
**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 24-5165
(C.A. No. 14-01589)

ROGER ARONOFF,

Plaintiff-Appellant,

v.

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Defendants-Appellees.

On Appeal from Final Judgment of the
United States District Court for the District of Columbia,
Hon. Emmet G. Sullivan and Hon. Loran L. Alokhan, District Judges

**APPELLANT'S PETITION FOR REHEARING
AND PETITION FOR REHEARING EN BANC**

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GLOSSARY

Abbreviation	Definition
CIA	Central Intelligence Agency
COB	CIA Chief-of-Base
DoD	Department of Defense
DOJ	Department of Justice
EXORD	Execute order. DoD Definition: 1. An order issued by the Chairman of the Joint Chiefs of Staff, by the authority and at the direction of the Secretary of Defense, to implement a decision by the President or Secretary of Defense to initiate military operations. 2. An order to initiate military operations as directed.
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
QRF	CIA Quick Reaction Force
302s	FBI 302 reports of interviews of QRF conducted in Germany on Sept. 15, 2012

RULE 40 STATEMENT

This case raises a question of exceptional importance—it exposes the wholesale failure of our democratic institutions to expose the truth of the DoD's and CIA's immediate response to the attack on the U.S. government facilities on September 11, 2012 in Benghazi, Libya. The incident spawned over 100,000 media accounts,¹ seven Congressional Committees,² and a book followed by a feature-length movie.³

¹ See *Tappan Decl.* JA 16-17, "LexisNexis search for "Benghazi" from September 11, 2012, to February 8, 2015, yields 52,404 newspaper articles, 32,185 news releases, and 14,698 news transcripts.

² See *Clarke Decl.*, JA 366-374 ¶ 3. The first six reports:

- FLASHING RED: A SPECIAL REPORT ON THE TERRORIST ATTACK AT BENGHAZI, DEC. 2012;
- INTERIM PROGRESS REPORT FOR THE MEMBERS OF THE HOUSE REPUBLICAN CONFERENCE ON THE EVENTS SURROUNDING THE SEPTEMBER 11, 2012 TERRORIST ATTACKS IN BENGHAZI, LIBYA, APRIL 2013;
- BENGHAZI ATTACKS: INVESTIGATIVE UPDATE INTERIM REPORT ON THE ACCOUNTABILITY REVIEW BOARD, SEPT. 2013;
- TERRORIST ATTACKS ON U.S. FACILITIES IN BENGHAZI, LIBYA, SEPTEMBER 11-12, 2012, TOGETHER WITH ADDITIONAL VIEWS, JAN. 2014;
- BENGHAZI: WHERE IS THE STATE DEPARTMENT ACCOUNTABILITY? FEB. 2014;
- BENGHAZI INVESTIGATION UPDATE, FEB 2014.

³ Sept. 2014 Hatchette Book Group, *13 Hours, The Inside Account of what Really Happened in Benghazi*, by Mitchell Zuckoff with the Annex Security Team, referring to three of the five QRF members; Mark Geist, Kris Paronto, and John Tiegen; feature-length movie, *13 Hours: The Secret Soldiers of Benghazi*, Paramount, Jan. 2016.

Chief among the questions raised were (1) when the DoD had given the order to rescue the Americans and (2) whether assets had been ordered not to respond, or to "stand down."

Astoundingly, these questions remained unresolved.

On December 7, 2016, the HOUSE SELECT COMMITTEE ON EVENTS SURROUNDING THE 2012 TERRORIST ATTACK IN BENGHAZI ("*Select Committee*") released the seventh, and last, report on the matter, its 650-page *Final Report of the Select Committee on The Events Surrounding the 2012 Terrorist Attack in Benghazi* ("*Final Report*").

The *Final Report* relates that "documents relating to orders or commands given to defend against the attacks or rescue Americans in Benghazi was pending production," at the conclusion of its 31-month probe.⁴ *Appendix J Requests and Subpoenas for Documents*, at page 611.

⁴ Cf. *Select Committee* Chairman Trey Gowdy, opening remarks:

We will have hearings in January, February, March and until there is a full understanding of what happened in Benghazi. That means access to all documents and all witnesses. We are going to answer the questions surrounding the attacks in Benghazi.

See also May 6, 2014 remarks on Fox News, "we want to see every single solitary relevant material document."

Unbeknownst to the *Select Committee*, the DoD had released the "commands given to defend against the attacks" to Aronoff under the FOIA on May 16, 2016, six months before the *Select Committee* released its *Final Report*.

Also unbeknownst to the *Select Committee*, this first order, attached hereto as Exhibit 1, was issued at 3:00 a.m., eight hours after the 9:00 p.m. time that the *Select Committee* reported that it had been given orally, and six hours after it claims that the order had been transmitted to forces.⁵ (All times provided are Eastern Daylight Time.)

In lieu of the use of its subpoena power, the *Select Committee* based its conclusions solely on the January 8, 2016, closed-door testimony of former Secretary of Defense Leon Panetta, the transcript of which was released to Aronoff, redacted, eight months after the *Select Committee* issued its *Final Report*. Selected pages of the transcript are a part of the record. *Panetta testimony*, JA 375-418.

⁵ *Select Committee* excused this first two-hours on a bureaucratic snafu:

During those crucial hours between the Secretary's order and the actual movement of forces, no one stood watch to steer the Defense Department's bureaucratic behemoth forward to ensure the Secretary's orders were carried out with the urgency demanded by the lives at stake in Benghazi.

Final Report JA 426.

Mr. Panetta testified that he gave the order "to go"⁶ by 7:00 p.m. This is patently false.

Nor did the *Select Committee* subpoena the records of available assets. Rather, it merely observed that the DoD's "failure to respond" to that request "unnecessarily and unadvisedly leaves questions the Defense Department can easily answer, and it is in the public interest that it do so."⁷

Given the investigative history of this matter, and media attention, the prosecution of this FOIA case opens up the inner working of not only government

⁶ *Panetta testimony*, JA 384, 385, 386, 390, 400, 415, repeated twelve times that the order was "to go" and there was no order to "prepare." *See also Final Report* JA 425 (same).

⁷ *Id.* (footnotes omitted):

[T]he Committee requested it confirm whether there were any additional assets not identified on the maps or any assets withheld due to special access programs restrictions. It did not respond to the Committee's request. This failure to respond unnecessarily and unadvisedly leaves questions the Defense Department can easily answer, and it is in the public interest that it do so.

See also Id. at 64 under heading *Assets at Souda Bay, Crete*:

While conducting oversight in Souda Bay, Members of the Committee received a briefing regarding special operations aircraft that were stationed at Souda Bay on the night of the attacks in Benghazi and could have been utilized in response to the attacks. The Committee sought confirmation of this information through interviews and requests for information from the Defense Department. The Defense Department has not denied the presence of these assets.

agencies, but also exposes the failure of Congress to meaningfully exercise oversight, and exposes the media's failure to explore the fundamental issues involved. In sum, this matter exposes the wholesale failure of our democratic institutions in this instance. Thus, it a question of exceptional importance.

Appellant seeks the opportunity, under the FOIA, 5 U.S.C. § 552, to expose that the DoD falsified its account of when it ordered assets to respond, and to expose that the CIA ordered assets to "stand down."

STATEMENT OF THE CASE

I. Factual Background

1. Attack

On September 11, 2012... at 3:32 p.m., "dozens of attackers, armed with assault rifles and anti-tank rocket-propelled-grenades, swarmed the gate at the State Department's Benghazi Special Mission Compound, which, at the time, housed seven Americans." Amended Complaint ("*Compl.*") JA 24. Unable to penetrate the safe area of the compound, the attackers set fire to it, killing Christopher Stevens and Sean Smith by asphyxiation. Roughly eight hours later, at the CIA facility that the survivors had fled to, mortar fire took the lives of Tyrone Woods and Glen Doherty. While the episode is referred to as the Benghazi "attack," a more accurate description is a siege, as it lasted for over 10 hours.

2. Select Committee Probe

Pressure for a seventh committee was occasioned by widespread recognition that Congress had not ferreted out the truth even after six Committee probes. In May of 2014, Congress established the *Select Committee*. H. Res. 36—113th Congress (2013-2014) provides that "(a) The Select Committee is authorized and directed to conduct a full and complete investigation and study and issue a final report of its findings to the House regarding... internal and public executive branch communications about the attacks... [and] the response to the attacks..." On December 7, 2016, the *Select Committee* issued its 650-page *Final Report*.

The *Select Committee* recites that it had sought "documents relating to orders or commands given to defend" the Americans, but the DoD's response was "pending production," discussed *infra*. Nor did the DoD produce records requested by the *Select Committee* of the assets that could have been deployed, discussed *infra*.

As to whether a "stand down" order had been given, the *Select Committee* recounted the CIA's version, that "[t]he Chief-of-Base was adamant that he never told the Annex team members to 'stand down'" (JA 423), as well as the QRF account that the COB ordered them to "stand down" and "hold up" three times

before they disobeyed that order. The *Select Committee* took no position on the issue.⁸

II. Procedural Background

1. FOIA Requests and Productions

(a) DoD

In March of 2024, a month before Congress established the *Select Committee*, Aronoff made roughly 17 FOIA requests to the DoD seeking records of (1) the government's initial communications, and orders, with all relevant assets, including the DoD's first alert, called an OPREP-3, and (2) assets that were available to respond,

Rescue Order. The DOD produced, as its earliest record of any order, or communication, an order to execute, or to go, known as an EXORD. It is attached as Exhibit 1. It was issued on September 12, at 3:00 a.m. An EXORD is, by definition, the first order, as discussed below.

First alert. The OPREP-3 is a report which "describes an event of such importance that it needs to be brought to the immediate attention of the National

⁸ Cf. TERRORIST ATTACKS ON U.S. FACILITIES IN BENGHAZI, LIBYA, SEPTEMBER 11-12, 2012, TOGETHER WITH ADDITIONAL VIEWS, U.S. Senate Select Committee on Intelligence, JA 23: "[T]he Committee found no evidence of intentional delay or obstruction by the Chief of Base or any other Party."

Command Authority, Joint Chiefs of Staff/National Military Command Center, and other national-level leadership." *Herrington Decl.* ¶ 4, JA 117.

In the proceedings below, the DoD related that it could not locate the report, and the district court adopted the magistrate's view that Aronoff had not presented "countervailing evidence to rebut the [DoD] affidavit and suggest that the DIA should have been able to locate" the OPREP-3. *Mem. Op.* JA 540. On appeal, the government argued that it did, in fact, provide it. The Panel sided with the government: "[W]e start with the conclusion that the OPREP-3 was indeed produced." *Panel Opinion* at 8. Appellant disagrees. The record is attached hereto as Exhibit 2.⁹

Available assets. Regarding available assets, the DoD responded that its 12 pages of maps contains the force posture of "forces worldwide during the relevant timeframe in September 2012," as well as "the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya." The DoD withheld the maps, in their entirety, asserting that disclosure could provide adversaries with information that could now be expected to cause serious damage to national security. *Malloy Decl.* ¶ 12, JA 96.

⁹ Exhibit 2 appears to have been generated at 9:22 p.m. EDT, six hours after the onset of the attack, does not describe hostilities, and refers to an earlier record: "INITIAL OPREP- 3 REPORT/AFRICOM JOC TO JS VIA JABBER."

(b) DOJ

From the DOJ, Appellant sought disclosure of the FBI 302 interview reports of QRF Mark Geist, Kris Paronto, and John Tiegen, but only the excerpts that reflect the CIA's having issued a stand down order. *Id.* ¶ 126 (8) JA 73. *See infra* n. 3.

The FBI withheld, in full, these FBI 302s.

(c) CIA

Aronoff sought from the CIA records of a whistleblower complaint to the CIA Inspector General ("IG"), but only the excerpts that reflect that a stand down had been given. *Id.* ¶ 144(1) JA 82.

The CIA withheld 12 documents in their entirety and released eight, which totaled 25 pages. Nine of these pages are wholly redacted, with the balance heavily redacted. The 25-page production is in the record, *CIA Inspector General Records*, JA 447-473. The release discloses the existence of the CIA IG complaint, the whistleblower's request that the IG inform CIA Director David Patreus of a grievance. But it does not reveal whether the underlying complaint was that an order to stand down had been given. The *only* information regarding the subject matter is that it "calls into question some actions and decisions made by the Chief of Base, Benghazi."

2. District Court Ruling

The trial court held that "Plaintiffs' objection fails because the evidence they cite is entirely consistent with DOD's representations." *Mem. Op.* JA 551.

And the district court found that the accounts of an order to "stand down," reflected in FBI and CIA records, was so inextricably intertwined with exempt information so as to be incapable of segregation.

ARGUMENT

I. Panel Declined to Adjudicate Clear Error

Aronoff argued that the district court's finding of fact that the DoD had, as it claimed, transmitted the order for assets to respond by 9:00 p.m., rather than at 3:00 a.m. the next day, was error. *See* Brief for Appellant ("*Brief*") at 17-18, 21-30. The district court had posed the question as whether "Plaintiffs' objection fails because the evidence they cite is entirely consistent with DOD's representations." *Mem. Op.* JA 551.

The Panel declined to review whether the finding was clearly erroneous, holding that Aronoff had not "developed this argument" until he filed his Reply Brief, and had therefore forfeited it. However, the relevant inquiry is whether Appellant had raised the argument in his opening *Brief*, not whether he developed it.

Here, the first two issues submitted were on this very issue:

Did the District Court erroneously fail to find as fact that the EXORD, transmitted at 3:00 a.m. September 12, disproves the DoD's version that the order to respond had been given "by 7:00 p.m." and the *Select Committee's* account that the order had been relayed to forces by 9:00 p.m.

Did the District Court erroneously fail to find as fact that the order to respond, known as an EXORD, is, by definition, the first order to respond.

Brief at 18, Issues Presented.

See also id. at 20, 35:

The District Court denied plaintiffs' prayer that the Court order the DoD to answer a single interrogatory. While the Court's exercise of its discretion in denying discovery in a FOIA case is entitled to deference, plaintiffs are entitled to a meritorious finding of fact upon which that ruling is based. In this *de novo* review, the plaintiffs are asking this Court to rule, as a finding of fact, that the DoD did not order any response to the ongoing attack until September 12 at 3:00 a.m.

Whether to grant discovery in a FOIA case is at the discretion of the District Court. But plaintiffs are entitled to have that decision based upon correct findings of fact. Agency bad faith is relevant as undermining the credibility of the agency's affidavits. *Allen v. CIA*, 636 F.2d 1287 (D.C. Cir. 1980).

And the *Brief's* demand prayed that the Court:

Find as a fact that the Department of Defense did not order its assets to respond until 3:00 a.m. Washington time, and to order the District Court to consider this fact in determining whether to allow plaintiffs to take discovery.

Id. at 53.

The government responded that "appellant offers no authority in support of his novel contention that he is 'entitled to a meritorious finding of fact upon which that ruling is based.' Br. 20." *Gov. Brief* at 16.

While every equitable action requires findings of fact, which are reviewable, Appellant nevertheless provided the rule in federal courts of this fundamental rule: "Rule 52(a) of the Federal Rules of Civil Procedure, *Findings and Conclusions by the Court; Judgment on Partial Findings*, requires findings of fact when equitable relief is sought, provides that the parties may challenge those findings, and sets forth the standard of review as 'clearly erroneous.'" *Reply Brief* at 1, 5.

The Court took a different view of Appellant's initial pleading:

Although, if necessary, we may consider arguments that a district court's factfinding was clear error, *Grand Canyon Tr. v. Bernhardt*, 947 F.3d 94, 96 (D.C. Cir. 2020), Aronoff developed this argument for the first time in his reply brief, Reply Br. 4–7, 17. Because this argument arrived late, it is forfeited. *Jones Lang LaSalle Ams., Inc. v. NLRB*, 128 F.4th 1288, 1296 (D.C. Cir. 2025) (collecting cases). In any event, Aronoff declines to even provide a viable explanation for why this argument could not be advanced in his opening brief. *Cf. Holland v. Bibeau Const. Co.*, 774 F.3d 8, 14 (D.C. Cir. 2014).

Panel Opinion n. 5 at 4.

The court in *Jones*, *infra* at 1296, observed that permitting an issue to be raised in a reply brief deprives the opposing party the opportunity to respond.

Here, Aronoff's *Brief* asserted his "entitle[ment] to a meritorious finding of fact," and identified the specific findings that he asserts were erroneous. The

government disputed that contention. So, clearly, Appellant had raised the issue in his initial *Brief*.

II. District Court Finding Was Clear Error

"A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

Had the Panel reviewed, *de novo*, whether the finding was clearly erroneous, it should have held that this finding was clear error: "Plaintiffs' objection fails because the evidence they cite is entirely consistent with DOD's representations." As set forth above, according to the *Final Report*, Mr. Panetta had given the order "by 7:00," but "nearly two more hours elapsed before the Secretary's orders were relayed," so the order had been transmitted by 9:00 p.m. *Final Report* JA 425-426.

The government does not deny that the order was transmitted at 3:00 a.m., but avers that the initial order was relayed earlier, by telephone: "[T]he initial orders in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya, were conveyed *verbally*." *Herrington Decl.* ¶¶ 19-20, JA 116. Thus, according to the DoD, the Pentagon ordered assets, worldwide, to respond to an ongoing attack with a phone call, and there is no record whatsoever of such an

order having been given, or received.¹⁰ Not only does this seem highly implausible, it is contradicted by all the evidence in the record:

- ***No forces airborne.*** No forces enroute for over 13 hours after alleged 9:00 p.m. order. "These are elite forces," Mr. Panetta explains, "When you order them to go, they go." *Panetta testimony*, JA 417.
- ***Orders to go are typed.*** "As you know," Mr. Panetta testified, "those are the—somebody then types those orders out, in terms of a formal authorization." *Id.* JA 391.
- ***No follow-up orders.*** Order to execute, or EXORD, is supplemented with FRAGORDs, or fragmentary, follow-up, orders, based on fluid developments and further intelligence. No follow-up orders between 9:00 p.m. and 3:00 a.m.; DoD produced 70 pages of FRAGORDs issued *after* the 3:00 a.m. EXORD.
- ***Joint Chiefs reported forces moving when order not transmitted.*** After the 7:00 p.m. order Mr. Panetta "continuing to talk to make sure that the steps that I had ordered were taking place." He "continued to ask, 'Give me updates,' to make sure these people are on the move." In response, "they [Generals Ham and Dempsey and Admiral Winfield] indicated things were moving" (*id.* JA 387, 398)—even while the order not transmitted for another two hours.
- ***Responding asset learned of attack on Fox News.*** "The Commander of the FAST Platoon testified he first became aware of the attack on the Mission compound in Benghazi through reports on Fox News. At the time, the FAST Platoon was stationed in Rota, Spain." *Final Report* JA 427.

¹⁰ Aronoff suggested that the DoD provide an affidavit from the caller, or the recipients, or any of the men in the four units who are said to have been ordered to go.

- ***Conflicting accounts of what order given.*** Mr. Panetta was adamant that order was "to go" and no order to "prepare to go" (*infra* n. 6), but the DoD's timeline, released November 2013, recites that between 6:00 p.m. and 8:00 p.m., two platoons in Spain and in Croatia ordered "to *prepare* to deploy to Benghazi," and that at 8:39 p.m., Secretary Panetta ordered the two other platoons "to *prepare* to deploy." See *Timeline* JA 373-374.
- ***Early orders include "provides verbal authorization" but the order to deploy does not.*** See *id.*
- ***Conflicting accounts of when order given.*** Mr. Panetta testified before the *Senate Intelligence Committee* that "We both went back to the Pentagon and immediately I ordered the deployment of these forces into place," upon commencement of 6:00 p.m. meeting. *Senate Intelligence Committee* testimony, Feb. 7, 2013 JA 481.
- ***Admitted absence of information did not cause delay.*** As to why he waited three-and-a-half to (allegedly) give the order, Mr. Panetta stated that "[y]ou don't just go charging in." "But that's not true," Mr. Pompeo responded, "we put folks in harm's way all the time without perfect real-time information. You did it, in fact, as the Secretary of Defense multiple times. So, help me, Mr. Panetta." He answered, "We had pretty good information." *Id.* at 408.

III. Panel's Affirmance of Withholding of Stand Down Order

This Court held that the CIA's withholding of the gravamen of the whistleblower complaint were proper as "inextricably intertwined with exempt portions" (*Panel Opinion* at 7, citation omitted), and that the FBI's withholding in full of its 302 interview reports with the three QRF was justified as "agencies 'may withhold records in their entirety when nonexempt portions are inextricably intertwined with exempt portions.'" *Id.*, citation omitted.

The Court reasoned that the CIA's "justifications for invoking Exemption[s] are logical and plausible" (*id.* at 5, citation omitted), that the FBI's "affidavits show with reasonable specificity why documents... cannot be further segregated," and that the Court had "no cause to discredit its reasoning." *Id.* at 7, citations omitted.

Appellant had argued that the government proffers no theory, or analysis, of how disclosure of the order to stand down, in FBI and CIA records, properly redacted, could possibly be expected to result in violations of any interest protected by any exemption. *See. e.g., Brief* at 19, *Issues Presented*, "does the FBI have a rational basis to assert that such disclosure 'could reasonably be expected to interfere with enforcement proceedings' under Exemption 7(A)." In response, the Court seems to have placed the burden on the FOIA requester: "Aronoff fails to lodge reviewable objections to the CIA's exemptions because he neither clearly states which exemptions he is challenging nor provides bases for said challenges." *Panel Opinion* n. 6 at 8.

CIA. Disclosure may prove that that Director Petraeus lied to Congress when he testified before the House Intelligence Committee that he was unaware of a stand order having been given. *See Brief, Issues Presented* at 19:

7. Where CIA Director David Petraeus testified that he was unaware of any "stand down" order having been given by the COB to the QRF, was the redaction of that information from a whistleblower's complaint, and its resultant Report of the CIA Inspector General, justified under Exemptions 1, 3, 5, 6 and 7.

FBI. Disclosure may prove that that the government had been well-aware, within a few days, that the COB had ordered the QRF to stand down, notwithstanding its protestations to the contrary.

CONCLUSION

For the foregoing reasons, Appellant Roger Aronoff respectfully prays, *inter alia*, that the Court review this matter *de novo*, and that the Court rule that clear error occurred in the finding that the Department of Defense transmitted its order to respond by 9:00 p.m., rather than 3:00 a.m. on September 12, and to remand the case with instructions that the trial court consider this finding of fact in determining whether to allow Appellant to take discovery.

Date: September 3, 2026.

Respectfully submitted,

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ADDENDUM

Exhibit 1: EXORD

Exhibit 2: Disputed OPREP-3

July 28, 2026, *Per Curiam* Panel Judgment

APPELLANT'S CERTIFICATE AS TO PARTIES, RULINGS, AND
RELATED CASES

APPELLANT'S CORPORATE DISCLOSURE STATEMENT

CERTIFICATE OF COMPLIANCE FRAP 40 (d)(3)

CERTIFICATE OF SERVICE

~~SECRET//NONE~~

Subject: USEUCOM EXORD FOR COMMANDERS IN-EXTREMIS FORCE (CIF) DEPLOYMENT

Originator: EUCOM J3 DIRECTORATE(MC)

DTG: 120700Z Sep 12 Precedence: ROUTINE

To: SOCEUR(mc), COMUSNAVEUR NAPLES IT(sc), SOCEUR(mc),
USAFECOMMANTCENTER(mc), USAREUR CG(mc), COMMARFOREUR(mc)

cc: SOCEUR J3 OPERATIONS DIRECTORATE(MC), EUCOM J1 DIRECTORATE(MC), EUCOM J37
Joint Readiness Training and Exercise Div(mc), EUCOM EPOC Antiterrorism
Division(mc), EUCOM J4-Eddoc Eucom Deployment-Distribution Ops Ctr(mc), EUCOM
J5-P Plans Div(mc), EUCOM J4-JLOC(mc), USCENCOM COMMAND CENTER(mc), USAREUR
G3(mc), EUCOM J2 DIRECTORATE(MC), EUCOM EPOC Operations Div(mc), EUCOM J4
DIRECTORATE(MC), EUCOM J5-J8 Directorate(mc), EUCOM J6 DIRECTORATE(MC), EUCOM
J7 DIRECTORATE(mc), EUCOM J9 DIRECTORATE(mc), EUCOM PA Public Affairs(mc),
EUCOM JA Judge Advocate Directorate(mc)

MSGID/ORDER/CDRUSEUCOM//
REF/A/PHONECON/CDRUSEUCOM/112228ZSEP12//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

ORDTYP/EXORD/CDRUSEUCOM//
TIMEZONE/Z//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

GENTEXT/SITUATION/
1. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/MISSION/
2. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/EXECUTION/
3. +(S)

(b)(1) EO 13526 § 1.4(a)

3.B. (U) TASKS.
3.B.1. (U) CDR, SOCEUR (CDRSOCEUR).

(b)(1) EO 13526 § 1.4(a)

~~SECRET//NONE~~

EXHIBIT 1

~~SECRET//NONE~~

3.B.1.B. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.2. (U) COMMANDER, NAVAL FORCES EUROPE (CDRNAVEUR).

(b)(1) EO 13526 § 1.4(a)

3.B.4. (U) CDR, US ARMY EUROPE (CDRUSAREUR).

3.B.4.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.5. (U) CDR, US MARINE FORCES EUROPE (CDRUSMARFOREUR).

3.B.5.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

GENTEXT/ADMIN AND LOG/

(b)(1) EO 13526 § 1.4(a)

GENTEXT/COMMAND AND SIGNAL/

5. (U) COMMAND AND SIGNAL//

5.A. (U) COMMAND RELATIONSHIPS. CDRUSAFRICOM IS THE SUPPORTED COMBATANT COMMANDER FOR THIS MISSION. CDRUSEUCOM IS THE SUPPORTING COMBATANT COMMANDER. ALL OTHER COMPONENT COMMANDERS ARE SUPPORTING.

5.B. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

5.E (U) POINTS OF CONTACT.

(b)(3) 10USC 130b (b)(6)

Derived From: MULTIPLE SOURCES

Declassify On: 120700Z Sep 22

Date of Source: 010001Z Aug 08

~~SECRET//NONE~~

~~SECRET//NOFORN~~**Subject:** JUKEBOX LOTUS**Originator:** AFRICOM OPS LOG(MC)**DTG:** 212247Z Jan 12 **Precedence:** IMMEDIATE **DAC:****To:** NMCC WASHINGTON DC, CJCS WASHINGTON DC, CDR USCENTCOM(MC), EUCOM CDR(MC), JOINT STAFF J31(MC), COMBATANT CDR USNORTHCOM(SC), CDR USPACOM HONOLULU HI(SC), CDR USSOCOM(MC), CDR USSTRATCOM(SC), CDR USTRANSCOM(SC), DIRNSA FT GEORGE G MEADE MD, JWAC DAHLGREN VA**Cc:** WHITE HOUSE SITUATION ROOM WASHINGTON DC, SECSTATE WASHINGTON DC, CSAF WASHINGTON DC, CSA(SC), CNO WASHINGTON DC(SC), CMC WASHINGTON DC(SC), DISA WASHINGTON DC(SC), NSA HQ BETHESDA MD, DIA WASHINGTON DC, HQ DLA FORT BELVOIR VA(SC), NCTC WASHINGTON DC, USCYBERCOM FT GEORGE G MEADE MD, DEPT OF JUSTICE COMMAND CENTER WASHINGTON DC, DEA HQS WASHINGTON DC(MC), COMSC WASHINGTON DC(SC), COMDT COGARD WASHINGTON DC, HQ USASETAF(MC), COMUSNAVEUR COMUSNAF NAPLES IT(SC), COMMARFORAF(MC), 17AF COS(MC), SOCAFRICA ROD JOC(MC), CJTF HOA COMMANDER(MC), JAC MOLESWORTH RAF MOLESWORTH UK, COMJSOC FT BRAGG NC, CDR ZTW WASHINGTON DC, AMEMBASSY NAIROBI, JCSE MACDILL AFB FL(SC)~~SECRET//NOFORN~~

MSGID/OPREP-3/CDRUSAFRICOM/002//

REF/A/DESC: INITIAL VOICE OPREP-3 REPORT/AFRICOM JOC EA CELL/12HHHHZSEP12/-//

REF/B/DESC: INITIAL OPREP-3 REPORT/AFRICOM JOC TO JS VIA JABBER/12HHHHZSEP12/-//

REF/C/DESC: PROTOCOL FOR USEUCOM CIF ISO USAFRICOM CRISIS RESPONSE FY12 /251500ZMAY12/-//

1. ~~(S//NF)~~ AFRICOM OPREP-3/ ATTACK AGAINST US CONSULATE IN BENGHAZI.2. ~~(U)~~ CURRENT SITUATION: REF B/2.A ~~(S//NF)~~ CDRUSAFRICOM RECEIVED AN INITIAL REPORT OF AN ATTACK AGAINST THE US CONSULATE IN BENGHAZI, LIBY (b)(1)1.4a

(b)(1)1.4a

2.B ~~(S)~~ (b)(1)1.4a

(b)(1)1.4a

2.B.1. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.2. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.3. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.4. ~~(U)~~ INFORMATION MANAGEMENT.2.B.4.A. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

(b)(1)1.4a

2.B.4.B. ~~(S)~~

(b)(1)1.4a

(b)(1)1.4a

HTTPS://PORTAL.AFRICOM.SMIL.MIL

(b)(6)

2.B.4.C. ~~(U)~~ PRIMARY COORDINATION WILL BE CONDUCTED VIA JWICS VTC.

2.B.4.D. ~~(U)~~

2.B.4.E. ~~(U)~~

2.B.4.F. ~~(U)~~

2.B.4.G. ~~(U)~~

2.B.4.H. ~~(U)~~

2.B.4.I. ~~(U)~~

2.B.4.J. ~~(U)~~

(b)(3)/(b)(6)

2.B.5. ~~(S//NF)~~

(b)(1)1.4a

(b)(1)1.4a

2.B.5.1. ~~(S//NF)~~

(b)(1)1.4a

(b)(1)1.4a

2.B.5.2. ~~(S//NF)~~

(b)(1)1.4a

(b)(1)1.4a

3. ~~(S)~~

(b)(1)1.4a(b)(3)/(b)(6)

(b)(1)1.4a

CLASSIFIED BY:

(b)(3)/(b)(6)

J3, USAFRICOM

REASON: 1.4A

DECLASSIFY ON: 12 **HHHH** ZSEP12

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5165

September Term, 2025

FILED ON: JULY 28, 2026

ACCURACY IN MEDIA, ET AL.,
APPELLEES

ROGER L. ARONOFF,
APPELLANT

v.

UNITED STATES DEPARTMENT OF DEFENSE, AND ITS COMPONENTS DEPARTMENT OF THE ARMY,
NAVY DEPARTMENT, DEPARTMENT OF THE AIR FORCE, MARINE CORPS, EUROPEAN COMMAND,
CENTRAL COMMAND, AFRICA COMMAND, SPECIAL OPERATIONS COMMAND, OFFICE OF
SECRETARY OF DEFENSE AND JOINT STAFF, DEFENSE INTELLIGENCE AGENCY, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:14-cv-01589)

Before: WALKER and CHILDS, *Circuit Judges*, and ROGERS, *Senior Circuit Judge*

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and oral argument of the parties. After according the issues full consideration, the Court is satisfied that appropriate disposition of the appeal does not warrant a published opinion. *See* Fed. R. App. P. 36; D.C. Cir. R. 36(d). For the reasons stated below, it is hereby

ORDERED and **ADJUDGED** that the district court's order on November 28, 2022, granting in part and denying in part the cross-motions for summary judgment and additionally denying Plaintiffs' motion for leave to propound an interrogatory, is **AFFIRMED**. It is **FURTHER ORDERED** that the district court's order on April 26, 2024, granting the Government's renewed motion for summary judgment, and denying Plaintiffs' cross-motion for

summary judgment, is **AFFIRMED**.

The Freedom of Information Act (FOIA) exists to strengthen public confidence in the actions of agencies at home and abroad. To that end, Plaintiffs made dozens of FOIA requests to several federal agencies seeking information related to the events and aftermath of the 2012 terrorist attack on the U.S. Embassy in Benghazi, Libya. Pursuant to Plaintiffs' FOIA requests, the agencies produced hundreds of responsive documents related to the attack. Plaintiffs sued in district court to challenge the adequacy of the agencies' productions and the agencies' justifications for withholding certain information from Plaintiffs. Plaintiffs also moved for discovery, asking for leave to propound an interrogatory to one agency in particular, the U.S. Department of Defense. The district court eventually resolved this dispute in favor of the agencies and denied Plaintiffs' discovery motion. The court relied on the agencies' un rebutted declarations about their search for responsive documents and the propriety of the FOIA exemptions the agencies invoked. Now, one Plaintiff appeals these decisions. We affirm.

I

A.

In 2014, Plaintiffs—Roger L. Aronoff, other individual plaintiffs,¹ and the non-profit corporation Accuracy in Media—sought materials from Executive law enforcement, defense, and intelligence agencies through FOIA. Plaintiffs submitted over three dozen FOIA requests for materials related to the terrorist attack on the U.S. Embassy in Benghazi, Libya on September 11, 2012, and the tactical response that followed. Plaintiffs' FOIA requests sought documents, historical maps, and communications they thought would support their beliefs about what occurred in the critical days and hours before and after the attack. Plaintiffs sent their requests to several agencies: the U.S. Department of Defense and several of its components² (DOD), the U.S. Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), the U.S. Department of State (State Department), and the Central Intelligence Agency (CIA).

Plaintiffs filed suit in the U.S. District Court for the District of Columbia. Among other things, they sought review of the defendant agencies' alleged failure to produce responsive documents to Plaintiffs' requests and to properly justify the information they withheld from Plaintiffs. After several years, much of the dispute in the district court was resolved between the parties. However, a few issues remained, largely stemming from Plaintiffs' continued belief that the documents they received, and the information in the public record, contradicted what they believe occurred before, during, and in response to the Benghazi attack. In particular, the outstanding issues pertained to Plaintiffs' FOIA requests to the DOD, DOJ, State Department, FBI,

¹ The other individual Plaintiffs are: Larry W. Bailey Captain, USN (Ret.); Kenneth Benway Lieutenant Colonel, USA (Ret.); Richard F. Brauer Jr. Colonel, USAF (Ret.); Clare M. Lopez; James A. Lyons Jr. Admiral, USN (Ret.); and Kevin M. Shipp.

² The components of the U.S. Department of Defense that Plaintiffs sued were the U.S. Army, the U.S. Navy, the U.S. Air Force, the U.S. Marine Corps, the Office of Secretary of Defense, the Joint Chiefs of Staff, the Defense Intelligence Agency, and the European, Central, Africa, and Special Operations Commands.

and CIA (collectively, the Agencies). The parties then filed cross-motions for summary judgment, and Plaintiffs also moved for leave to propound an interrogatory to the DOD. Plaintiffs' interrogatory motion asserted that the DOD had "not been candid" about the events of Benghazi and that its account required additional corroboration through interrogatories. Pls.' Cross-Mot. Summ. J. 33–36, ECF No. 71.³ The district court referred their pending motions to a magistrate judge for report and recommendation.

The magistrate judge recommended that the district court grant in part and deny in part the cross-motions for summary judgment and then further deny Plaintiffs' motion to propound an interrogatory to the DOD. *Accuracy in Media, Inc. v. DOD*, No. 1:14-cv-1589, 2020 WL 9439354, at *14 (D.D.C. Aug. 27, 2020), *report and recommendation adopted sub nom., Accuracy in Media v. DOD*, No. 1:14-cv-1589, 2022 WL 17250196 (D.D.C. Nov. 28, 2022) [hereinafter *AIM I*]. In the recommendation, the magistrate judge determined that the Agencies had conducted adequate searches and properly withheld documents pursuant to applicable and supportable FOIA exemptions. *See id.* at *4. However, the magistrate judge was unsatisfied by the FBI's *Glomar* response⁴ and thus recommended denying summary judgment to the Government on that ground and instead granting it to Plaintiffs. *See id.* at *10–12. The magistrate judge further recommended that Plaintiffs' motion to propound an interrogatory be denied, finding the request unwarranted by the circumstances, and also "speculative" and "inappropriate." *See id.* at *12–14.

The district court largely adopted the magistrate judge's report and recommendation, granting in part and denying in part summary judgment to both parties. *See Accuracy in Media v. DOD*, No. 1:14-cv-1589, 2022 WL 17250196, at *1, *6–10 (D.D.C. Nov. 28, 2022) [hereinafter *AIM II*]. The FBI withdrew its *Glomar* response during the pendency of the district court's review of the magistrate judge's order, so the district court denied this portion of the Government's motion for summary judgment as moot. *See id.* at *3, *10. In the interim, the FBI searched for records that were responsive to Plaintiffs' requests. *See id.* at *3. As a result, one issue remained unaddressed in the district court, the newly disclosed FBI records and the exemptions used to redact them. *See id.* at *10. Later, the FBI acknowledged the existence of its requested records but withheld the documents in full based on several FOIA exemptions. *See Accuracy in Media, Inc. v. DOD*, No. 1:14-cv-1589, 2024 WL 1833851, at *1 (D.D.C. Apr. 26, 2024) [hereinafter *AIM III*]. Thereafter, the parties again filed cross-motions for summary judgment regarding the FBI's productions and withholdings. *Id.* The district court then granted the Government summary judgment, finding the FBI's withholdings justified under a FOIA exemption. *Id.* at *2.

B.

³ All Electronic Case Files (ECF) system citations that are marked with "ECF No." are references to items in the district court docket, *Accuracy in Media, Inc. v. Department of Defense*, No. 14-cv-01589 (D.D.C. Sep. 19, 2014).

⁴ An agency issues a "*Glomar* response" to a FOIA request by invoking a FOIA exemption and then "refus[ing] to confirm or deny the existence or nonexistence of responsive records." *Elec. Priv. Info. Ctr. v. NSA*, 678 F.3d 926, 931 (D.C. Cir. 2012) (citing *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007)). A *Glomar* response is proper "if the particular FOIA exemption at issue would itself preclude the acknowledgement of such documents." *Id.* (citation omitted).

Now, Plaintiff Roger Aronoff alone appeals the district court's summary judgment orders and its order denying Plaintiffs' motion to propound an interrogatory. Before reaching the merits of this appeal, it is important to begin by understanding what lies at the heart of Aronoff's case. Aronoff continues to seek the withheld information because he believes the Agencies have been untruthful about the sequence of events during the Benghazi attack and response, and he further believes that Plaintiffs were wrongfully denied access to documents hidden from the public and Congress. So we frame the resolution of this appeal by first outlining the information he seeks.

The items related to Aronoff's contentions are the following: (1) an EXORD, a written order that Aronoff believes will show when and how the DOD directed the European Command to respond to the Benghazi attack; (2) an OPREP-3 PINNACLE report (OPREP-3) that Aronoff believes the DOD used to notify and provide information to its components about the attack and any tactical response; (3) the numbers and placements of U.S. military assets near Benghazi on September 11th and 12th of 2012, which Aronoff wants so that he may understand what "assets . . . could have been dispatched" in response to the attack; and (4) a "stand-down" order, or its equivalent, that Aronoff believes will show that security personnel were directed not to respond to the attack. As for this fourth item, Aronoff asserts that a "stand-down" order can be found in the CIA's Inspector General reports and the FBI's materials—videos, notes, and reports—related to agents' interviews of witnesses, victims, and personnel conducted after the attack. We address Aronoff's arguments related to these items in turn.

II

We have jurisdiction over this appeal under 28 U.S.C. § 1291, and this court reviews cross-motions for summary judgment *de novo*. *Insider Inc. v. Gen. Servs. Admin.*, 92 F.4th 1131, 1134 (D.C. Cir. 2024). Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."⁵ Fed. R. Civ. P. 56(a). Our *de novo* review includes relevant questions of law, such as "FOIA's statutory requirements and limitations." *Project for Priv. & Surveillance Accountability, Inc. v. U.S. Dep't of Just.*, 143 F.4th 506, 510 (D.C. Cir. 2025), *cert. denied sub nom.*, *PPSA, Inc. v. Dep't of Just.*, 224 L. Ed. 2d 11 (Feb. 23, 2026). We may rely on declarations to make this inquiry. *Campbell v. U.S. Dep't of Just.*, 164 F.3d 20, 30 (D.C. Cir. 1998), *as amended* (Mar. 3, 1999) ("To justify summary judgment, a declaration must provide detailed and specific information demonstrating that [the] material withheld is logically within the domain of the exemption claimed." (citation

⁵ At the outset, we address Aronoff's contention that this court has the power to make findings of fact as part of our review. Appellant's Br. 18–20. It is not clear to what end he wishes us to make such findings. Compare *id.*, with Reply Br. 4–7, 17. And Aronoff fails to provide a basis in our precedent to support that this court may consider such a request. *United States v. Askew*, 529 F.3d 1119, 1142 (D.C. Cir. 2008) (citing precedent that characterizes *de novo* factfinding as "wholly inconsistent with the function of an appellate court." (citation omitted)). Although, if necessary, we may consider arguments that a district court's factfinding was clear error, *Grand Canyon Tr. v. Bernhardt*, 947 F.3d 94, 96 (D.C. Cir. 2020), Aronoff developed this argument for the first time in his reply brief, Reply Br. 4–7, 17. Because this argument arrived late, it is forfeited. *Jones Lang LaSalle Ams., Inc. v. NLRB*, 128 F.4th 1288, 1296 (D.C. Cir. 2025) (collecting cases)). In any event, Aronoff declines to even provide a viable explanation for why this argument could not be advanced in his opening brief. Cf. *Holland v. Bibeau Const. Co.*, 774 F.3d 8, 14 (D.C. Cir. 2014).

modified)).

A.

FOIA allows agencies to declare that portions of requested materials are exempt from disclosure, and Congress provided express exemptions under which agencies can justify those withholdings. 5 U.S.C. § 552(a)(8)(A), (b). We construe FOIA exemptions narrowly because the statute establishes “a strong presumption in favor of disclosure.” *See Burka v. U.S. Dep’t of Health & Hum. Servs.*, 87 F.3d 508, 515 (D.C. Cir. 1996). Below, the Government withheld documents pursuant to eight FOIA exemptions. 5 U.S.C. § 552(b)(1), (3), (6), (7)(A), 7(C)–(F). In *AIM I*, the magistrate judge recommended that the district court ratify the Agencies’ withholdings under Exemptions 1, 3, and 7(D). 2020 WL 9439354, at *4, *10. In *AIM II*, the district court instead granted summary judgment based on Exemptions 1 and 3. 2022 WL 17250196, at *7. Later, in *AIM III*, the district court permitted the FBI’s withholdings under Exemption 7(A). 2024 WL 1833851, at *2. Our own view is that Exemptions 1 and 7(A) are enough to resolve this dispute. *Larson v. Dep’t of State*, 565 F.3d 857, 862–63 (D.C. Cir. 2009) (“[C]ourts may uphold agency action under one exemption without considering the applicability of the other.”).

1.

The Agencies invoked Exemption 1 to authorize withholdings related to “documents containing information about U.S. personnel and assets relevant to the Benghazi attacks.” Appellees’ Br. 9; *see also id.* at 7–8, 23–24. What Aronoff searches for within those withholdings are the DOD’s maps, assets, and EXORD, and information about the “stand-down” order, which Aronoff contends will be revealed in the CIA’s Inspector General report or the FBI’s interview materials. Appellant’s Br. 18–19. Exemption 1 covers the withholding of classified materials that are “specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy” and are “in fact properly classified pursuant to such Executive order.” 5 U.S.C. § 552(b)(1). The Agencies have met the conditions required to justify their withholdings under Exemption 1.

The Agencies identify Executive Order 13526 to justify its withholdings under Exemption 1. Executive Order 13526 outlines a system for the proper classification of national security information. Exec. Order No. 13526, 75 Fed. Reg. 707, 707, 709–11 (Dec. 29, 2009). As our precedent requires, the Government provided this court with affidavits that explain the reasons for their withholdings in “reasonably specific detail,” including reasoning for how the Agencies have met the criteria of Executive Order 13526, and thereby, the requirements of Exemption 1. *Larson*, 565 F.3d at 862 (citation omitted); *see, e.g., Williams Decl.* ¶ 14, J.A. 340–41 (“[The requested record] is a finished intelligence product prepared by an analytic component of [the Defense Intelligence Agency]. The product is an in-depth analysis related to the Benghazi consulate attack which is based on information obtained from classified sources and methods. In addition, this intelligence product contains a detailed statement summarizing the sources upon which its analyses and assessments are based, and areas of intelligence gaps.”). Furthermore, the Agencies’ justifications for invoking Exemption 1 are “logical” and “plausible.” *Larson*, 565 F.3d at 862

(citation omitted); *see, e.g.*, Blaine Decl. ¶ 16, J.A. 903 (“The redacted CIA information includes certain classified details . . . [which contain] specific details that would tend to reveal CIA’s sources and methods, including operational techniques, resources, capabilities, and vulnerabilities.”). The declarations plainly demonstrate why the withheld information falls within both Exemption 1 and Executive Order 13526’s requirements. *Larson*, 565 F.3d at 862 (citation omitted). As such, we conclude that the Government has met its burden.

Aronoff fails to upset our conclusion with his counterarguments in favor of disclosure. Declarations may be relied upon to grant summary judgment, as long as “they are not called into question by contradictory evidence in the record or by evidence of agency bad faith.” *Eddington v. DOD*, 35 F.4th 833, 837 (D.C. Cir. 2022) (citation omitted). Aronoff argues on appeal that there was bad faith by the Agencies in only the most speculative way, and only in support of his request to propound an interrogatory. This is not enough to disturb the presumption of good faith we assign to the Agencies’ declarations. *Eddington*, 35 F.4th at 839 (holding that a plaintiff’s “purely speculative claims about the existence and discoverability” of his requested FOIA materials did not overcome the presumption of good faith (quoting *SafeCard Svcs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991))). This court thus declines to “conduct a more detailed inquiry” into the Agencies’ declarations because there are no contentions or record evidence to warrant it. *Larson*, 565 F.3d at 865 (citing *Gardels v. CIA*, 689 F.2d 1100, 1104 (D.C. Cir. 1982)).

2.

The FBI also invoked Exemption 7(A) to cover withholdings of its interview materials related to the Benghazi attack. Exemption 7(A) permits the withholding of “records or information compiled for law enforcement purposes” that, if produced, “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A); *see also Ctr. for Nat. Sec. Stud. v. Dep’t of Just.*, 331 F.3d 918, 925–26 (2003) (noting that “a presently pending enforcement proceeding” is not required for a valid application of Exemption 7(A) (internal quotation marks omitted)). The Government has also met the conditions required to justify the FBI’s withholdings under Exemption 7(A).

To determine whether Exemption 7(A) is properly invoked, this court first determines whether the requested “records or information” were compiled for “law enforcement purposes.” *See* 5 U.S.C. § 552(b)(7). The Government’s declarations confirm that the FBI’s interview materials were compiled for the investigation of the Benghazi attack. *See, e.g.*, Seidel Decl. ¶ 13, J.A. 573 (“[The requested records contain] pending investigative files . . . [such as] one or more FD-302 Interview Reports with attachments, including handwritten notes, of interviews conducted . . . of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11-12, 2012, attacks on those facilities.”).

Next, this court must determine the nature of the alleged enforcement proceedings, and whether the requested materials “could reasonably be expected to interfere with” them. *Id.* § 552(b)(7)(A). The Government again uses its un rebutted declarations to make this showing. *See, e.g.*, Seidel Decl. ¶ 17, J.A. 575 (“[D]isclosure could be detrimental to success of the pending

investigation and prospective enforcement proceedings by permitting subjects to estimate the scope of the FBI's investigation and judge whether their activities are likely to be detected."). Upon our review of these declarations, it is clear how and why the disclosure of these documents "could reasonably be expected to interfere with enforcement proceedings that are pending or reasonably anticipated." *Citizens for Resp. & Ethics in Wash. v. U.S. Dep't of Just.*, 746 F.3d 1082, 1096 (D.C. Cir. 2014) (citation modified); *see id.* at 1098. So, we easily conclude that Exemption 7(A) allows the FBI to withhold its interview materials related to the Benghazi attack.

Aronoff does not contest that the FBI has made these showings and even conceded at oral argument that an investigation is ongoing. Rather, in his brief, Aronoff suggests that the FBI failed to show that there are pending or reasonably anticipated "prosecutions" to justify invoking Exemption 7(A). Appellant's Br. 19, 49–50. A pending prosecution is not required to justify a withholding under Exemption 7(A), nor is a presently pending "enforcement proceeding" even required. *See Ctr. for Nat. Sec. Stud.*, 331 F.3d at 926 (noting that Exemption 7(A) may be applied for law enforcement materials made during an investigation that is "likely" leading to enforcement proceedings).

In addition, we are also unconvinced by Aronoff's contention that public discussion or an individual interviewee's waiver should compel the disclosure of the FBI's requested records. It is true that "when information has been officially acknowledged and voluntarily disclosed in a public domain, 'a FOIA plaintiff may compel disclosure of that information even over an agency's otherwise valid exemption claim.'" *Nat'l Sec. Couns. v. CIA*, 969 F.3d 406, 411 (D.C. Cir. 2020) (quoting *ACLU v. DOD*, 628 F.3d 612, 620 (D.C. Cir. 2011)). However, Aronoff's argument still fails because he has not made the required showing for this court to conclude that the Agencies waived confidentiality, namely that the information in the public domain is a *duplicate* of what is being withheld. *Pub. Citizen v. Dep't of State*, 11 F.3d 198, 201, 201–02 (D.C. Cir. 1993).

Aronoff also cursorily argues that the FBI should not have redacted its materials in full because, in Aronoff's view, he only seeks access to portions of these materials that reveal the "stand-down" order. However, this court has held that agencies "may withhold records in their entirety when nonexempt portions are inextricably intertwined with exempt portions." *Farahi v. FBI*, 153 F.4th 1283, 1286 (D.C. Cir. 2025) (citation modified)). Moreover, we "may rely on government affidavits that show with reasonable specificity why documents withheld pursuant to a valid exemption cannot be further segregated." *Id.* (citation omitted). The FBI has explained that it closely examined the requested information to determine if there was anything reasonably segregable that could be disclosed to Plaintiffs, but that nothing could be. We have no cause to discredit its reasoning. Consequently, we must conclude the FBI properly invoked Exemption 7(A) to cover the withholdings of its interview materials.

Relying on the un rebutted representations of the Agencies and the lack of any contraindicatory information in the record, we conclude that Exemptions 1 and 7(A) cover the Agencies' challenged withholdings. *Am. First Legal Found. v. U.S. Dep't of Agric.*, 126 F.4th 691, 694–95 (D.C. Cir. 2025) (citation omitted). Aronoff does not give us a reason to conclude

otherwise.⁶

B.

All that remains is the OPREP-3. Aronoff makes myriad, conflicting arguments pertaining to this document. In his brief, Aronoff initially challenged the adequacy of the DOD's search for the OPREP-3.⁷ Aronoff argued that the document was not produced because the DOD "did not locate it, suggesting that the plaintiffs had sought the alert from the wrong [DOD] component." Appellant's Br. 13. Aronoff also argued that the DOD declined to forward it to the proper component. In response to both arguments, the Government pointed to its declarations, which assert that the DOD *did* produce the OPREP-3. Appellees' Br. 17 (first citing Herrington Decl. ¶ 8, J.A. 112; then citing Herrington Decl. ¶ 24, J.A. 117) (additional citations omitted). Then, in his reply, Aronoff simply argues this document is not the OPREP-3. At oral argument, Aronoff repeated these assertions, yet counsel conceded that he may not even be able to recognize an OPREP-3 if he were provided one.

To begin, Aronoff simply denying that the document the DOD produced is indeed the OPREP-3 he is looking for is not a proper challenge to the adequacy of the DOD's search. *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 313–14 (D.C. Cir. 2003) (explaining that once an agency meets its burden of showing it complied with FOIA, the plaintiff's role is to "then provide countervailing *evidence*" about the adequacy of the agency's search (emphasis added) (citation modified)). Speculation that the truth is out there will not give rise to a viable FOIA challenge. *SafeCard*, 926 F.2d at 1201 ("Mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them."). However, we will take up and dispose of Aronoff's argument on the merits. We begin by noting that the DOD has already provided a "detailed and non-conclusory" declaration attesting to its production. *Id.* at 1200 (citation omitted). We also see no evidence in the record to cause us independently to doubt that the DOD properly processed Plaintiffs' request for the OPREP-3 and then provided it to Plaintiffs. So, we start with the conclusion that the OPREP-3 was indeed produced.

Once we are "satisfied that proper procedures have been followed and that the information logically falls into the exemption claimed," this court "need not go further to test the expertise of

⁶ To the extent Aronoff challenges other exemptions asserted by the CIA, he does so to no avail. Aronoff fails to lodge reviewable objections to the CIA's exemptions because he neither clearly states which exemptions he is challenging nor provides bases for said challenges. See Appellant's Br. 44 (conceding that "many of the CIA's redactions are undoubtedly proper"). And the court cannot carry the ball for him. *Doe v. Blanche*, 172 F.4th 901, 912 (D.C. Cir. 2026) ("As the 'neutral arbiter of matters the parties present,' we 'rely on the parties to frame the issues for decision.'" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))).

⁷ Interestingly, in his brief, Aronoff relies upon the declaration the DOD produced to explain what the OPREP-3 is, Appellant's Br. 13 (citing Herrington Decl. ¶ 24, J.A. 117), but in the same breath denies that the agency produced the report, even going so far as to cite the same paragraph where the DOD declarant states that the agency produced the document, *compare id.* (citing Herrington Decl. ¶ 24, J.A. 117), *with* Appellees' Br. 17 (citing Herrington Decl. ¶ 24, J.A. 117).

the agency, or to question its veracity when nothing appears to raise the issue of good faith.” *Larson*, 565 F.3d at 867 (quoting *Gardels*, 689 F.2d at 1104). Accordingly, for Aronoff to prevail in spite of our initial conclusion, he owes us a showing of the Agencies’ bad faith. *SafeCard*, 926 F.2d at 1201 (“Agency affidavits are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.” (citation modified)). Instead, Aronoff merely assures us in response that this document is not the OPREP-3 he requested. While this showing from Aronoff will not overcome the presumption of good faith, it is the only one he offers. As a result, because we have concluded that the DOD’s declaration was satisfactory and that there is no record evidence to contradict its representations, *see SafeCard*, 926 F.2d at 1201, Aronoff’s failure to raise substantial doubt about the reasonableness of the DOD’s search and production of the OPREP-3 ends our inquiry. *Kowal v. U.S. Dep’t of Just.*, 107 F.4th 1018, 1028 (D.C. Cir. 2024), *cert. denied sub nom. Kowal v. Dep’t of Just.*, 145 S. Ct. 2821 (2025).

III

Finally, Aronoff challenges the district court’s refusal to allow Plaintiffs to propound an interrogatory to the DOD. This court reviews the limits a district court places on discovery for abuse of discretion. *Eddington*, 35 F.4th at 836 (D.C. Cir. 2022). In general, because of the nature of FOIA, namely the productions of documents it makes available, discovery in a FOIA case is rare. *Baker & Hostetler LLP v. U.S. Dep’t of Com.*, 473 F.3d 312, 318 (D.C. Cir. 2006). Discovery in a FOIA case is permissible when the district court concludes—upon reviewing declarations or before such review—that the agency has acted in bad faith in conducting their search responsive to the FOIA requests. *In re Clinton*, 973 F.3d 106, 113 (D.C. Cir. 2020) (citations omitted). Aronoff again has shown us no more than his “mere suspicion of bad faith,” which we have clearly held “cannot be used as a dragnet to authorize voluminous discovery that is irrelevant to the remaining issues in a case.” *See id.* at 114. Aronoff’s beliefs about the DOD’s public representations are not the “evidence” we require to justify compelling the agency to provide discovery in addition to its FOIA productions. *See id.* at 113. We see no abuse of discretion in the district court’s conclusion that the DOD’s search was “reasonably calculated to uncover all relevant documents,” and thus could not be compelled to respond to an interrogatory. *Id.* at 116 (citations omitted). Hence, Plaintiffs’ motion to propound one was properly denied.

* * *

For the foregoing reasons, this Court affirms the orders of the district court granting summary judgment to the Government and denying Plaintiffs’ motion to propound an interrogatory to the DOD.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41(a)(1).

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk

**APPELLANT'S CERTIFICATE AS TO
PARTIES, RULINGS, AND RELATED CASES**

Counsel for Appellant certifies as follows:

I. Parties

The sole Appellant is Roger L. Aronoff, one of six plaintiffs in the District Court. The other five plaintiffs are Lieutenant Colonel Kenneth Benway, USA (Ret.), Colonel Richard F. Brauer, Jr., USA (Ret.), Clare M. Lopez, Kevin Michael Shipp, and Accuracy in Media, Inc. Appellees are the Department of Defense, the Central Intelligence Agency, and the Department of Justice.

II. Ruling Under Review

At issue in this appeal are (1) the Honorable Emmet G. Sullivan's November 28, 2022 *Memorandum Opinion* and *Order* granting the Defendants' Motion for Summary Judgment and denying Plaintiffs' Cross-Motion for Summary Judgment, and (2) the Honorable Loran L. Alokhan's April 26, 2024, *Memorandum Opinion* and *Order* granting the Defendant's Motion for Summary Judgment and denying Plaintiffs' Cross-Motion for Summary Judgment, and (3) the Honorable J. Michelle Childs, Judith W. Rogers, and Justin R. Walker's July 28, 2026, *Per Curiam* Panel *Judgment*.

III. Related Cases

Undersigned counsel is not aware of any pending related cases.

/s/ John H. Clarke

APPELLANT'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Accuracy in Media, Inc. ("AIM"), a plaintiff in the court below, is a not-for-profit corporation, duly organized and existing under the laws of the District of Columbia. AIM is not a publicly held corporation, has no parent companies, and no companies have a 10% or greater ownership interest in AIM.

/s/ John H. Clarke

CERTIFICATE OF COMPLIANCE FRAP 40 (d)(3)

The text for this *Appellant's Petition for Rehearing and Petition for Rehearing En Banc* was prepared using Times New Roman, 14-point, and contains 3,898 words as counted by Microsoft Word.

/s/ John H. Clarke

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2026, I have caused the foregoing *Appellant's Petition for Rehearing and Petition for Rehearing En Banc* to be served on Appellee's counsel by filing on the Court's CM/ECF system. Counsel is a registered user.

/s/ John H. Clarke