

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): _____ Caption [use short title] _____

Motion for: _____

Set forth below precise, complete statement of relief sought:

MOVING PARTY: _____
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: _____

MOVING ATTORNEY: _____
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: _____

Court-Judge/Agency appealed from: _____

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: _____ Date: _____

Has service been effected? Yes No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____

By: _____

Counsel for Plaintiffs-Appellants

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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THE NEW YORK TIMES COMPANY,
CHARLIE SAVAGE, SCOTT SHANE,
AMERICAN CIVIL LIBERTIES UNION,
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs-Appellants,

Docket Nos. 13-422(L),
445(Con)

v.

UNITED STATES DEPARTMENT OF
JUSTICE, UNITED STATES
DEPARTMENT OF DEFENSE,
CENTRAL INTELLIGENCE AGENCY,

Defendants-Appellees.

..... X

DECLARATION OF SHARON SWINGLE

SHARON SWINGLE, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an attorney with the Department of Justice, Civil Division, Appellate Staff, and I represent defendants-appellees the Department of Justice, the Department of Defense, and the Central Intelligence Agency (collectively, the “government”) in the above-named consolidated appeals. Together with Sarah Normand at the U.S. Attorney’s Office for the Southern District of New York, I have been assigned to defend this matter, and I am fully familiar with the facts pertaining to it.

2. I submit this declaration in support of the government's motion for leave to file, *ex parte* and *in camera* a classified supplemental submission that addresses questions posed by the panel during the oral argument held in this matter on October 1, 2013. The proposed supplemental classified submission is being lodged on this date with security specialists with the Litigation Security Group at the Department of Justice.

3. These appeals concern requests by plaintiffs-appellants under the Freedom of Information Act ("FOIA") seeking disclosure of information concerning targeted lethal operations against suspected terrorists, including U.S. citizens. In response to plaintiffs' FOIA requests, the defendant agencies withheld documents and information pursuant to, *inter alia*, FOIA exemption 1, which exempts from public disclosure information that is currently and properly classified. *See* 5 U.S.C. § 552(b)(1).

4. The record in this case contains classified materials. The government submitted classified materials to the district court, *ex parte* and *in camera*, in support of the government's motion for summary judgment. In addition, the district court issued a classified "appendix" to its opinion granting the government's motion for summary judgment, in which the district court addressed certain issues relating to the classified materials that had been submitted by the

government *ex parte* for *in camera* review. SPA 3-4.

5. To allow defendants-appellees to address the classified information in the record, by Order dated August 27, 2013, the Court granted the government leave to file Classified Inserts to its brief on appeal.

6. A panel of this Court (Cabranes, Newman and Pooler, C.JJ.) heard argument in this appeal on October 1, 2013. During the oral argument on October 1, 2013, a member of the panel asked the government to clarify a citation contained in a classified declaration in the record. See Tr. 73-74. The government's proposed supplemental classified submission provides the clarification requested by the Court. The proposed supplemental classified submission also provides an additional answer to a question posed during oral argument that could not be adequately and completely answered in a public setting.

8. Counsel for plaintiffs oppose the relief requested in this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
October 10, 2013

/s/ Sharon Swingle
SHARON SWINGLE