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Delivery by CM/ECF

The Honorable Nwamaka Anowi
Clerk of Court
United States Court of Appeals for the Fourth Circuit
Lewis F. Powell, Jr. United States Courthouse Annex
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

Re: *Driggs, et al. v. Central Intelligence Agency, Appeal No. 25-2177*

Dear Ms. Anowi:

Pursuant to Federal Rule of Appellate Procedure 28(j), the Central Intelligence Agency (“CIA”) identifies *Malone v. United States Patent & Trademark Office*, No. 24-1706, -- F.4th ---, 2026 WL 1217252 (4th Cir. May 5, 2026), as a new authority relevant to the parties’ arguments concerning the reach of the Freedom of Information Act (“FOIA”) into an agency’s underlying conduct.

Malone addressed a FOIA claim involving a request for draft opinions that that were authored by Patent Trial and Appeal Board (“PTAB”) judges and circulated to other patent judges on the panel and nonpanel patent judges. *Id.* at *2. There, the FOIA requestor challenged the agency’s withholdings under Exemption 5 as protected by the deliberative process privilege. *Id.* at *2. As the FOIA requestor saw it, Exemption 5 could not justify withholding these records because they “shed light on government misconduct.” *Id.* at *6. After holding that the deliberative process privilege shielded the records from disclosure, *Malone* rejected the FOIA requestor’s assertion that “government misconduct” can defeat the privilege. *Id.* at *4, 6. Following *Rudometkin v. United States*, 140 F.4th 480 (D.C. Cir. 2025), this Court concluded that “it is simply untenable to assert that government misconduct bears on the application of Exemption 5” as the “FOIA itself provides no such exception.” *Malone*, 2026 WL 1217252, at *6.

Moreover, *Malone* emphasized that “FOIA is not a vehicle by which to bring a collateral attack on the legality or constitutionality of broader agency policy.” *Id.* Rather, “[i]n FOIA, production of documents is the beginning and the end of the claim.” *Id.* (cleaned up). This supports the CIA’s assertion here that the FOIA good faith inquiry is limited to an assessment of the agency’s handling/processing of the FOIA request, CIA Br. at 32-33; and does not allow, as Driggs argues, a “collateral attack” on the propriety of the agency’s underlying activities. Driggs Br. at 17.

Accordingly, for these reasons and those in the CIA’s Brief, this Court should affirm.

Sincerely,

Todd W. Blanche
Acting Attorney General

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Civil Chief

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cc: Counsel for Driggs (via CM/ECF)