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VIA CM/ECF

February 13, 2013

Mr. Mark J. Langer
U.S. Court of Appeals for the
District of Columbia Circuit
333 Constitution Avenue, N.W.
Room 5523
Washington, D.C. 20001

RE: *ACLU v. CIA*, No. 11-5320 (D.C. Cir.)
Oral Argument Held on September 20, 2012

Dear Mr. Langer:

Plaintiffs have filed a letter with the Court submitting two transcripts in support of their contention that the CIA has officially acknowledged interest or involvement in the use of unmanned aerial vehicles for “targeted killing.” Neither source meets the “strict test” for an official disclosure by the CIA. *Wilson v. CIA*, 586 F.3d 171, 186-87 (2d Cir. 2009).

Plaintiffs cite statements made by Rep. Mike Rogers on “Face the Nation,” but this Court has repeatedly held that statements made by members of Congress do not constitute official disclosure by an Executive Branch agency. *See Frugone v. CIA*, 169 F.3d 772, 774 (D.C. Cir. 1999); *Fitzgibbon v. CIA*, 911 F.2d 755, 765-66 (D.C. Cir. 1990); *Salisbury v. United States*, 690 F.2d 966, 971 (D.C. Cir. 1982); *Wilson*, 586 F.3d at 186-87.

Plaintiffs also cite the transcript of the confirmation hearing of John Brennan, the nominee for Director of Central Intelligence. They assert that “the nominee . . . and members of the committee extensively discussed various aspects

of the CIA's targeted killing program" However, plaintiffs identify no statement in which Mr. Brennan allegedly confirms purported CIA involvement in the use of unmanned aerial vehicles for "targeted killing." Rather, plaintiffs cite instances in which *members of Congress* mentioned "targeted killing," and general discussions of "targeted killing" that do not address the involvement of any particular agency.

Plaintiff seeks to compel disclosure under FOIA of classified information by contending that the information has already been made public through an official disclosure. To do so, the plaintiff has the burden to demonstrate that three criteria are met -- the information requested must (1) "be as specific as the information previously released;" (2) "match the information previously disclosed;" and (3) "already have been made public through an official and documented disclosure." *ACLU v. U.S. Dep't of Defense*, 628 F.3d 612, 620-621 (D.C. Cir. 2011). The statements cited by plaintiffs fall far short of this exacting standard.

Sincerely,

/s/ Sharon Swingle

Sharon Swingle
Attorney

cc: all counsel (via CM/ECF)