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September 29, 2025

The Honorable Anna Paulina Luna, Chair  
The Honorable Jasmine Crockett, Ranking Member  
*Task Force on the Declassification of Federal Secrets*  
Committee on Oversight and Government Reform  
United States House of Representatives  
Room 2157, Rayburn House Office Building  
Washington, DC 20515

Re: Disclosure of Records on U.S. POWs  
from the Vietnam and Korean Wars

Dear Chairwoman Luna and Ranking Member Crockett:

I am writing to urge the Task Force to do what it can to declassify withheld records on unrepatriated American POWs from the Vietnam and Korean Wars.

The U.S. Senate Committee on Foreign Relations Republican Staff's 1991 105-page Report, *An Examination of U.S. Policy Toward POW MIAs*, authoritatively recounts consistent communist policy of withholding U.S. POWs at the conclusion of hostilities. It also details the sad history of the U.S. government's abandonment of these men. The Report fueled calls for hearings, and the *Senate Select Committee on POW/MIA Affairs* held hearings on the issue from August 2, 1991 to January 2, 1993.

Former U.S. Rep. Billy Hendon (R-NC)'s book, subtitled "The Definitive Account of American POWs Abandoned in Southeast Asia," is aptly named, *An Enormous Crime*. The government has a strong motive to withhold these records. Unsurprisingly, it has a policy, and steadfast history, of nondisclosure.

Much of the evidence can be found in the CIA's repository of its operational records, which is exempt from the FOIA.

I am prosecuting three FOIA cases for disclosure of records of American POWs from the Vietnam and Korean Wars. In *Hall et al v. CIA* (USDC DC, CA No. 04-0814), the court held that, under an exception in the CIA Act, the CIA must search its otherwise exempt operational records. On April 25, 2025, the US Court of Appeals reversed and remanded the case, holding that the CIA must conduct another search of its operational records, this time for POWs held in Laos.

The court in *Driggs et al v. CIA* (USDC EDVA, CA No. Case 23-1124) held the opposite. It ruled that the exception to the CIA Act mandating a FOIA search of operational records was inapplicable, even though most of the records sought in *Driggs* regard 70-year-old Korean War records.

The *Driggs* plaintiffs also seeks a more fulsome disclosure of a very enlightening record, having to do with the so-called "1205 Document"—the most illuminating record on the issue of the number of POWs remaining in communist hands after the Vietnam War's Operation Homecoming.<sup>1</sup> The issue is the propriety of the CIA's redactions to its analysis of Senator Bob Smith's criticisms of the CIA's 1998 *National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue*. The NIE disparaged the reliability of the 1205 Document.

The plaintiffs argued that the CIA's analysis was written in bad faith. The court ruled that agency bad faith in the underlying activities that generated the records at issue is legally irrelevant under the FOIA. The court held that the only relevant inquiry is the government's truthfulness in the litigation, contrary to the law in the sixth Circuit, where the existence of a cover-up is relevant to issues of disclosure. This is a momentous issue under the FOIA. We will appeal.

The third case is *McDaniel et al v. NARA* (USDC DC, CA No. 20-1735), which also seeks POW records on both the Vietnam and Korean Wars. NARA responded that, given the lack of specificity in agency-produced indices, it had insufficient resources to conduct the search. So, the requesters submitted a second FOIA request seeking "All indices, lists, or any other records describing of the contents of all boxes in" specified Record Groups. NARA produced 22,000 pages. From that production, plaintiffs' experts will submit a targeted list of records to search, and ask that the court order NARA to conduct that search.

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<sup>1</sup> In December of 1992, Harvard University's Dr. Stephen Morris discovered in the Soviet Union archives the most the transcript of the Soviet's surreptitiously taped debriefing by a top Vietnamese Army General to Vietnam's Politburo reporting that the total number of communist-held American POWs in Southeast Asia was 1,205—just months before Operation Homecoming returned 591 POWs.

Governmental efforts to obtain records include the McCain Act, 1991 NDAA § 1082 *et seq.* and three Presidential directives. In 1992 President Bush issued Executive Order (“E.O.”) 12812, *Declassification and Release of Materials Pertaining to Prisoners of War and Missing in Action*. As the Executive Branch made little progress releasing those records, in 1993 President Clinton issued Presidential Decision Directive NSC-8, directing all agencies to complete that review and release by Veterans Day 1993. In 2009 President Obama issued E.O. 13526, mandating automatic declassification of aged records and prohibiting continued classification to prevent embarrassment.

The government has unequivocally still not complied.

There is a longstanding, and enduring, community advocating for disclosure, as the Appellant's brief in *Hall* observed:

Thus, this lawsuit, now 20 years old, is part of a much larger advocacy, spanning 50 years, by family members, journalists, authors, organizations, Congressional Committees, at least three Administrations, and an Act of Congress—all seeking to prompt the government to reveal what it knows of the fates of these Americans.

We request that the Task Force request the CIA to release these aged records. Or, perhaps it can suggest to President Trump that he issue another “Declassification and Release” Executive Order to include a directive that the CIA search its operational records concerning these Americans who gave so much.

I would be happy to provide additional information on these matters.

Very truly yours,

John H. Clarke