



October 7, 2020

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VIA EMAIL ONLY

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VIA EMAIL ONLY

RE: *ACLJ v. NSA, U.S. Dept. of State, 17-cv-1425 (D.D.C.); Declassification of records*

Dear Counsel:

On October 6, 2020, the President announced to the public, via Twitter:

“All Russia Hoax Scandal information was Declassified by me long ago. Unfortunately for our Country, people have acted very slowly, especially since it is perhaps the biggest political crime in the history of our Country. Act!!!”

<https://twitter.com/realDonaldTrump/status/1313650640699224069>.

And, and on the same date, the President announced to the public:

“I have fully authorized the total Declassification of any & all documents pertaining to the single greatest political CRIME in American History, the Russia Hoax. Likewise, the Hillary Clinton Email Scandal. No redactions!”

<https://twitter.com/realDonaldTrump/status/1313640512025513984>.

A number of redactions and/or withholdings in this case have been based on the ‘classified’ exemption of (b)(1).

It is well established that the President of the United States possesses the authority to declassify any document. *See Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (“[The president’s] authority to classify and control access to information bearing on national security . . . flows primarily from this constitutional investment of power in the president and exists quite apart from any explicit congressional grant.”).

The ACLJ hereby requests that all records previously withheld or redacted based on the (b)(1) classified exemption be produced. As to records withheld or redacted based on (b)(1) as well as one or more additional exemptions, the ACLJ requests that withholdings be reevaluated without the (b)(1) basis, as the record(s) may now be amenable to public release or contain reasonably segregable information, even if, for example, a legitimate (b)(5) or (b)(6) redaction of part of the record may still be appropriate.

Further, we expect that the President’s declassification orders will impact the State Department’s review currently underway, as set forth in paragraph 3 of the Joint Status Report filed September 24, 2020 [Doc. # 50], such that (b)(1) will not form the basis of any redactions or withholdings of records. Please advise if your client takes a different position.

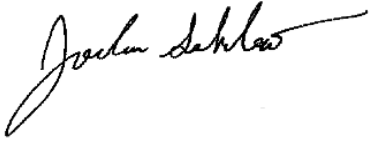
Please be advised that we are considering asking the Court to revisit, whether by renewed motion for summary judgment or some other vehicle, the issue of waiver of the Glomar responses not already ruled by the Court as waived in its Memorandum Opinion of July 24, 2020 [Doc. # 47]. Given the President’s declassification order(s), arguments raised by the agencies and rationale expressed by the Court in its opinion were incomplete. If the underlying documents have been ordered declassified, then the basis of the asserted Glomar responses is invalid. Please advise if your clients agree to retract all Glomar responses in this case, or whether Court intervention will be necessary.

The ACLJ also requests an explanation as to why records in this case were withheld or redacted as classified, and why the agencies asserted Glomar responses, given the President’s announcement that he declassified all Russia Hoax Scandal documents “long ago.”

We are preparing to advise the Court of our requests given the President’s very recent public announcement, but desire to accomplish this in good faith with your clients first such that Court intervention is not necessary.

We look forward to hearing from you.

Respectfully,

A handwritten signature in black ink, appearing to read "Jordan Sekulow". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jordan Sekulow
Executive Director

A handwritten signature in black ink, appearing to read "Benjamin P. Sisney". The signature is cursive and somewhat stylized, with a prominent "B" and "S".

Benjamin P. Sisney
Senior Litigation Counsel