

AMERICAN CENTER FOR LAW & JUSTICE



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QUARTERLY **FOIA**

R E P O R T



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A MESSAGE FROM CHIEF COUNSEL JAY SEKULOW



Just over two years ago, I mobilized a dedicated team of attorneys and staff to launch our Government Accountability Project. The purpose of this Project was and is to shed light on burgeoning corruption in the bureaucracy that controls our government agencies and implements our laws. We are fighting to hold this ever-expanding “Deep State” accountable to the American people. Thanks to your support, our efforts have been a resounding success.

As part of this effort, we have issued more than fifty-one Freedom of Information Act (FOIA) requests. The law requires government agencies to respond to these lawful requests. Yet, the bureaucracy fights tooth and nail to protect its secrets, often refusing to comply with our requests or the law. So, we have been forced to bring them to account – in court. To that end, we have filed eleven federal lawsuits (two of which have been combined) against five different bureaucratic agencies. We are fighting every day to expose the truth.

Over the course of the last two years, we have exposed corruption, lawlessness, influence peddling, and deception in our government. We have ensured that numerous Deep State bureaucrats are no longer in positions of power. We have dug into the Obama Administration’s funding of anti-Israel causes – including an attempt to unseat the government of Israel – exposed major corruption and collusion surrounding the infamous Clinton-Lynch tarmac meeting, and revealed the “purposeful” deletion of an official State Department briefing video to hide when the Iran nuclear deal negotiations began.

The goal of our Government Accountability Project is clear: ensure the United States Government remains of the People, dedicated to the People, and operated for the People – and not entrenched Washington elites, the ever-expanding bureaucratic Deep State, and corrupting special interests. The following is our next Quarterly Report, which the ACLU will issue to Members of Congress and the general public to update and empower those with a voice to make a difference and hold the government accountable.

After a review of the Report’s findings, I encourage the appropriate congressional committees to provide oversight, hold hearings, and take whatever corrective action is necessary, including new legislation. I also encourage you, the American people, to remain vigilant; your voice makes a huge difference.

Thank you for your continued support. Without you, the virus of deception would remain hidden. With your help, we will continue to expose the truth and defeat the corruption.

Signed,

A handwritten signature in black ink, reading "Jay Sekulow".



ABOUT THE ACLJ

Founded in 1990 with the mandate to protect religious and constitutional freedoms, the American Center for Law and Justice (ACLJ) engages legal, legislative, and cultural issues by implementing an effective strategy of advocacy, education, and litigation that includes representing clients before the Supreme Court of the United States and international tribunals around the globe.

As ACLJ Chief Counsel Jay Sekulow continued to build his legal and legislative team, the ACLJ experienced tremendous success in litigating cases at all levels of the judiciary – from the federal district court level to the U.S. Supreme Court.

Over the last two decades, Sekulow has appeared before the U.S. Supreme Court on numerous occasions, successfully arguing precedent-setting cases before the High Court: protecting the free speech rights of pro-life demonstrators; safeguarding the constitutional rights of religious groups to have equal access to public facilities; ensuring that public school students can form and participate in religious organizations, including Bible clubs, on campus; and, guaranteeing that minors can participate in the political process by protecting their free speech rights in the political setting.

Headquartered in Washington, D.C., the ACLJ's work reaches across the globe with affiliated offices in Israel, Russia, France, Pakistan, and Zimbabwe. In addition to its religious liberties work, the ACLJ also focuses on constitutional law involving the issues of national security, human life, judicial nominations, government corruption, and protecting patriotic expression such as our National Motto and the Pledge of Allegiance.

OUR FOIA PRACTICE:

The ACLJ has litigated and pursued governmental accountability for decades. Over the past several years, the ACLJ has intensified its advocacy in this area, focusing on identifying and countering the dangers of the unelected bureaucratic morass known as the “fourth branch of government.” In the last two years, the ACLJ has responded to troubling reports of the ever-growing “Deep State” – an out-of-control, unelected, unaccountable bureaucracy – by throwing back the curtain and shedding light on the ongoing government corruption and lawlessness. To that end, the ACLJ launched its Government Accountability Project.

One of the ACLJ’s most useful tools in this fight is the Freedom of Information Act (FOIA). This law requires federal government agencies and departments, when asked by appropriately concerned citizens, to turn over unclassified documents, records, and more as they relate to particular governmental activities. FOIA requests are almost never as simple as they sound. They require the requesting party to provide a detailed contextual background forming the basis of the request, define the parameters of the search, and regularly engage in a back-and-forth battle with an unwilling department that will use every possible technicality to reject, delay, or otherwise impede the release of information.

Thankfully, the ACLJ has extensive experience submitting FOIA requests, and the necessary legal and media resources to make sure that these requests are seen, heard, and responded to. In the past two years, the ACLJ has issued over fifty FOIA requests to more than fifteen different agencies and their component entities. Due to the repeated refusal of these agencies to comply with the ACLJ’s requests, the ACLJ has filed lawsuits to compel compliance in the U.S. District Court for the District of Columbia in nearly a dozen cases. Thus far, the ACLJ has been successful in every single case.

To date, the ACLJ has obtained nearly 14,000 pages of records, comprising approximately 4,000 responsive documents. These documents shed light on corruption at the highest levels of our government, exposing lies, cover-ups, influence peddling, and even attempts to unseat the duly-elected government of one of our closest allies. In addition, our discoveries have been prominently featured in the media and have led to significant policy changes in the federal bureaucracy.

The ACLJ will remain vigilant and carry out its obligation to hold the government accountable for its actions. The ACLJ will continue to be on the front lines in this fight, issuing more requests and, if necessary, taking our government to court to get to the truth.

TABLE OF CONTENTS

QUARTERLY REPORT EXECUTIVE SUMMARY	v
UNRWA FRAUD: <i>ACLJ v. Department of State</i> , 18-cv-944 (D.D.C.).....	1
FDA CONTRACT WITH ABR:	4
CLINTON-LYNCH COVER-UP: <i>ACLJ v. Department of Justice</i> , 16-cv-2188 (D.D.C.); <i>ACLJ v. Department of Justice, FBI</i> , 17-cv-1866 (D.D.C.).....	9
CLINTON FOUNDATION FAVORS: <i>ACLJ v. Department of State</i> , 16-cv-1975 (D.D.C.).....	12

QUARTERLY REPORT EXECUTIVE SUMMARY:

In response to troubling reports of the ever-growing “Deep State” – an out-of-control, unelected, unaccountable bureaucracy – for the last two years, the ACLJ has utilized the Freedom of Information Act (FOIA) to request documents and records from federal government agencies and departments with the intent of then using that information to shed light on the ongoing government corruption and lawlessness. In the past two years, the ACLJ has issued fifty-one FOIA requests to more than fifteen different agencies and their component.

Deep State corruption runs deep, however, and federal agencies and departments have repeatedly refused to provide the requested information to the ACLJ. As a result, the ACLJ has had to file federal lawsuits to compel compliance in the U.S. District Court for the District of Columbia in nearly a dozen cases. To date, the ACLJ has been successful in every single case.

This Quarterly Report provides updates on several of our FOIA requests.

First, we discuss one of our FOIA requests issued to unearth evidence that the Obama State Department used taxpayer funding in an intentional or reckless manner to bolster Israel’s sworn enemies by covering up U.N. corruption and deception regarding UNRWA funding for so-called Palestinian “refugees.”

Second, we detail information about a recent FOIA request generated to draw the attention of the Trump Administration to federal contracts entered into under the Obama administration that further the market for aborted baby parts used for questionable research.

Third, our Report provides updates regarding one of our FOIA requests sent to the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ) aimed at discovering the truth about reports of corruption within the Obama Administration and the Deep State bureaucracy. Specifically, these updates concern the secret tarmac meeting between President Bill Clinton and Attorney General (AG) Loretta Lynch.

Fourth, and finally, our Report provides updated information about our FOIA request and resulting lawsuit against the State Department to obtain evidence of the corruption and deception that swept federal agencies during the Obama Administration through Secretary Clinton’s collusion with the Clinton Foundation and use of the State Department to serve the interests of the Clinton Foundation and its donors.

As always, the ACLJ will continue to remain ever vigilant and carry out its obligation to hold those in government accountable for their actions and provide that information to the American people.

**ACLJ FOIA LAWSUIT DEMANDS STATE DEPARTMENT REPORT
CONCERNING ALLEGED FRAUDULENT UNRWA
FUNDING TO PALESTINIAN “REFUGEES”**

ACLJ v. Department of State, 18-cv-944 (D.D.C.)

I. EXECUTIVE SUMMARY

In our previous Quarterly Report, we detailed the ACLJ’s reasons for issuing a Freedom of Information Act (“FOIA”) request to the State Department, and subsequently filing a federal lawsuit, to obtain the specific report detailing the use of millions of dollars of U.S. funds by the United Nations Relief & Works Agency for Palestine Refugees in the Near East (“UNRWA”), which purportedly indicated awareness by State Department officials of fraud by this United Nations-created agency.

II. BACKGROUND

At the time of our last Report, the ACLJ had already filed a lawsuit against the State Department to obtain access to the information requested in our FOIA.¹ For purposes of document production, the ACLJ prioritized the State Department report (“UNRWA report”) concerning potential fraudulent misuse of United States funds by UNRWA, as this key document is sought by both Congress and the American people. While the State Department attempted to drag its heels and further delay release of the information, on June 13, 2018, a federal judge ordered the State Department to begin processing the UNRWA report – a big win, as this order expedited its release.

III. THE ACLJ’S WORK TO ACHIEVE TRANSPARENCY

Pursuant to legislation passed in 2012 (the “Kirk Amendment”) the State Department was required to produce a report “indicating the approximate number of people who, in the past year, have received UNRWA services,”

(1) whose place of residence was Palestine between June 1946 and May 1948 and who were displaced as a result of the 1948 Arab-Israeli conflict; and

(2) who are descendants of persons described in subparagraph (1).²

In July of this year, the ACLJ received the UNRWA report from the State Department. However, key portions of the report – a total of seven paragraphs – have been withheld under FOIA Exemption 1 on the grounds that the information pertains to a

¹ Complaint, *ACLJ v. U.S. Dep’t of State*, 18-cv-944 (D.D.C. Apr. 23, 2016), ECF No. 1, available at http://media.aclj.org/pdf/18.04.23-UNRWA-Complaint-%5BFILED%5D_Redacted.pdf.

² Jennifer Rubin, *U.N. ‘Refugee’ Battle Reveals What the PA is Up To*, THE WASHINGTON POST (May 25, 2012), https://www.washingtonpost.com/blogs/right-turn/post/un-refugee-battle-reveals-what-the-pa-is-up-to/2012/05/25/gJQAG40NpU_blog.html?utm_term=.9062862cd3f8.

foreign government and/or government relations – a tool regularly employed by federal agencies to keep information concealed. We believe that the withheld portions are crucial to exposing what we and many others believe is an effort to conceal UNRWA fraud from the American public.

The report obtained by the ACLJ includes a section covering the information required by the Kirk Amendment. It shows the 5 million figure for Palestinian “refugees,” however the next sentence – purportedly the breakdown of “refugees” and descendants of “refugees” – has been withheld. We have reason to believe that these redacted portions will reveal the true number of refugees actually receiving assistance, which may be closer to a mere 20,000. Additionally, the redacted portions of this report should also contain the congressionally required breakdown of “refugees” and descendants of “refugees” as the omission of this information from the report would constitute a violation by the Obama State Department of legislative requirements.

UNRWA’s decision to rely on the U.N.’s inflated 5 million estimate stems from a twofold purpose: (1) to avoid economic embarrassment and (2) to denigrate Israel. The Palestinian Authority (PA) uses UNRWA’s inflated numbers as a political weapon. The PA has consistently argued that these “refugees” have a “right of return” to what is in fact the State of Israel. The right of return for 5 million refugees would dramatically affect the balance of power in Israel. Indeed, the relocation of 5 million Arabs, rather than a few tens of thousands, would allow the Arabs to outnumber Jewish Israelis, take over the government, and eliminate the Jewish State.

While obtaining the report was a major win, the information withheld in the report – *i.e.*, information regarding how hundreds of millions of U.S. taxpayer dollars have been spent by UNWRA - is critical. Thus, the ACLJ went back to federal court to demand the report be produced in its entirety. Through continued litigation, the ACLJ has forced the State Department to file a motion for summary judgment and provide detailed justification for the withholdings made to the five-page UNRWA report. In the process, the State Department has admitted that some of the information withheld from the ACLJ and the American public includes, specifically, information regarding the “approximate number of people who, in the past year, have received UNRWA services . . . [w]hose place of residence was Palestine.” Astoundingly, the reason for the State Department’s refusal to provide this information is that a foreign government and/or international organization wishes the information to remain a secret and, thus, release of the information would, purportedly, pose a “threat to national security.” In fact, in support of this assertion, the State Department has revealed that an unnamed foreign government/international organization recently re-affirmed its desire that the information remain confidential, *in other words*, that the American people be left in the dark about what their taxpayer funds support. The State Department admits that the information is “highly controversial.”

On September 17, 2018, in response to the State Department’s summary judgment motion, we challenged the withholdings, noted possible deficiencies in the process of classifying the report, and reminded the court that the information withheld pursuant to

Executive Order 13526 cannot be “classified . . . in order to: (1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization, or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of the national security.”

In yet another victory for the ACLJ, and in response to ACLJ’s challenges, the court has ordered the State Department to produce the UNRWA report in full to the court for *in camera* review so that it can conduct an independent review of the State Department’s withholdings.

IV. CONCLUSION & NEXT STEPS

The State Department complied with Judge Boasberg’s Order to produce the entire report for *in camera* review, and the ACLJ awaits a determination from the court on whether the information contained in it should continue to be withheld from the American public.

**ACLJ PREPARED PRO-LIFE FOIA DEMANDING RECORDS REGARDING
FDA CONTRACT WITH FETAL PROCUREMENT ORGANIZATION THAT
HAD BEEN REFERRED FOR CRIMINAL INVESTIGATION**

I. EXECUTIVE SUMMARY

In August 2018, it was reported that the U.S. Food and Drug Administration (“FDA”) signed a contract on July 25, 2018, with a vendor named Advanced Bioscience Resources, Inc. (“ABR”). The purpose of that contract was “to acquire ‘fresh’ human fetal tissue to transplant into ‘humanized mice’ so that these mice [would] have a functioning ‘human immune system.’”³ Also according to reports, “[b]ecause it would not be able to create its ‘humanized mice’ without fresh tissue taken from aborted babies, the FDA also has an interest in the continuation of legalized abortions at a state in fetal development when the tissue needed to create these mice can be retrieved from the aborted baby.”⁴ The contract was for a period of one year, from July 15, 2018 through July 14, 2019, and followed on the heels of at least two prior year-long contracts with ABR. The ACLJ set out to obtain records from the FDA to determine the ethical, legal, and moral considerations of the FDA in undergoing its continued research and creation of mice with humanized immune systems using the body parts of aborted babies, and in coming to its decision to contract with ABR – which, as the ACLJ learned, had been referred for criminal investigation because of its prior dealing with Planned Parenthood.

II. BACKGROUND

Three years ago, the Center for Medical Progress (“CMP”) released a series of undercover investigation videos that exposed the despicable practices of Big Abortion and the profits being made from the sale of aborted babies’ body parts.⁵

In the wake of CMP’s undercover videos, the U.S. Senate and House of Representatives launched separate investigations into Planned Parenthood and several fetal tissue procurement industries that work with Planned Parenthood. As a result of its investigation, the U.S. Senate’s Committee on the Judiciary recommended eight organizations, including ABR and the Planned Parenthood Federation of America, to both the Department of Justice (“DOJ”) and the FBI “for investigation and potential prosecution for violations of the law that bans the buying or selling of human fetal tissue, 42 U.S.C. § 289g-2, and the criminal conspiracy statute, 18 U.S.C. § 371.”⁶

³ Terence P. Jeffrey, *FDA Acquiring ‘Fresh’ Aborted Baby Parts to Make Mice with Human Immune Systems*, CNS NEWS (Aug. 7, 2018, 11:48 AM), <https://www.cnsnews.com/news/article/terence-p-jeffrey/fda-acquiring-fresh-aborted-baby-parts-make-mice-human-immune-systems>.

⁴ *Id.*

⁵ Erik Zimmerman, *Back in Court Against Big Abortion*, ACLJ (Aug. 17, 2018), <https://aclj.org/pro-life/aclj-back-in-court-against-big-abortion>.

⁶ Letter from United States Senate Committee on the Judiciary, to Loretta Lynch, Attorney General of the United States, and James Comey, Director of the Federal Bureau of Investigation, (Dec. 13, 2016), available at <https://www.judiciary.senate.gov/imo/media/doc/2016-12-13%20CEG%20to%20DOJ%20FBI%20-%20Fetal%20Tissue%20Investigation%20referrals.pdf>.

Similarly, at the conclusion of its investigation, the U.S. House of Representatives' Committee on Energy and Commerce⁷ made fifteen "criminal and regulatory referrals to federal, state, and local authorities," including a recommendation that the District Attorney of Riverside, California, "conduct a thorough investigation into whether Advanced Bioscience Resources violated" 42 U.S.C. § 289g-2, Cal. Health & Safety Code § 125320(a), and California Penal Code § 367f(a).⁸ Moreover, the Committee "sent [a] criminal referral to U.S. Attorney General Loretta Lynch . . . urging [her] to conduct an investigation into whether ABR violated federal and state statutes and regulations, and to take appropriate action if the investigation reveals criminal behavior."⁹

In November 2017, the FBI requested that the Senate provide the FBI with the unredacted documents it obtained during the course of its investigation, "signaling agents may be investigating whether Planned Parenthood and other abortion providers illegally sold fetal tissue and body parts."¹⁰ And in December 2017, the DOJ also requested unredacted copies of the Senate's records "in order to further investigate these matters."¹¹

Importantly, the ACLJ does not know the status of any potential criminal investigation of ABR. But based on public reporting and publicly available correspondence between congressional committees and the DOJ and FBI, a criminal investigation of ABR may, in fact, be underway. One thing is certain, however: ABR was among the entities specifically referred for criminal investigation to the DOJ and FBI.

Shockingly, despite CMP's released footage and the Senate and House investigations and referrals for criminal investigation by the DOJ and the FBI, in July the FDA announced its intent to contract with ABR to "acquire Tissue for Humanized Mice." The FDA cited its intent to contract as being in accordance with 41 U.S.C. 3304(a)(1).¹² Now, 41 U.S.C. 3304(a)(1) is an exemption from competitive procedures in awarding government contracts. This allows the government to award a contract directly to an

⁷ Press Release U.S. House of Representatives Energy and Commerce Committee, Investigation into Big Abortion Reveals Disturbing Nationwide Trend of Women and Babies Being Exploited for Profit (Dec. 21, 2016), <https://energycommerce.house.gov/news/press-release/select-panel-refers-numerous-entities-further-investigation-possible/>.

⁸ Letter from U.S. House of Representatives Committee on Energy and Commerce, to Michael Hestrin, District Attorney County of Riverside California (Nov. 30, 2016), <https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/114/letters/20161221Riverside.pdf>.

⁹ SELECT INVESTIGATIVE PANEL OF THE ENERGY & COMMERCE COMMITTEE, U.S. HOUSE OF REP., FINAL REPORT (Dec. 30, 2016), available at https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/Analysis/20161230Select_Panel_Final_Report.pdf [hereinafter FINAL REPORT].

¹⁰ John Solomon, *FBI Seeks Senate Documents Signaling Possible Probe into Sale of Fetal Tissue*, THE HILL (Nov. 13, 2017, 4:03PM), <https://thehill.com/homenews/senate/360154-fbi-seeks-senate-documents-signaling-possible-probe-into-sale-of-fetal-tissue>.

¹¹ Letter from Stephen E. Boyd, Assistant Attorney General, to Charles E. Grassley, Chairman, Committee on the Judiciary (Dec. 7, 2017), <http://cdn.cnn.com/cnn/2017/images/12/07/pp.pdf>.

¹² Pre-solicitation Notice, U.S. Food & Drug Administration (June 13, 2018), available at https://cdn.cnsnews.com/attachments/pre-solicitation_notice-fda-06-13-2018.pdf.

organization. In sum, the FDA was saying that “ABR is *the only company in the U.S. capable of supplying tissues suitable for HM research*. No other company or organization is capable of fulfilling the need. . . . ABR is the only company that can provide the human fetal tissue needed to continue the ongoing research being led by the FDA.”¹³

Again, according to the FDA, the only organization that can supply the FDA with the body parts of aborted babies to create mice with humanized immune systems is an organization which has been referred for criminal investigation. And it was your tax dollars – \$15,900 to be exact – that were being used to purchase these aborted babies’ parts.

“The only company in the U.S. capable of supplying tissues suitable for . . . research.” Such a small sentence to sum up the despicable practices that caused the U.S. Senate and House to recommend criminal investigation. The Senate report described how “ABR technicians working at the Planned Parenthood clinics obtain the [aborted babies] from the Planned Parenthood staff and then harvest and immediately ship the fetal tissue specimens.”¹⁴ It further described the payment received for those aborted babies’ body parts:

For example, on one day in June of 2014, the ABR technician obtained a 20-week-old [aborted baby] at a PPPSW clinic. From the one [baby], ABR sold its brain to one customer for \$325; both of its eyes for \$325 each (\$650 total) to a second customer; a portion of its liver for \$325 to a third customer; its thymus for \$325 and another portion of its liver for \$325 to a fourth customer; and its lung for \$325 to a fifth customer. . . . So, from that single [baby] for which ABR paid PPPSW a mere \$60, ABR charged its customers a total of \$2,275 for tissue specimens, plus additional charges for shipping and disease screening.¹⁵

The House Committee also investigated ABR’s business model and fees, and “uncovered evidence that ABR may have violated 42 U.S.C. § 289g-2 and the California Health and Safety Law.”¹⁶

III. THE ACLJ’S WORK TO ACHIEVE TRANSPARENCY

In response to these disturbing facts, the ACLJ prepared a FOIA request to the FDA to uncover, among other things, whether the FDA considered the ethical, legal, and moral implications of using U.S. taxpayer dollars to contract with an organization referred for federal criminal investigation. Furthermore, our request sought to determine whether the FDA knows whether these aborted babies’ body parts will be supplied by the

¹³ *Id.*

¹⁴ S. REP. NO. 114-27 (2016), *available at* <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/22920%20-%20FTR.pdf>

¹⁵ *Id.*

¹⁶ FINAL REPORT, *supra* note 9.

U.S.'s biggest abortion provider – Planned Parenthood – which reportedly may also be under federal criminal investigation.

V. CONCLUSION & NEXT STEPS

Thankfully, after being alerted to the concerns surrounding this research and ABR's practices, and shortly after we announced our FOIA request, the HHS issued the following statement:

After a recent review of a contract between Advanced Bioscience Resources, Inc. and the Food and Drug Administration to provide human fetal tissue to develop testing protocols, HHS was not sufficiently assured that the contract included the appropriate protections applicable to fetal tissue research or met all other procurement requirements. As a result, that contract has been terminated, and HHS is now conducting an audit of all acquisitions involving human fetal tissue to ensure conformity with procurement and human fetal tissue research laws and regulations. In addition, HHS has initiated a comprehensive review of all research involving fetal tissue to ensure consistency with statutes and regulations governing such research, and to ensure the adequacy of procedures and oversight of this research in light of the serious regulatory, moral, and ethical considerations involved. Finally, HHS is continuing to review whether adequate alternatives exist to the use of human fetal tissue in HHS funded research and will ensure that efforts to develop such alternatives are funded and accelerated.¹⁷

This victory is an incredible step forward in the pro-life fight, and shows just how important it is that we let our government know that we are not okay with our tax dollars being used in such appalling and shameful ways.

The HHS's move to end this contract shows that we have an Administration that values the sanctity of human life. The ACLJ is continuing its engagement and efforts in this matter and is currently preparing another FOIA request directed to the National Institutes of Health which also has contracted for aborted babies' body parts to be used in similar research. Through our FOIA practice, we will continue to seek the truth and expose what we find.

RECOMMENDATIONS FOR CONGRESS

Research involving the use of human fetal tissue implicates serious regulatory, moral, and ethical considerations. The ACLJ suggests that appropriate congressional subcommittees request copies of HHS's comprehensive review – once completed – of all research and contracts involving fetal tissue. In addition, the ACLJ encourages the appropriate congressional subcommittees to work towards ending all federally funded

¹⁷ Press Release, Department of Health & Human Services, Statement from the Department of Health & Human Services (Sept. 24, 2018), <https://www.hhs.gov/about/news/2018/09/24/statement-from-the-department-of-health-and-human-services.html>.

research involving the use of human fetal tissue as it effectively creates a market demand for aborted babies' body parts.

ACLJ FOIA REQUEST FOR RECORDS
REGARDING CLANDESTINE TARMAC MEETING BETWEEN
BILL CLINTON AND LORETTA LYNCH

ACLJ v. Department of Justice, 16-cv-2188 (D.D.C.)
ACLJ v. Department of Justice, FBI, 17-cv-1866 (D.D.C.)

I. EXECUTIVE SUMMARY

As we reported in our prior FOIA report, the ACLJ issued a FOIA request to both the FBI and the DOJ seeking records relating to former President Bill Clinton's secret meeting with Attorney General Loretta Lynch on a tarmac in Arizona. The primary impetus for the ACLJ's FOIA was the clear appearance of impropriety resulting from the timing of and parties involved in the meeting which took place days before Attorney General Lynch announced that she would remove herself from the decision of whether to indict Hillary Clinton, and FBI Director Comey announced that the criminal investigation against Clinton would end with no charges being filed.

II. BACKGROUND

Our FOIA requests were sent to the DOJ¹⁸ and the FBI¹⁹ on July 15, 2016. The FBI responded asserting it had no documents responsive to ACLJ's request – a claim we later learned to be false. The DOJ failed to respond altogether, and on November 2, 2016, the ACLJ filed suit against the DOJ²⁰ to obtain the documents. Following the release of documents that would not have occurred unless we filed our lawsuit, the ACLJ learned that the FBI did, in fact, have documents responsive to our request. On September 12, 2017, the ACLJ filed suit against the FBI.²¹ In response to the ACLJ's federal lawsuits, the agencies have purportedly produced all records responsive to our requests.

III. THE ACLJ'S WORK TO ACHIEVE TRANSPARENCY

A key point of our FOIA requests was to find out what was said, done, and known by the FBI and DOJ in connection with the tarmac meeting, including by whom and when. We succeeded.

As we outlined in our prior Quarterly Report, the facts that prompted the ACLJ's FOIA requests are disturbing. Attorney General Lynch, head of the DOJ, met with Bill Clinton, whose wife, Hillary Clinton, the Secretary of State and leading Democrat presidential candidate, was under criminal investigation. Shortly after that meeting,

¹⁸ FOIA Request from ACLJ to DOJ (July 15, 2016), available at <http://media.aclj.org/pdf/FOIARquest-DOJ-Lynch-REDACTED.pdf>.

¹⁹ FOIA Request from ACLJ to FBI (July 15, 2016), available at <http://media.aclj.org/pdf/Exhibit-B-ACLJ-FBI-FOIA.pdf>.

²⁰ Complaint, *ACLJ v. DOJ*, 16-cv-2188 (D.D.C. Nov. 2, 2016), ECF No. 1, available at [http://media.aclj.org/pdf/Complaint,-ACLJ-v.-DOJ-\(filed-11.2.16\)_Redacted.pdf](http://media.aclj.org/pdf/Complaint,-ACLJ-v.-DOJ-(filed-11.2.16)_Redacted.pdf).

²¹ Complaint, *ACLJ v. FBI*, 17-cv-1866 (D.D.C. Sept. 12, 2017), ECF No. 1, available at http://media.aclj.org/pdf/Doc.-1.-Complaint_Redacted.pdf.

Attorney General Lynch announced that she would remove herself from the decision of whether to indict Hillary Clinton, and FBI Director Comey announced that the criminal investigation against Clinton would end with no charges being filed. Equally alarming is the fact that in response to the ACLJ's request for information about that meeting, both the FBI and DOJ lied and withheld key documents in clear violation of FOIA. Yet, the ACLJ successfully fought back in court, forcing both the FBI and DOJ to give us the documents we requested.

Nonetheless, more than half the documents produced to the ACLJ contain significant redactions – redactions admittedly containing non-exempt factual information to which a FOIA requestor is typically entitled. Thus, we have demanded through our lawsuits that the agencies fully comply with their FOIA obligations. Following summary judgment motions in both cases, the court in our lawsuit against the FBI ordered the agency to produce the pages containing redactions to the court for *in camera* review. The FBI complied with this order, and after reviewing the pages, the court issued an order denying the ACLJ's motion for summary judgment and granting the FBI's motion despite the agency's admission that much of the information withheld contains factual information that must be produced unless it would reveal deliberations of the agency.

Similarly, in our lawsuit against the DOJ, the court granted DOJ's summary judgment motion, in part, and ordered the agency to provide additional justification to support certain of its redactions. In both cases, the court – while recognizing the lack of binding appellate precedent governing the withholding of information contained in talking points (statements prepared for public relations purposes) – sided with other courts that have applied an expansive and broad application of the deliberative process privilege (falling under FOIA Exemption 5). The ACLJ, as well as many other courts, consider this broad interpretation to be antithetical to the very purpose of FOIA and the mandate that FOIA exemptions be applied narrowly and always in favor of the FOIA requestor. The courts' rulings in our two FOIA cases also accord the agency great deference in determining what information to withhold – deference which the ACLJ has witnessed several federal agencies abuse time and again.

The ACLJ's lawsuit against the DOJ at the district court level is ongoing. The ACLJ has appealed the court's decision in the FBI case in light of inconsistent rulings by D.C. district courts as well as other districts regarding the information properly withheld. The two primary issues to be presented on appeal include: (1) whether an agency's decision regarding when, what and how to communicate to the press is in itself the type of policy-oriented judgment that is protected by the deliberative process privilege; and (2) what burden of proof is actually required of federal agencies withholding non-exempt information from FOIA requestors – *i.e.*, facts the general public would typically be entitled to – under the guise that such facts, if revealed, would reveal agency deliberations.

V. CONCLUSION & NEXT STEPS

Only through the dedicated efforts of the ACLJ and its success in court have the lies by the FBI and DOJ been uncovered and the documents which the agencies preferred to remain hidden, produced.

Appealing the district court's decision in our lawsuit against the FBI will obtain necessary clarification from the D.C. Circuit and affect all FOIA litigation moving forward involving an agency's withholding of talking points and other press-related statements. Many of the decisions rendered by district courts in FOIA cases in recent years contradict FOIA and cripple its clear objective of government transparency and accountability. In light of our recent appeal, the ACLJ has filed motions to stay all further proceedings at the district court level in two of its other FOIA cases pending a decision by the D.C. Circuit on these important issues.

ACLJ FOIA LAWSUIT DEMANDS RECORDS
REGARDING SECRETARY CLINTON AND STATE DEPARTMENT’S
COLLUSION WITH CLINTON FOUNDATION

ACLJ v. Department of State, 16-cv-1975 (D.D.C.)

I. EXECUTIVE SUMMARY

As we detailed in our previous FOIA Quarterly Report, this ACLJ FOIA request to the State Department and subsequent litigation uncovered evidence that Secretary of State Hillary Clinton used her powerful government position as a favor-factory for the Clinton Foundation and its donors. In the hundreds of emails obtained by ACLJ between Hillary Clinton and her top aides and high-ranking officials at the Clinton Foundation, we found requests for State Department favors, jobs, and ambassadorships funneling through the Clinton Foundation. Now that we have exposed the reality of Hillary Clinton’s misuse of the State Department, we are continuing our litigation to hold the State Department accountable for its continued and repeated unwillingness to be transparent, fully comply with FOIA, and maintain accountability to the American public.

II. BACKGROUND

The ACLJ issued its FOIA request to the State Department on August 15, 2016.²² After the State Department failed to comply with the law – as it has done with regards to every single FOIA request issued by ACLJ – we filed a lawsuit in federal court in October 2016 challenging the agency’s failure to produce documents and alleging that the agency is engaged in a long-time pattern and practice of violating FOIA – a claim that allows for injunctive and declaratory relief against the agency.²³ Following a court-ordered status report, on January 19, 2017, the State Department finally began producing documents. Since then, the ACLJ has been in court on numerous occasions securing the production of thousands of documents evidencing more favors, collusion, and corruption, and advancing its pattern-and-practice claim against the State Department for willful, intentional delay in violation of FOIA.

III. THE ACLJ’S WORK TO ACHIEVE TRANSPARENCY

Despite the State Department’s fervent efforts to obtain dismissal of the ACLJ’s pattern-and-practice claim of intentional delay against the agency, the ACLJ recently obtained a significant victory. On February 8, 2018, the court denied the State Department’s motion to dismiss and granted to the ACLJ the opportunity to conduct discovery regarding the State Department’s FOIA policies and practices.

²² FOIA Request from ACLJ to Dep’t of State (Aug. 15, 2016), *available at* http://media.aclj.org/pdf/FOIARequest-StateDept-EmailsApril2009%5B2%5D_Redacted.pdf.

²³ Complaint, *ACLJ v. Dep’t of State*, 16-cv-1975 (D.D.C. Oct. 5, 2016), ECF No. 1, *available at* [http://media.aclj.org/pdf/Complaint-\(ACLJ-v.-DOS,-16-cv-1975\)_Redacted.pdf](http://media.aclj.org/pdf/Complaint-(ACLJ-v.-DOS,-16-cv-1975)_Redacted.pdf).

A discovery award in FOIA cases is extremely rare and establishes important and helpful precedent for FOIA requesters in general. For the first time in our FOIA practice, the ACLJ will be able to examine agency policies and practices and discover crucial information including: (1) why the speed at which the State Department processes FOIA requests continues to decline while the State Department assures the court that it has improved its FOIA department and adequately addressed all concerns raised by its Inspector General in prior years; (2) why the State Department regularly denies expedited processing for the same FOIA requests for which other agencies readily grant expedited processing; and, (3) whether the State Department maintains a policy or practice of hiding non-exempt information from disclosure under Exemption 5.

V. CONCLUSION AND NEXT STEPS

Our current litigation is precedent-setting, and will be invaluable to current and future FOIA requesters in forcing the State Department to cease its pattern and practice of withholding embarrassing information about Deep State bureaucracy and its corruption.

In the coming months, the ACLJ will examine the State Department's FOIA policies and practices, and we are prepared to hold the State Department accountable for any policies and practices that fall short of complying with the law. In the meantime, we continue to receive thousands of pages of records from the State Department. And rest assured, we will continue to be vigilant in exposing any more corruption we find that occurred at the Clinton State Department and in challenging further improper and unsupported redactions by the State Department.

The ACLJ's Government Accountability Project

The basic function of the Freedom of Information Act is to ensure informed citizens, vital to the functioning of a democratic society.



A digital copy of this report can be downloaded at **[ACLJ.org/FOIA](https://aclj.org/FOIA)**