff member of the State Security Bureau in Seoul on 12 February 1951, “all American prisoners of war were sent to camps in Mukden, Tunghua, and Antung Provinces of Manchuria, where they were put to hard labor in mines and factories.” (Note: February 12 is before the U.N. forces retook Seoul on March 14, 1951) (Source: CIA Report No. S065823, declassified)

*Smith Aff.* ¶ 36.

28. CIA did not review, or produce, the record identified in the forgoing Statement.

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29. The *Select Committee Chronology* includes the following paragraph:

August 22, 1951. The Central Intelligence Agency reports that, according to a source, some 40 U.N. POWs in Canton, including British and American officers and enlisted men, have participated in “propaganda tours and street demonstrations” in Canton in early May, 1951. (Source: CIA Declassified Report No. S070338)

*Smith Aff.* ¶ 38.

30. CIA did not review, or produce, the record identified in the forgoing Statement.

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32. The *Select Committee Chronology* includes the following paragraph:

August 24. The Central Intelligence Agency reports that, according to a source, “78 American prisoners of war are in a camp at No. 35, Lane 1136

Yuyen Road, Shanghai. They have no freedom of movement and are not free to talk. They must attend meetings daily to study Communist doctrine. Camp officers are appointees of the East China Bureau and the East China Military Area, and four English speaking Soviets." Ten names of 8 alleged U.S. servicemen, written in Chinese, are provided "from a scrap of paper picked up in the POW camp." The identities are not evaluated by CIA. (Source: 24 August 1951 declassified CIA report no. S070512.)

*Smith Aff.* ¶ 39.

33. CIA did not review, or produce, the record identified in the forgoing Statement.
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34. The *Select Committee Chronology* includes the following paragraph:

September 6, 1951. 60 American prisoners of war are reported being held in Canton as of mid-July, according to a CIA source. (Note: According to another source (11 August 1951), 52 American POWs were moved from Canton on August 2, 1951 by rail to Peiping.) (Source: declassified CIA report dated 6 September 1951)

*Smith Aff.* ¶ 40.

35. CIA did not review, or produce, the record identified in the forgoing Statement.
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36. At some date, not intelligible on the document, the CIA released, in part, September 28, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 5.

37. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 42.
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38. The *Select Committee Chronology* includes the following paragraph:

October 4, 1951. The Central Intelligence Agency reports, that according to a source, the Chinese Communists held a meeting on August 1, 1951 to celebrate Army Day. "During the meeting, 5 American prisoners of war, captured in Korea, were escorted by Communists soldiers to the rostrum. Two of them addressed the gathering." (Source: Declassified CIA Report No. S073337, dated 4 October 1951.)

*Smith Aff.* ¶ 43.

39. CIA did not review, or produce, the record identified in the forgoing Statement.

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40. On December 4, 2001, the CIA released, in part, October 23, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 6.

41. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 10 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 44.

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42. On April 1, 2009, the CIA released, in part, October 25, 1951 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 6.

43. CIA did not review, or process, the record identified in the forgoing Statement, which was written 70 years ago, was released in part 12 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 45.

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44. The *Select Committee Chronology* includes the following paragraph:

October 27, 1951. A CIA source reports that 125 American prisoners of war were observed walking to Antung, China on the night of March 25, 1951. (declassified CIA report)

*Smith Aff.* ¶ 46.

45. CIA did not review, or produce, the record identified in the forgoing Statement.

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46. On March 21, 2011, the CIA released, in part, January 4, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 7.

47. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part 10 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 51.

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48. The *Select Committee Chronology* includes the following paragraph:

January 5, 1952. A CIA source reports that 13 American and 8 British prisoners of war were transferred by rail from Canton to Hankow. CIA also reports they have another report of U.S. POWs in the Canton area “performing hard labor on airfields.” (Source: 5 January 1952 CIA declassified report.) *Smith Aff.* ¶ 52.



49. CIA did not review, or produce, the record identified in the forgoing Statement.

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50. At some date (unintelligible), the CIA released, in part, February 6, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 7.

51. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 53.

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52. The *Select Committee Chronology* includes the following paragraph:

February 14, 1952. A CIA source reports that about the first week of January, the Chinese Communists were parading U.S. captives (prisoners of war) in Paoshan, Yunnan Province, for propaganda purposes. The source reports the Communists pointed the U.S. soldiers to the spectators, saying “these are the people we've been fighting -- and have conquered.”  
(Source: CIA declassified report dated 14 February 1951)

*Smith Aff.* ¶ 54.

53. CIA did not review, or produce, the record identified in the forgoing Statement.

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54. The *Select Committee Chronology* includes the following paragraph:

April 15, 1952. The Central Intelligence Agency reports, that according to a source, “In November, 1951 about 50 American prisoner of war were brought under guard from Shanghai to Hangchow, and were taken to Maochiafou and placed in the detention center there.” The report further states that as of February 10, 1952, 15 of them were taken elsewhere, leaving only 35. Maochiafou is reported as “probably near Hangchow.”  
(Source: CIA report dated 15 April 1952, declassified)

*Smith Aff.* ¶ 57.

55. CIA did not review, or produce, the record identified in the forgoing Statement.

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56. On March 22, 2012, the CIA released, in part, May 2, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 9.

57. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part 9 years ago, and was cited in



the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 58.

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58. On March 22, 2012 the CIA released, in part, July 17, 1952 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 9.
59. CIA did not review, or process, the record identified in the forgoing Statement, which was written 69 years ago, was released in part 9 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 60.
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60. On August 31, 2007 the CIA released, in part, July 15, 1953 *Central Intelligence Agency Information Report*, attached to *Hendershot Aff.* Exhibit B at 11.
61. CIA did not review, or process, the record identified in the forgoing Statement, which was written 68 years ago, was released in part 14 years ago, and was cited in the *Select Committee Chronology*. See, e.g., *Smith Aff.* ¶ 68.

**Failure to Search Records Housed at National Archives**

62. CIA has the ability to search its documents housed at the National Archives and Records Administration.
63. CIA has the authority to declassify documents housed at the National Archives and Records Administration.

**Bad Faith Nondisclosures**

64. Six of the 55 records produced are unredacted. Twenty-eight contain redactions based on both (b)(1) and (b)(3), and thirty have redactions under (b)(6). *Hendershot Aff.* ¶ 5.
65. Claiming grands of "(b)(1)(b)(3) NatSecAct," CIA redacted the following from its January 5, 1952 *Information Report*:

GRADING OF SOURCE						COLLECTOR'S PRELIMINARY GRADING OF CONTENT					
COMPL ETELY RELIAB LE	USUA LLY RELI ABLE	FAIRL Y RELI ABLE	NOT USUA LLY RELI ABLE	NOT RELI ABLE	CAN NOT BE JUD GED	CONFI RMED BY OTHER SOUR CES	PROB ABLY TRUE	POSS IBLY TRUE	DOUB TFUL	PROB ABLY FALSE	CAN NOT BE JUD GED
A	B	C	D	E	F	1	2	3	4	5	6

Compare CIA production *Hendershot Aff. Exhibit A* at Bates 27 with same *Information Report* submitted with *FOIA Request*, ECF No. 9-1 at 13.

66. Senator Bob Smith, Vice Chairman Senate Select Committee on POW/MIA Affairs, opines that he has "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." *Smith Aff.* ¶ 5.
67. In Senator Smith's opinion, is that "[a]fter decades of FOIA requests, emotional appeals from family members, senators and congressmen, and House and Senate Committee investigations, the intelligence agencies still keep numerous documents classified under the guise of national security. I can state without any evocation that they are still holding documents that should be declassified. The families if these men, and the American public, deserve to know the truth of what is in those files." *Smith Aff.* ¶ 7.

#### **Unrepatriated POWs, POWs Held in Soviet Union and China**

68. "The estimated number of known U.S. POWS not repatriated from the Korean War... in January, 1954...'are approximately 954'..." *Sauter Aff.* ¶ 10.
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69. In 1993, Directorate investigators reported, "We believe that U.S. Korean War POWs were transferred to the Soviet Union and never repatriated. This transfer was a highly-secret MGB [KGB] program approved by the inner circle of the Stalinist dictatorship." Evidence of the transfers was included in the Joint Commission's 1993 report, "The Transfer of U.S. Korean War POWs to the Soviet Union." *Sauter Aff.* ¶ 17.
70. "An Army Combined Command for Reconnaissance Activities Korea memorandum states... 'According to reliable information, the Communist Chinese Forces have transferred UN POWs to Russia... to be specially trained at Moscow for espionage work... 10 Americans... Russia has established a Higher Informant Training Team... in Siberia in October, 1952. [including] American[s] s." *Smith Aff.* ¶ 64.
71. "An April 29, 1954 response to a request by Assistant Secretary of the Army, Hugh Milton, to 'consolidate information on prisoners of war which may remain in Communist hands'" cites intelligence that "'corroborates previous indications UNC POWs might have been shipped to Siberia during Korean hostilities.... [and that] support earlier indications that American prisoners of war from Korea had been transported into Soviet Union and are now in Soviet custody.'" *Sauter Aff.* ¶ 17.
72. In 1954, the DoD's "summary show[ed] 944 U.S. military personnel 'presumed to be in Communist custody' and for whom 'the United Nations Command has not received a satisfactory accounting' ... [and] lists the names of 18 USAF personnel for whom 'the United States has reason to believe are being held by Communist China' ...

[and] lists 11 U.S. military personnel downed on January 18, 1953 in the South China Sea... may be in Communist custody." *Smith Aff.* ¶ 110.

73. A January 1952 report related that "63 U.S. POWs were being shipped by truck and rail from Pyongyang, North Korea to Chita, in the Soviet Union... U.S. command cancelled air strikes on the railway he reported would be carrying the POWs." *Smith Aff.* ¶ 49.

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74. On June 23, 1992, Senator Smith release[d] the list of up to 125 names (from February, 1991 Moscow trip and subsequent research) of U.S. servicemen who were reportedly interrogated by Soviets during the Korean Conflict and sent to China." *Smith Aff.* ¶ 272.

75. "[On] January 2, 1952. U.S. Army Intelligence receive[d] information that more than 500 U.N. prisoners were in a camp in Tung Kuan Ying... [in] Manchuria 'to be given short-term training pending transfer to the Soviet Union on order of central authorities,' ... and that '494 U.N. POWs had been observed inside China since December, 1951.'" *Smith Aff.* ¶ 50.

#### **Bad Faith Changes of Status of POWs**

76. "Hugh M. Milton II, Assistant Secretary of the Army in January, 1954," wrote, "A further complicating factor in the situation is that to continue to carry this personnel in a missing status is costing over one million dollars annually. It may become necessary at some future date to drop them from our records as 'missing and presumed dead.'" *Sauter Aff.* ¶ 10.

77. "On February 27, 1952, eight months after the shoot-down, the Chief of Naval Personnel wrote to the Judge Advocate General 'that there is a possibility that Captain Moore survived and is now a prisoner of war.' But the government did not inform Lois and me of this intelligence. Rather, in December of 1953, the Air Force notified us that Harry had been re-classified, from missing-in-action to killed-in-action. In 2002 the Department of Defense first advised Lois and me of Harry's survival, and captivity. In 2013, the government provided us the February 1952 memorandum referenced above." *Moore Aff.* ¶¶ 12-13.

78. In 1954, "the Department of the Army... placed 618 soldiers, *known to have been in enemy hands and unaccounted for* by the Communist Forces, in the following categories—313 Finding of Death (Administratively determined), 275—report of death, 21—dishonorable discharge, 4—under investigation (missing in action for less than one year), 3—under investigation, prognosis undecided, missing in action for over one year." *Smith Aff.* ¶ 107.

79. The fate of most of the more than 8,000 men initially listed as MIA was to be administratively declared "presumed dead, remains unknown." In 1953, General Van Fleet, commanding General of United States Army forces during the Korean War, stated that "a large percentage of the 8,000 American soldiers listed as missing in Korea were alive." *Sauter Aff.* ¶ 26.
80. The number "had already been dropped from 954 to 618 through a series of presumed findings of death" of "unaccounted-for Americans believed to be still held illegally by the Communists." *Sauter Aff.* ¶ 12.

**Unwarranted Nondisclosures upon Decennial Reviews**

81. During the course of CIA Decennial Reviews in 1985, 1995, 2005, 2015, defendant did not release the 55 records it produced in this case, "14 of which were generated in 1952-55, five in 1981-88, and 26 in 1991-92." *Hendershot Aff.* ¶ 4.

**Unwarranted Nondisclosures under Executive Order 13526**

82. Of the 55 records that the CIA produced, three are dated 1952, three are dated 1953, five are dated 1954, three are dated 1955, one is dated 1981, one is dated 1982, two are dated 1985, one is dated 1988, fifteen are dated 1991, eleven are dates 1992, two are dated 1993, one is dated 1994, one is dated 1996, one is dated 1998, one is dated 1999, two are dated 2000, one is dated 2018 and one record date is unintelligible. *Hendershot Aff.* ¶¶ 3-4.
83. All but five of the records identified in the foregoing statement are subject to automatic declassification under E.O. 13526 § 3.3, *Automatic Declassification*.

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Date: January 17, 2022.

Respectfully submitted,

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