

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 14-1589 (EGS)
)	
UNITED STATES DEPARTMENT OF DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ STATEMENT
OF MATERIAL FACTS NOT IN DISPUTE**

Pursuant to Local Civil Rule 7(h)(1), Defendants, United States Department of Defense (“DOD”), United States Department of State (“State”), the Federal Bureau of Investigation, a component of the United Department of Justice (“FBI”), and the Central Intelligence Agency (“CIA”) (collectively, “Defendants”), file this response¹ to Plaintiffs’ Statement of Material Facts Not In Dispute, *see* ECF No. 71-4.

Plaintiffs’ Undisputed Material Facts	Defendants’ Response
Material Facts Not In Dispute as to Defendant DOD	
1. Regarding Plaintiffs’ request reflecting initial communications and orders, the DOD produced, as its earliest communication, a record generated at 3:00 a.m. Washington time. Herrington Decl. ¶¶ 4, 22, Clarke Decl. Ex 1, Ex. 11.	Undisputed that Defendant DOD produced a redacted copy of the Execution Order (“EXORD”) dated 0700 Zulu (Greenwich meantime) September 2012, which is the initial written order directing EUCOM to execute an action in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya. <i>See</i> Herrington Decl. ¶16; Herrington Ex. 6.

¹ Because the parties recently were able to resolve outside of litigation Plaintiffs’ challenge to State’s decision to withhold the 12 surveillance videos, there are no remaining claims against State and State should be dismissed from this suit. As a result, Defendants’ response does not address Plaintiffs’ statement of material facts not in dispute with respect to Defendant State.

Plaintiffs' Undisputed Material Facts	Defendants' Response
	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>2. Seven minutes into the attack, at 3:49 p.m. personnel in both Tripoli and Benghazi contacted the State Department’s Diplomatic Security Command Center.</p> <p>Clarke. Decl. Ex. 4 at 52.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>3. At 4:05 p.m., the State Department Operations Center issued an “Ops Alert” to “senior Department officials, the White House Situation Room, and others.”</p> <p>Clarke Decl., Ex. 4 at 52.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>4. At about 4:05 p.m., “members within the AFRICOM command structure learned of the attack, just more than 30 minutes after it began.”</p> <p>Clarke Decl. Ex. 4 at 52.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>5. “Just minutes after word of the attack reached the Secretary, he and General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, department the Pentagon.”</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S.

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Clarke Decl. Ex. 4 at 52	242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>6. In 2013, the DOD represented in its timeline presented to Congress, that, at the 5:00 pm meeting with the President, Secretary Panetta and General Dempsey, “the leaders discuss[ed] potential responses to the emerging situation.”</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>7. In January of 2016, Mr. Panetta testified that, at the 5:00 p.m. meeting with the President, Secretary Panetta and General Dempsey, “the Principals did not discuss [] what resources would or would not be deployed.”</p> <p>Clarke Decl. Ex. 3 at 14.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>8. In 2013, the DOD represented in its timeline presented to Congress, that, at 8:30 pm The National Military Command Center conducts a Benghazi Conference Call with representatives from AFRICOM, EUCOM, CENTCOM, TRANSCOM, SOCOM, and the four services.[]</p> <p>Clarke Decl. Ex. 3 at 3-4; Herrington Decl. Ex. F.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
<p>9. In 2013, the DOD represented in its timeline presented to Congress, that, between 6:00 pm and 8:00 pm, “actions are verbally conveyed from the Pentagon to the affected Combatant Commands.”</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes

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	that are irrelevant or unnecessary will not be counted.”)
<p>10. In 2013, the DOD represented in its timeline presented to Congress, that, at 8:39 p.m., “As ordered by Secretary Panetta, the National Military Command Center transmits formal authorization for the two FAST platoons, and associated equipment, to prepare to deploy and for the EUCOM special operations force, and associated equipment, to move to an intermediate staging base in southern Europe.”</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>11. The order referenced in the forgoing Statement was typed out.</p> <p>Clarke Decl. Ex. Exhibit 3 at 33.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>12. In 2013, the DOD represented in its timeline presented to Congress, that, at 8:53p.m., “As ordered by [S]ecretary Panetta, the National Military Command Center transmits formal authorization to deploy a special operations force, and associated equipment from the United States to an intermediate staging base in southern Europe.”</p> <p>Clarke Decl. Ex. 2 at 3-4; Herrington Decl. Ex. F.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>13. Mr. Panetta testified that the order referenced in the forgoing Statement was typed out.</p> <p>Clarke Decl. Ex. Exhibit 3 at 33.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes</p>

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	that are irrelevant or unnecessary will not be counted.”)
<p>14. Shortly after 4 pm, Secretary Clinton notified National Security Director Tom Donilon.</p> <p>Clarke Decl. Ex. Exhibit 7 at 70.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>15. Upon Panetta and Dempsey’s arrival at the White House after 5:00 pm, they first went to the National Security Council quarters for “additional information . . . about events in Benghazi.”</p> <p>Clarke Decl. Ex. Exhibit 3 at 12.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>16. Mr. Panetta claims to have received “no intelligence” from the White House Situation room.</p> <p>Clarke Dec. Ex. Exhibit 3 at 12.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>17. Mr. Panetta [] <i>sic</i> could “not recall whether Mr. Donilon had even been notified.”</p> <p>Clarke Decl. Ex. Exhibit 3 at 12.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>18. Mr. Panetta testified that, sometime before Jeremy Bash sent his email at 7:19 p.m., he ordered immediate deployment.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See</i></p>

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Clarke Decl. Ex. Exhibit 3 at 33.	<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
19. Mr. Panetta testified that his deployment order was unequivocally to go. Clarke Decl. Ex. 4 at 69, Ex. 3 at 14, 16, 19, 23, 27, 30, 34, 43, 45, 48.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
20. DOD personnel in Tripoli was ordered to stand down. Clarke Decl. Ex. 5 at 63.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
21. The CIA Chief of Base ordered QRF to “stand down.” Clarke Decl. Ex. 4 at 46.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
22. In 2013, the DOD represented in its timeline presented to Congress, that, between 6:00 p.m. and 8:00 p.m. the initial order was contingent “upon receipt of formal authorization.” Clarke Decl. Ex. 2 at 3.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes

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	that are irrelevant or unnecessary will not be counted.”)
<p>23. Jeremy Bash’s 7:19 email relates to the condition precedent to deployment as “assuming the Principals agree to deploy.”</p> <p>Clarke Decl. Ex. 3 at 27, 34.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>24. At the 7:30 p.m. White House “roughly two-hour meeting . . . containing the phrases ‘[i]f deployment is made,’ and ‘Libya must agree to any deployment,’ and ‘[w]ill not deploy until order comes to go to either Tripoli or Benghazi.’”</p> <p>Clarke Decl. Ex. 4 at 115.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>25. Mr. Panetta testified that “cross-border” authority, or permission from Libya would have been necessary prior to deployment.</p> <p>Clarke Decl. Ex. 3 at 20.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>26. Mr. Panetta was unaware of any request for “cross-border” authority, or permission from Libya.</p> <p>Clarke Decl. Ex. 3 at 20.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>27. AFRICOM Commander General Ham issued an order by 8:02 p.m.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See</i></p>

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Clarke Decl. Ex. 3 at 47.	<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
28. Mr. Panetta claimed that, at the 6:00 p.m. meeting at the Pentagon “principals were . . . continuing . . . to make sure that the steps that I had ordered were taking place.” Clarke Decl. Ex. 3 at 17.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
29. Mr. Panetta testified that, at the 6:00 pm meeting at the Pentagon, the principals “were assuring me that the forces were moving into place.” Clarke Decl. Ex. 3 at 31.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
30. The DOD claims that “nearly two more hours elapsed before the Secretary’s orders were related to those forces.” Clarke Decl. Ex. 4. At 56.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)
31. The DOD posits that “no one stood watch to steer the Defense Department’s bureaucratic behemoth forward to ensure the Secretary’s orders were carried out.” Clarke Decl. Ex. 4 at 56.	Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes

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	that are irrelevant or unnecessary will not be counted.”)
<p>32. The DOD claims to have issued an order to deploy “11 o’clock.”</p> <p>Clarke Decl. Ex. 3 at 44.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>33. It was “roughly 3 1/2 hours from notice of the attack to your [Panetta] decision to get them moving.”</p> <p>Clarke Decl. Ex. 3 at 22.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>34. Mr. Panetta excused “roughly 3 1/2 hour” delay on the absence of real-time information, stating that “You don’t drop people into a situation unless you have some idea what you’re getting into.”</p> <p>Clarke Decl. Ex. 3 at 38.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>35. “Special operations aircraft that were stationed in Souda Bay on the night of the attacks in Benghazi and could have been utilized in response to the attacks.”</p> <p>Clarke Decl. Ex. 4 at 64.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>36. “The 12 pages [of maps] withheld by Joint Staff contain the force posture of the Department of Defense for the European</p>	<p>Undisputed.</p>

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<p>Command, Central Command, Africa Command areas of responsibility as well as the force posture of Special Operations forces worldwide during the relevant timeframe in September 2012.”</p> <p>Malloy Decl., ECF No. 69-1 ¶ 4.</p>	
<p>37. “The disposition of our forces in September 2012 is tactical information that is perishable in the immediate time frame. Therefore, to continue to maintain that revealing that tactical information six years later has no basis in fact . . . [and] could be of no value to an adversary.”</p> <p>Affidavit of Admiral James A. Lyons, Jr. USN, (Ret) ¶ 5.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>
<p>38. The record that the DOD produced as an “OPREP 3” is not that report itself, but rather refers to the OPREP-3.</p> <p>Herrington Decl., ECF No. 68-4 . . . ¶ 24.</p>	<p>Undisputed.</p>
<p>39. The record that the DOD produced as an “OPREP 3” is dated January.</p> <p>Herrington Decl., ECF No. 68-4 ¶ 24.</p>	<p>Undisputed except to note that the January reference is a typographical error.</p>
<p>40. DOD’s search for records of Gaddafi’s March 2011 interest in a truce and abdication was limited to electronic records.</p>	<p>Disputed. As set forth in the two Herrington declarations, DOD conducted a search for responsive records in both paper and electronic files. <i>See</i> Herrington Decl. ¶¶ 25-26; <i>see also</i> Suppl. Herrington Decl. ¶¶ 8-11.</p>
<p>41. DOD’s search for records of Gaddafi’s March 2011 interest in truce and abdication did not include the search term “CIA.”</p> <p>Herrington Decl., ECF No. 68-4 ¶ 25.</p>	<p>Undisputed.</p>
<p>42. The DOD described its search terms for records of Gaddafi’s March 2011 interest in truce and abdication “extend[ing] to all known spelling variants of the individuals named in this request,” and did not specify the actual search terms used.</p> <p>Herrington Decl., ECF No. 68-4 ¶ 26.</p>	<p>Disputed. <i>See</i> Herrington Decl. ¶ x; <i>see also</i> Suppl. Herrington Decl. ¶ x.</p>

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<p>43. The DOD's Declaration regarding its search for records of Gaddafi's March 2011 interest in truce and abdication does not disclose the number of potentially responsive "hits" that were obtained during its searches, nor its procedures for reviewing those potentially responsive records.</p> <p>Herrington Decl., ECF No. 68-4.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.")</p>
<p>44. The DOD's Declaration regarding its search for records of Gaddafi's March 2011 interest in truce and abdication does not disclose whether Colonel Linvill is aware of the existence of any responsive records.</p> <p>Herrington Decl., ECF No. 68-4.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.")</p>
<p>45. The DOD's Declaration regarding its search for records of Gaddafi's March 2011 interest in truce and abdication does not disclose whether General Carter Ham is aware of the existence of any responsive records.</p> <p>Herrington Decl., ECF no. 68-4.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.")</p>
Material Facts Not in Dispute as to Defendant CIA	
<p>46. The CIA's production of IG records at issue does not disclos[e] . . . the substance of the underlying allegation.</p> <p>Clarke Decl. Ex. 8 at 77-103.</p>	<p>Disputed. Defendant CIA disclosed the subject matter of the underlying investigation as evident in Plaintiffs' Exhibit 8. <i>See</i> Supp. Shriner Decl. ¶¶ 6-10; <i>see also</i> Clarke Decl. Ex. 8.</p>
Material Facts Not in Dispute as to Defendant FBI	
<p>50. "[A]n excerpt from the December 30, 2012, Senate Committee on Homeland Security and Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi: [states that] 'On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes</p>

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<p>on the compound in Benghazi during the attack.”</p> <p>Am. Compl. ¶ 126(9).</p>	<p>that are irrelevant or unnecessary will not be counted.”)</p>
<p>51. The <i>Select Committee</i> interviewed, and released, the transcripts[] of all U.S. personnel who had been on the compounds in Benghazi during the attack.</p> <p>Clarke Decl. Ex. 4 at 58-60.</p>	<p>Disputed to the extent that this paragraph does not set forth uncontroverted facts that are material to the outcome of this suit. <i>See Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-48 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”)</p>

Dated: July 27, 2018

Respectfully submitted,
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