

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Civil Action No. 12 CIV 0794-CM

American Civil Liberties Union and the American
Civil Liberties Union Foundation,

Plaintiffs,

v.

U.S. Department of Justice, including its component
the Office of Legal Counsel, U.S. Department of
Defense, including its component U.S. Special
Operations Command, and Central Intelligence
Agency,

Defendants.

DECLARATION OF COLIN WICKER

I, Colin Wicker, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney with the law firm of Dorsey & Whitney LLP, co-counsel for Plaintiffs American Civil Liberties Union and the American Civil Liberties Union Foundation.
2. Attached hereto as Exhibit 1 is a true and correct copy of a letter from Nathan Freed Wessler of the American Civil Liberties Union Foundation to the Office of Information Policy, U. S. Department of Justice and others, dated October 19, 2011.
3. Attached hereto as Exhibit 2 is a true and correct copy of a letter from counsel for Defendants to the Honorable Colleen McMahon dated April 9, 2012.
4. Attached hereto as Exhibit 3 is a true and correct copy of a letter from counsel for Defendants to the Honorable Colleen McMahon dated April 23, 2012.
5. Attached hereto as Exhibit 4 is a true and correct copy of a transcript of *Director's Remarks at the Pacific Council on International Policy* (May 18, 2009), as retrieved

from the CIA website on March 27, 2012, <https://www.cia.gov/news-information/speeches-testimony/directors-remarks-at-pacific-council.html>.

6. Attached hereto as Exhibit 5 is a true and correct copy of a transcript of *Obama on "Tonight Show" with Jay Leno: Full Video and Transcript*, Oct. 25, 2011, as retrieved from The Washington Post website on July 16, 2012, http://www.washingtonpost.com/blogs/44/post/obama-on-tonight-show-with-jay-leno-full-video-and-transcript/2011/10/26/gIQAHXJIM_blog.html. The transcript contains a transcription error. The transcript indicates that President Obama said, "it was important that working with the enemies, we were able to remove him from the field." However, President Obama actually said, "working with the Yemenis, we were able to remove him from the field." The video is available at <http://www.nbc.com/the-tonight-show/video/president-obama-part2-102511/1371660>.

7. Attached hereto as Exhibit 6 is a true and correct copy of Luis Ramirez, *Panetta Praises Libya Campaign, Thanks Troops*, Voice of America, October 6, 2011, as retrieved from the Voice of America website on July 16, 2012, <http://www.voanews.com/content/panetta-praises-libya-campaign-thanks-troops-131370363/146328.html>.

8. Attached hereto as Exhibit 7 is a true and correct copy of the *Remarks of CIA General Counsel Stephen W. Preston at Harvard Law School* on April 10, 2012, as retrieved from the CIA website on July 16, 2012, <https://www.cia.gov/news-information/speeches-testimony/2012-speeches-testimony/cia-general-counsel-harvard.html>.

9. Attached hereto as Exhibit 8 is a true and correct copy of the text of *U.S.: Defense Secretary Refers to CIA Drone Use*, L.A. Times, October 7, 2011, as retrieved from the L.A. Times website on July 16, 2012, http://latimesblogs.latimes.com/world_now/2011/10/us-pakistan-yemen-cia-drones.html. Due to technical issues with printing the article from the L.A. Times website, the text of the article was copied into a separate document and printed.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Government's Sentencing Memorandum in *United States v. Umar Farouk Abdulmutallab*, No. 2:10-cr-20005 (E.D. Mich. Feb. 10, 2012).

11. Attached hereto as Exhibit 10 is a true and correct copy of Peter Finn & Joby Warrick, *CIA Director Says Secret Attacks in Pakistan Have Hobbled al-Qaeda*, Wash. Post, Mar. 18, 2010, as retrieved from The Washington Post website on July 16, 2012, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/17/AR2010031702558.html?hpid=topnews>.

12. Attached hereto as Exhibit 11 is a true and correct copy of Siobhan Gorman & Jonathan Weisman, *Drone Kills Suspect in CIA Suicide Bombing*, Wall. St. J., Mar. 18, 2010, as retrieved from The Wall Street Journal website on July 16, 2012, <http://online.wsj.com/article/SB10001424052748704059004575128123449551524.html>.

13. Attached hereto as Exhibit 12 is a true and correct copy of a transcript of *Jake Tapper Interviews CIA Director Leon Panetta*, ABC News, June 27, 2010, as retrieved from ABC News website on July 16, 2012, <http://abcnews.go.com/ThisWeek/week-transcript-panetta/story?id=11025299&page=1>.

14. Attached hereto as Exhibit 13 is a true and correct copy of a transcript of the network broadcast portion of a 60 Minutes interview with Leon Panetta, *The Defense Secretary: Leon Panetta* (CBS Jan. 29, 2012), as retrieved from the CBS News website on July 18, 2012, http://www.cbsnews.com/8301-18560_162-57448437/the-defense-secretary-leon-panetta/?tag=contentMain;contentBody. As can be seen from the exhibit, the CBS News website refers to a "Web Extra" presentation of *The Killing of Anwar al-Awlaki*, an online-only video segment of the interview containing discussion of the government's targeted killing of Anwar al-Awlaki, which is not otherwise reflected in the transcript. The Web Extra video presentation is

available at <http://www.cbsnews.com/video/watch/?id=7396830n>. It is this Web Extra video which is quoted in the accompanying memorandum of law.

15. Attached hereto as Exhibit 14 is a true and correct copy of Lisa Daniel, *Panetta: Awlaki Airstrike Shows U.S.-Yemeni Cooperation*, American Forces Press Service, Sept. 30, 2011, as retrieved from the U.S. Department of Defense website on July 16, 2012, <http://www.defense.gov/news/newsarticle.aspx?id=65512>.

16. Attached hereto as Exhibit 15 is a true and correct copy of Charlie Savage, *A Not-Quite Confirmation of a Memo Approving Killing*, N.Y. Times, March 8, 2012, as retrieved from the New York Times website on July 16, 2012, <http://www.nytimes.com/2012/03/09/us/a-not-quite-confirmation-of-a-memo-approving-killing.html>.

17. Attached hereto as Exhibit 16 is a true and correct copy of Mark Landler, *Civilian Deaths Due to Drones Are Not Many, Obama Says*, N.Y. Times, Jan. 30, 2012, as retrieved from the N.Y. Times website on July 16, 2012, <http://www.nytimes.com/2012/01/31/world/middleeast/civilian-deaths-due-to-drones-are-few-obama-says.html>.

18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of Daniel Klaidman, *Kill or Capture* (Houghton Mifflin Harcourt, 1st ed. 2012).

19. Attached hereto as Exhibit 18 is a true and correct copy of *Senate Appropriations Subcommittee on Commerce, Justice and Science, and Related Agencies Holds Hearing on the Proposed Fiscal 2013 Appropriations for the Justice Department* (March 8, 2012), as retrieved from the Congressional Quarterly website on July 13, 2012, <http://www.cq.com/doc/congressionaltranscripts-4042882?print=true>.

20. Attached hereto as Exhibit 19 is a true and correct copy of *Senate Select Intelligence Committee Holds Hearing on Worldwide Threats* (January 31, 2012), as retrieved

from the Defense Intelligence Agency website on July 17, 2012, <http://www.dia.mil/public-affairs/testimonies/2012-01-31.html>.

21. Attached hereto as Exhibit 20 is a true and correct copy of *House Judiciary Committee Holds Hearing on Oversight of the Justice Department* (June 7, 2012), as retrieved from the Congressional Quarterly website on July 13, 2012, <http://www.cq.com/doc/congressionaltranscripts-4101328?print=true>.

22. Attached hereto as Exhibit 21 is a true and correct copy of Keith Johnson, *U.S. Seeks Cleric Backing Jihad*, Wall St. J., Mar. 26, 2010, as retrieved from the Wall Street Journal website on July 17, 2012, <http://online.wsj.com/article/SB10001424052748704094104575144122756537604.html>.

23. Attached hereto as Exhibit 22 is a true and correct copy of *Remarks by Secretary Panetta and Canadian Minister MacKay*, September 30, 2011, as retrieved from the U.S. Department of Defense website on July 17, 2012, <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=4890>.

24. Attached hereto as Exhibit 23 is a true and correct copy of a transcript of a speech by Harold Hongju Koh, *The Obama Administration and International Law*, March 25, 2010, as retrieved from the U.S. Department of State website on July 17, 2012, <http://www.state.gov/s/l/releases/remarks/139119.htm>.

25. Attached hereto as Exhibit 24 is a true and correct copy of a letter from counsel for Defendants to the Honorable Colleen McMahon dated May 18, 2012.

26. A video recording of the Google+ interview with President Obama described in the ACLU's brief, *President Obama Hangs Out With America*, can be found on the official White House website at: <http://www.whitehouse.gov/blog/2012/01/30/president-obama-hangs-out-america>. The statements cited in the accompanying memorandum begin at minute 26:30.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 18th day of July 2012 in Minneapolis, Minnesota.

/s/ Colin Wicker
COLIN WICKER