

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE, et al.,)	
)	
Defendants.)	
_____)	

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act, 5 U.S.C. § 552, as amended)

PRELIMINARY STATEMENT

In March of 2011, Christopher Stevens became the United States Special Representative to the anti-Gaddafi rebels' political organization, the Libyan Transitional National Council, based in Benghazi. Among Stevens' activities was to create a program to collect surface-to-air missiles, or SAMs, fired via man-portable air-defense systems, or MANPADS.

On Tuesday, September 11, 2012, Ambassador Stevens' final scheduled meeting in Benghazi was with the Turkish consul general, Ali Akin. That evening, at 9:32 p.m., or earlier, dozens of attackers, armed with assault rifles and anti-tank rocket-propelled-grenades, swarmed the gate at the State Department's Benghazi Special Mission Compound, which, at the time, housed seven Americans. Moving with military tactics, the invaders lobbed a grenade into the Mission's command post, and then fired AK-47's into its main doorway. Eventually, their numbers swelled to more than 60.

Within minutes, Ambassador Stevens called his second in command, in Tripoli, Deputy Chief of Mission Greg Hicks. "Greg, we're under attack." Hicks immediately called the CIA Chief in Tripoli, the operations Center at the State Department in Washington, and the CIA's Benghazi facility, the "CIA Annex," the Agency's secret headquarters in Benghazi. Days earlier, a sheet of paper had been posted at the CIA Annex stating, "Be advised, we have reports from locals that a Western facility or US Embassy/Consulate/Government target will be attacked in the next week."

One purpose for maintaining the CIA Annex was to buy back, through Qatari cut-outs, as many MANPADS as possible, for \$12,000 or more each. Thousands had been looted from Qaddafi's stockpiles. Many of those recovered were loaded onto

covered trucks and sent to the Libyan ports in Benghazi and Tripoli for onward shipping to Turkey and ultimate delivery overland to Syrian rebels.

Locked inside the Mission's Technical Operation Center, Alec Henderson alerted the CIA Annex, Embassy Tripoli, and the State Department Operations Center in Washington about the attack. Henderson stayed in contact, as did Hicks, while the Tripoli Defense Attaché kept African Command and the Joint Chiefs of Staff informed. Word quickly reached Defense Secretary Leon Panetta and chairman of the Joint Chiefs of Staff General Martin Dempsey.

Global conference calls included European Command, Central Command, Special Operations Command, Transportation Command, and the Army, Navy, Air Force, and Marines. Thirty-three minutes into the attack, at 4:05 p.m. Washington time, State's Operations Center issued an alert to the White House Situation Room, the FBI, and the Office of the Director of National Intelligence, among other key government and intelligence offices. An "OPREP-3 Pinnacle Report" alerted the Pentagon's National Military Command Center. By the time that Africa Command's reconnaissance drone arrived overhead, ninety minutes into the siege, the attackers had set multiple fires.

Within five minutes of Henderson's first call to the CIA Annex, five of the Agency's Quick Reaction Force there had "jocked up" and assembled in two armored cars, ready to go. But the CIA Chief of Base, who was in charge, forbade the rescuer's departure while he spoke by phone with officials. After being ordered to stay in place at least three times, when they heard Henderson plead, "If you guys do not get here, we're going to die," the rescuers disobeyed orders, and "moved to the sound of the guns" a half mile away, which they could hear in the distance. Later, most, if not all, of these rescuers would opine that Ambassador Christopher Stevens and Sean Smith would have lived but for the delay.

US officials were informed when Tyrone Woods and six others, most of whom were heavily armed, left the CIA's facility, and when they arrived at the Mission. Soon after these rescuers discovered that Sean Smith had died from smoke inhalation, but that Ambassador Stevens could not be found. Washington was told this. Updates included that the group of 14 Americans at the Mission had made a break for the CIA Annex, in two armored SUV's, barely successfully. They had been targeted by multiple machinegun attacks as they fled.

Officials worldwide were informed when the seven-man Tripoli Task Force rescue team arrived at the CIA Annex, and that Glen Doherty had joined Tyrone Woods on the roof of the CIA headquarters building, and began defending the 28 Americans on site. Washington was apprised in real time when the CIA Annex was hit with rocket-propelled grenades, bombs, and intense firefights. And Washington knew when the attackers fired, in rapid succession, five seven-pound 82-mm mortar rounds at the Americans. The third and fourth rounds hit the roof of the CIA headquarters building, killing Tyrone Woods and Glen Doherty instantly, and

seriously wounding two others. The Americans had averted a tragedy on a larger scale during the eight-hour siege only by performing extraordinary acts of courage and heroism.

At the time, a 130-man Marine Force Reconnaissance force, along with an AC-130 Spectre gunship, was stationed in Sigonella, Sicily—about an hour's flight from the Mission. US aircraft at Aviano Air Base, in northeastern Italy, were about two hours away. US F-16 Aircraft were located at Souda Bay, Greece. Two Marine Corps Fleet Antiterrorism Security Teams were stationed three-and-a-half to four hours away, in Rota, Spain. Also about three-and-a-half hours away, in Croatia, a forty-man Special Operations Commander's-in-Extremis Force was conducting a counterterrorism exercise. In the United States, Special Operations Forces were eight hours flying time from bases in Sicily and Spain, from where they could have inserted into Libya. The Benghazi survivors were finally safe when they lifted off from Benghazi's airport, bound for Tripoli, thirteen hours after the siege began.

Shortly after the attacks, administration officials engaged in a cover-up of the facts surrounding the event, including deletion from the government databases relevant materials and reports, as set forth in a November 1, 2012 authoritative memorandum that has been submitted to several in Congress.

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Jurisdiction

1. Plaintiffs bring this action under the Freedom of Information Act ("the FOIA"), 5 U.S.C. § 552, as amended. The FOIA provides this Court jurisdiction over this matter. Venue is proper under § 552 (a)(4)(B) of the FOIA.

Parties

2. Plaintiff Accuracy in Media, Inc. ("AIM") is a District of Columbia non-profit 501(c)(3) corporation, organized and operated to publish and disseminate news to the American public, which it has steadily been doing done for over 35 years. AIM's principle place of business is 4350 East West Highway, Suite 555, Bethesda, Maryland.

3. Plaintiff Roger L. Aronoff is an individual residing at 5500 Friendship Boulevard, No. 1408, Chevy Chase, Maryland. Mr. Aronoff serves as AIM's Editor and Executive Secretary. He has worked as a journalist, TV producer, writer, and director of award-winning documentaries, and has appeared as a guest commentator on NPR, Air America, CNN, Fox News, CNBC, Court TV, Russia Today,

and Canadian TV. Mr. Aronoff is a prolific writer. He has authored over a dozen articles on Benghazi.

4. Mr. Aronoff is the founder of an informal association, the Citizens' Commission on Benghazi, or "CCB," a group of fifteen distinguished former military and Central Intelligence Agency personnel, all of whom are ardent students of the Benghazi tragedy, and all of whom are extremely troubled by it. The CCB is investigating the matter. It functions like a grand jury, including issuing reports. Collectively, CCB members have published over 40 articles on Benghazi. *See, e.g.,* <http://www.aim.org/benghazi/>. Seven of the CCB's 15 members are plaintiffs in this action.

5. Plaintiff Captain Larry W. Bailey, USN, (Ret.) is an individual residing at 103 Pamlico Place, Chocowinity, North Carolina. He is a 27-year US Navy SEAL veteran. In Vietnam, he led the first East Coast SEAL platoon into combat. Captain Bailey has also served in the Dominican Republic, Philippines, Panama, Bolivia, and Scotland. Captain Bailey commanded the Naval Special Warfare Center for three years, where all SEALs are trained. Since 2007, he has been involved in national policy issues, including having chaired Gathering of Eagles. He too is published on the Benghazi matter.

6. Along with plaintiffs Lieutenant Colonel Benway and Colonel Brauer, Captain Bailey is co-founder of *Special Operations Speaks*, or SOS, a pro-military PAC focused primarily on the welfare of military personnel. SOS views the Benghazi tragedy as a symptom of a greater threat to United States power, and, so, regularly

includes Benghazi news among the matters it publicizes. *See*

<http://specialoperationspeaks.com/>.

7. Plaintiff Lieutenant Colonel Kenneth Benway, USA, (Ret.) is an individual residing at 8 Martin Way, Whispering Pines, North Carolina. Colonel Benway enlisted in the Army as a parachute infantryman in 1966. After Special Forces training, he deployed to Vietnam. In 1970, he was commissioned as Second Lieutenant of Infantry, serving in leadership assignments in both Germany and Italy. Over the course of 27 years in uniform, Colonel Benway served with the three Special Forces Groups, Special Operations Command in Europe, as an exchange program officer with the Italian Susa Alpine Infantry Battalion in northwest Italy, and with the Army JFK Special Warfare Center and School. On retiring in 1993, he served as senior special operations analyst, program manager and corporate director in a variety of contracted support arrangements with the Army Special Operations community. Lieutenant Colonel Benway is co-founder of *Special Operations Speaks*.

8. Plaintiff Colonel Richard F. Brauer Jr., USAF, (Ret) is an individual residing at 24 Country Club Road, Shalimar, Florida. Colonel Brauer has amassed 5,200 hours of worldwide flying, attaining the aeronautical rating of Master Navigator. His tours of flying duty and deployments include Vietnam, Europe, Central and South America, and Australia, where he served as an Air Force Exchange Officer and flying instructor for the Royal Australian Air Force. Following his Pentagon tour, he was selected to be the 12th Commandant of the United States Air Force Special Operations School, where he served until his retirement in 1991,

having completed 26 years of active duty military service. In 2010, Colonel Brauer was inducted into the Air Commando Hall of Fame. He too is co-founder of *Special Operations Speaks*.

9. Plaintiff Clare M. Lopez is an individual who resides in Woodbridge, Virginia. She is Vice President for Research & Analysis at the Center for Security Policy, 1901 Pennsylvania Avenue, NW, Suite 201, Washington, DC. Ms. Lopez was formerly was a career operations officer with the Central Intelligence Agency. Ms. Lopez is also a skilled writer, having authored numerous articles on Benghazi, as well as being the principal author of the CCB's April 20, 2014 Interim Report on Benghazi.

10. Plaintiff Admiral James A. Lyons, Jr., USN, (Ret) is an individual whose residence is 9481 Piney Mountain Road, Warrenton, Virginia. Admiral Lyons is a former four-star admiral, Commander-in-Chief of the U.S. Pacific Fleet, Father of the Navy Seal Red Cell Program, Senior US Military Representative to the UN, and Deputy Chief of Naval Operations where he was the principal advisor to the Joint Chiefs of Staff. His commands include the US Second Fleet, NATO Striking Fleet, Seventh Fleet Logistic Force, and several ship commands. He has appeared on Fox Business News several times, and is a regular contributor to the Op Ed Section of the Washington Times, where eight of his pieces concerning Benghazi have been published.

11. Plaintiff Kevin Michael Shipp is an individual residing at 636 9th Avenue North, Jacksonville Beach, Florida. Mr. Shipp is a former Central Intelligence Agency officer and antiterrorism expert, having held several high level positions in

the CIA. He was assigned to be a protective agent for the Director of Central Intelligence, a counterintelligence investigator, a Counterterrorism Center officer, a team leader protecting sensitive CIA assets from assassination, a manager of high-risk protective operations, a lead instructor for members of allied governments, an internal staff security investigator, and a polygraph examiner. He was tasked with protecting the CIA from foreign agent penetration and the chief of training for the CIA federal police force. Mr. Shipp functioned as program manager for the Department of State, Diplomatic Security, and Anti Terrorism Assistance global police-training program. He is the recipient of two CIA Meritorious Unit Citations, three Exceptional Performance Awards, and a Medallion for overseas covert operations. He is the author of the book, *From the Company of Shadows—CIA Operations and the War on Terrorism*, Ascent Pub., 2012.

12. These seven members of the Citizens Committee on Benghazi, along with Accuracy in Media, Inc., are collectively referred to as "plaintiffs."

Defendants

13. Defendant United States Department of Defense, or "DOD" or "defendant" is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1). Plaintiffs made FOIA requests to ten component offices of the Department of Defense:

- (1) Department of the Army, or "Army"
- (2) Navy Department, or "Navy"
- (3) Department of the Air Force, or "Air Force"
- (4) Marine Corps
- (5) European Command
- (6) Central Command
- (7) Africa Command
- (8) Special Operations Command

- (9) Office of Secretary of Defense and Joint Staff
- (10) Defense Intelligence Agency

14. Defendant United States Department of State ("State Department") is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

15. Defendant United States Department of Justice is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1). The Federal Bureau of Investigation is the investigative component of the Department of Justice. The Department of Justice is responsible for the FBI's compliance with the FOIA. This defendant is hereinafter referred to as simply "FBI."

16. Defendant Central Intelligence Agency ("CIA") is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

DEPARTMENT OF DEFENSE

FOIA REQUESTS

17. Plaintiffs made 19 FOIA requests to defendant DOD.

Initial reports

18. Copies of radio communications from the compound, requested from Africa Command [and State Department]:

Audio. All records of **radio communications** emanating from the **Compound's Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.

19. Records of contemporaneous notifications to DOD, sought from Defense Intelligence Agency:

Op Rep 3's. The OPEREP-3 PINNACLE **reports used** to provide any Department of Defense division (or office or entity) with notification of, or **information about**, the September 11th and 12th, 2012 **attacks** on U.S. facilities in Benghazi, Libya

20. Communications to and from AFRICOM Joint Operations Center, made to Africa Command:

AFRICOM communications. All records of **AFRICOM Joint Operations Center (JOC)** Chief's communications subsequent to that Officer's receipt of messages emanating from the Compound's TOC. This request is to be read to include all communications **to all US personnel, whether armed forces or civilians**, and includes communications to General Carter Ham, the Unified Combatant Command, the Pentagon, CIA, Department of State, and White House including the Situation Room.

Help from allies

21. Appeals for help from allies in country made to (1) Africa Command, and (2) Office of the Secretary of Defense and the Joint Staff [and State Department]:

Appeals for help. Records of **requests for help** for personnel at the Special Mission Compound and the CIA Annex, to:

- (a) The **Turkish Consulate** in Benghazi;
- (b) The **Italian Consulate** in Benghazi; and
- (c) The **U.K. Security Team**.

Sigonella

22. Request for records of 130-man Marine Force team at Naval Air Station Sigonella, Sicily made to (1) Navy, (2) Air Force, (3) Marines, and (4) European Command:

Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:

- (a) All **communications with, and orders to, NAS Sigonella personnel** to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
- (b) All **communications from NAS Sigonella personnel notifying command that assets were ready** to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, **if applicable, orders to abort or turn back.**

23. Records of US aircraft in Sigonella, Sicily made to (1) Navy, (2) Air Force, and (3) European Command:

Sigonella. Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:

- Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
- C-5, C-9, C-17, C-40 and C-130 transport;
- C-2 cargo; C-26 passenger/cargo;
- KC-10 and KC-135 refueling; and
- P-3 surveillance.

24. Request for records of DOD seeking help by use of Italian aircraft in Sigonella Sicily made to (1) Marines, and (2) European Command:

Any records of the Department of Defense **seeking help by use of Italian aircraft** at NAS Sigonella.

Aviano

25. Request for records of US aircraft at Aviano, Italy, made to Air Force:

[D]isclosure of records **identifying all US aircraft at Aviano** Air Base in northeastern Italy on September 11th and 12th, 2012, including all U.S. Air Force 31st Fighter Wing assets, whether transport, cargo, refueling, fighter, attack, or surveillance.

Rota

26. Request for records of two Marine Corps Fleet Antiterrorism Security Teams in Rota, Spain made to (1) Navy, (2) Marines, (3) European Command, and (4) Special Operations Command:

Rota. Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams" ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:

- (a) All **communications** with, and **orders** to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
- (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back

Croatia

27. Records of orders to Special Operations Commanders-In-Extremis Force in Croatia made to (1) Army, (2) European Command, and (3) Special Operations Command:

Records regarding the readiness status of, and **orders** given to, **airborne** special operations unit, "**Commanders-In-extremis Force**" ("CIF"), assigned to the European Command, and **in Croatia**, including:

- (a) **Orders** for the CIF to deploy to NAS Sigonella; and
- (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

Djibouti

28. Records of US aircraft in Djibouti made to Africa Command:

Records **identifying**, and concerning, all **US aircraft in Djibouti** on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or

assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.

United States

29. Orders to Special Operations in the United States made to Special Operations Command:

United States. Records disclosing the readiness status of, and **orders given to, Special Operations Forces** ("Special Ops" or "SOF") **in the United States**, including:

- (a) Orders for Special Ops to deploy to Libya; and
- (b) Communications from SOF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for Libya, and, if applicable, orders to abort or turn back.

Maps

30. Request for maps depicting assets made to (1) European Command, (2) Africa Command, (3) Central Command, (4) Office of the Secretary of Defense and Joint Staff, and (5) Defense Intelligence Agency:

Maps. **Maps depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

Readiness status

31. Records of readiness status of all armed forces requested from Defense Intelligence Agency:

Orders regarding readiness status. For the period of July 1, 2012, through September 30, 2012, records of all **directives, orders and other communications regarding the readiness status** of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

EUCOM (European Command);
CENTCOM (United States Central Command);
AFRICOM (U.S. Africa Command);
USSOCOM (Special Operations Command);
OSD/JS (Office of Secretary of Defense and Joint Staff);
Naval Air Station Sigonella, Sicily;
Spanish naval base Naval Station Rota, Spain;
Aviano Air Base in northeastern Italy; and
Special Operations Forces in the United States

Contingency plans

32. Records of relevant military contingency action plans made to Office of Secretary of Defense and Joint Staff:

Records concerning **joint military contingency plans**:

- (a) **Plan Identification (PID) Number and title of the operation plan or plans** prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, for use by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
- (b) **Operation plan or plans for use by the supported combatant commander** to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
- (c) List of commands, organizations and agencies comprising the **joint planning and execution community (JPEC)**, found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
- (d) Supported **combatant commander's Joint Intelligence Preparation** of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
- (e) List of commands, organizations, agencies and offices comprising the **supported combatant commander's joint interagency coordinating group (JIACG)**, established to support the plans referenced under (a) above.

- (f) Copies of any **combatant command commercial contracts** established to **support** military, diplomatic and interagency activities at **Tripoli and at Benghazi** prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.

33. [Paragraph 33 deleted.]

Aircraft radio transmission

34. Request for "Feet dry over Libya" radio transmission made to (1) Air force, (2) Africa Command, and (3) Special Operations Command:

"Feet dry over Libya" radio transmission. Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

Gaddafi offer of abdication

35. Request for records of Gaddafi's March 2011 interest in truce and abdication made to Africa Command:

Records of all **communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:

- (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
- (b) Rear Admiral (ret.) Chuck Kubic;
- (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
- (d) The CIA.

October 2011 assets pre-positioned

36. Records of assets pre-positioned off the coast of Tripoli on October 18, 2011, made to (1) Navy, (2) Africa Command, (3) Office of the Secretary of Defense

and the Joint Staff, and (4) Defense Intelligence Agency [as well as State Department]:

Military assets pre-positioned in October 2011. In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, **when Secretary Clinton visited Libya.**

ADMINISTRATIVE RECORD

Army
March 31, 2014 FOIA Request

37. On March 31, 2014, plaintiffs submitted their FOIA request, by certified mail, to the Army. Plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012."

Specifically, plaintiffs sought production of:

Records regarding the readiness status of, and **orders** given to, **airborne special operations unit, "Commanders-In-extremis Force"** ("CIF"), assigned to the European Command, and **in Croatia**, including:

- (a) Orders for the CIF to deploy to NAS Sigonella; and
- (b) All communications from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

38. Seeking a waiver of any fees associated with the search and review of responsive records, the FOIA request sought agency recognition as "representatives of the news media." Plaintiffs' are entitled to news media status because disclosure is in the public interest: It will be "likely to contribute significantly the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Plaintiffs also sought a public interest waiver of duplication fees, under 5 U.S.C. § 552(a)(4)(A)(iii).

39. Plaintiffs FOIA request also prays for expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II), citing DOD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program." Plaintiffs posit that the regulations support expedition because "the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity," and that the requesters have demonstrated a "compelling need for the information."

40. By letter dated June 19, the Army wrote that it had "responded to your request on April 03, 2014, informing you that we referred the request to the Department of State. On June 19, 2014, we received a letter from the Department of State informing us that you will have to send your request directly to them." On June 20, plaintiffs replied:

There appears to be a misunderstanding. Contrary to your June 19 letter, the Army did not notified (sic) me of any referral. This is the first I have heard from the Army since I submitted the Request on March 31. Kindly email me a copy of the referenced notification. Moreover, it would appear to be an error to refer the request to the State Department.... In an effort to alleviate the necessity of the Army to refer the matter, I made the same FOIA request to two other DoD components, and so informed the Army, writing, "[k]indly note that we are simultaneously making this request, verbatim, to (1) HQ USEUCOM (U.S. European Command), and (2) HQ USSOCOM (Special Operations Command)." Even if the orders to deploy, or not deploy, assets, had come from the State Department, we still seek the DoD records. These same requesters already submitted extensive FOIA requests to the State Department, first on February 21, 2014, and second on April 7, 2014.

Constructive Exhaustion
of Administrative Remedies

41. Beyond its April 3 notification that it had referred plaintiffs' FOIA request to the State Department, the Army has not responded. As of the date of this complaint, defendant has failed to produce any responsive records or to demonstrate that they are exempt from disclosure. Because the twentieth day since plaintiffs made their March 31 FOIA request was in April, plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

Navy
March 31, 2014 FOIA Request

42. On March 31, 2014, plaintiffs wrote to the Secretary of the Navy Chief of Naval Operations FOIA Office, seeking "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Plaintiffs sought disclosure of:

1. **Sigonella.** Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:

- (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. **Rota.** Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
- (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.
43. Plaintiffs' FOIA request prayed for:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

44. In an effort to avoid the necessity of Navy having to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Department of the Air Force, and (b) the HQ USEUCOM (U.S. European

Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force, is also being made to (a) the Department of the Air Force, (b) HQ USEUCOM (U.S. European Command), and (c) Commandant of the Marine Corps. Request No. 4, for records of military assets pre-positioned in October 2011 off the coast of Tripoli, is also made to (a) HQ U.S. AFRICOM (U.S. Africa Command), as well as (b) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

45. By April 16 email, the Navy acknowledged receipt of plaintiffs' FOIA request. A week later, on April 23, 2014, the Navy wrote:

We have determined that the information you are seeking may be maintained by the Commander, Naval Forces Europe and Africa/US Sixth Fleet... Therefore, we have forwarded your request to that office for action and direct response to you. Please be advised... will address your request for an expedited processing and fee waiver.

46. By letter dated May 7, 2014, the office of the Commander, Naval Forces Europe and Africa/US Sixth Fleet, denied plaintiffs' request for expedited processing, as well as plaintiffs' request for statutory fee waivers.

47. On June 16, 2014, plaintiffs administratively appealed. Plaintiffs administratively appealed all DOD denials of expedited processing and statutory fee waiver determinations in the 40-page appeal, plus 38 attached exhibits. Plaintiffs' appeal proves:

- (a) For the first ten days following the attacks, the Administration repeatedly represented that the attack was spontaneous. This was false, and known to be false. Since then, the Administration has advanced several different versions of the facts.
- (b) The Administration baldly claims that it reacted with all due dispatch, even while the publicly-available record would appear to contradict that claim, in several respects. Disclosure of the just the DOD records sought will settle the matter.

- (c) Moreover, even if any one of the Administration's narratives were true, it would not solve the mystery of why the government failed to try to rescue its personnel. Congressional probes and reports demonstrate the Administration's negligence, but are silent on the issue of motive for the absence of an immediate response by the DOD.
- (d) The Administration facilitated delivery of weapons to militias known to be affiliates of jihadists, first to bring down Qaddafi, and subsequently to try and oust Assad. Did decision-makers fear that a rescue operation might expose this operation, exposing them to accusations of violating The Arms Export Control Act, or even materially supporting terrorists?
- (e) The circumstances mandate expedited processing. If processed in the regular course, full disclosure will occur only after the November 2016 elections, and the American people would lose the opportunity to meaningfully participate in this debate. The particular value of the information would be lost. This is particularly evident given the high probability that litigation at the appellate level will be necessary.
- (f) On the issue of when and how the State Department responded, disclosure will also reveal whether Secretary Clinton was truthful when she claimed to have sought help from American allies.
- (g) "Here, the public interest in disclosure is enormous... The public has a right to disclosure of records that would answer the many questions posed by the facts of the Benghazi attacks—*before* the next presidential election."

48. By June 20 letter, the Defense Freedom of Information Policy Office acknowledged that it had received plaintiffs' appeal on June 18. On June 20, the Defense Freedom of Information Policy Office wrote to plaintiffs that it was "unable to complete your appeal within the statutory time requirement."

Exhaustion of
Administrative Remedies

49. By letter of August 20, 2014, the Navy ruled on plaintiffs' appeal, granting it in part, and denying in part. The Navy agreed to treat plaintiffs as a

"member of the news media," and agreed to grant them a public interest waiver of duplication fees, but denied plaintiffs' request for expedited processing. Plaintiffs have exhausted their administrative remedies.

Air Force
First FOIA Request—March 31, 2014

50. On March 31, 2014, by certified mail to the Air Force, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought production of:

1. **Signonella.** Records identifying, and concerning, all **US aircraft** at NATO Base Signonella, **Naval Air Station Signonella in Sicily, Italy** ("NAS Signonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 - Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team at NAS Signonella**, including:
 - (a) All **communications with, and orders** to, NAS Signonella personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAS Signonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

51. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

52. In an effort to avoid the necessity of Department of the Air Force to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), as well as (b) the HQ USEUCOM (U.S. European Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Commandant of the Marine Corps, (b) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (c) HQ USEUCOM (U.S. European Command). Request No. 3, for records of a radio transmission, "Feet dry over Libya" or the like, is also being made to (a) HQ U.S. AFRICOM (U.S. Africa Command), and (b) HQ USSOCOM (Special Operations Command).

53. Upon information and belief, plaintiffs did not receive the Air Force's July 1 letter responding to their March 31 FOIA request, until the government filed its Answer.

Constructive Exhaustion
of Administrative Remedies

54. Defendant DOD averred that the Air Force responded to plaintiffs' March 31, 2014 FOIA request in a letter dated July 1, 2014, wherein the Air Force informed plaintiffs that "[t]he Operations, Plans and Requirements conducted an appropriate search for responsive records and indicated they have no equity in the

request" and that a "no records" determination was made. That letter also apprised plaintiffs of their rights to appeal the "no records" determination.

55. Plaintiffs believe that they did not receive the Air Force's July 1 response. In any event, on December 31, 2014, plaintiffs submitted a FOIA Request to the Air Force seeking disclosure of the exact same records requested in their March 31, 2014, FOIA Request to the Air Force. By letter dated February 9, 2015, the Air Force granted plaintiffs' request for a "news media" fee waiver, and denied their request for expedited processing.

Air Force
Second FOIA Request—April 7, 2014

56. On April 7, 2014, by certified mail to defendant Department of the Air Force, plaintiffs sought:

[D]isclosure of records **identifying all US aircraft at Aviano Air Base in northeastern Italy** on September 11th and 12th, 2012, including all U.S. Air Force 31st Fighter Wing assets, whether transport, cargo, refueling, fighter, attack, or surveillance.

57. Here too plaintiffs' FOIA request sought:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

Constructive Exhaustion
of Administrative Remedies

58. The twenty day period since plaintiffs submitted this FOIA request expired in May, without a response from the Air Force, and plaintiffs have constructively exhausted their administrative under 5 U.S.C. § 552 (b)(6)(A)(i).

Marine Corps
March 31, 2014 FOIA Request

59. On March 31, 2014, plaintiffs sent, via certified mail return receipt requested, to Commandant of the Marine Corps, a FOIA request for "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought disclosure of:

1. **Sigonella.** Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:
 - (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
2. Any records of the Department of Defense **seeking help by use of Italian aircraft** at NAS Sigonella.
3. **Rota.** Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) **All communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.

60. Here too plaintiffs' FOIA request included prayers for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

61. In an effort to avoid the necessity of Marine Corps having to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) HQ USEUCOM (U.S. European Command). Request No. 2, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to HQ USEUCOM (U.S. European Command). Request No. 3, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ USEUCOM (U.S. European Command), and (c) HQ USSOCOM (Special Operations Command).

62. By email dated April 8, 2014, the Marine Corps acknowledged receipt of plaintiffs' FOIA request. Two weeks later, on April 23, 2014, the Marine Corps wrote:

In an effort to assist you we have referred **item one** of your request to the Commander, US Marine Forces Europe, Attn: G-1 FOIA, Unit 30401, APO-AE9107, for direct response to you. If you would like to inquire about the status of your request, please contact Major Roger Mattioli via email at roger.mattioli@usmc or by fax to 011-49-703-112-392.

We note that **item two** refers to records under the cognizance of the Department of Defense (DoD). Since you also sent your

request to DoD, we will not refer this to them and will consider that as inapplicable to the U.S. Marine Corps.

Per our previous correspondence, we have referred **item three** of your request to the Marine Corps Security Force Regiment, 4th St. Bldg 624, Williamsburg, VA 23185, for direct response to you. If you would like to inquire about the status of your request, please call Captain Siva Ambikapath at (757) 877-7126 or send an email to siva.ambikapath@usmc.mil.

63. Defendant DOD averred that the Marine Corps responded in a letter dated April 21, 2014, stating that it was denying News Media status and expedited processing, and that it had referred item 3 of your request to the Marine Corps Security Force Regiment . . . for direct response to you." The letter placed plaintiffs' request in the "other" fee category, providing plaintiffs two hours of search time and 100 pages of duplication free of charge. The letter also apprised plaintiffs of their appeal rights.

64. Upon information and belief, plaintiff did not receive the Marine Corps' April 21 response. In any event, on December 31, 2014, plaintiffs submitted a FOIA Request to the Marine Corps seeking disclosure of the exact same records requested in their April 8, 2014, FOIA Request to the Marine Corps. Plaintiffs will seek leave to amend their Complaint, should it be necessary.

65. As of the date of the filing of the Complaint, the Marine Corps has failed to produce any responsive records, or demonstrate that such records are exempt from production.

Constructive Exhaustion
of Administrative Remedies

66. As of the date of the filing of the Complaint, the Marine Corps has failed to produce any responsive records, or demonstrate that such records are exempt from production.

European Command
March 31, 2014 FOIA Request

67. On March 31, 2014, by certified mail to defendant European Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought disclosure of:

1. **Sigonella.** Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station **Sigonella in Sicily**, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS **Sigonella**, including:
 - (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. Any records of the Department of Defense seeking **help by use of Italian aircraft** at NAS Sigonella.

4. **Rota.** Records revealing the status of **two Marine Corps Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota")**, including:
 - (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.
5. **Croatia.** Records regarding the readiness status of, and **orders given to**, airborne special operations unit, **"Commanders In-extremis Force" ("CIF")**, assigned to the European Command, and **in Croatia**, including:
 - (a) **Orders** for the CIF to deploy to NAS Sigonella; and
 - (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.
6. **Maps.** Maps **depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

68. In an effort to avoid the necessity of European Command to refer the requests to other components of defendant DOD, plaintiffs' FOIA request states:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) the Department of the Air Force. Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) Commandant of the Marine Corps. Request No. 3, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to the Commandant of the Marine Corps. Request No. 4, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being

made to (a) the Commandant of the Marine Corps, and (b) HQ USSOCOM (Special Operations Command).

69. Again, plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

70. By letter dated May 22, 2014, European Command denied plaintiffs' request for expedited processing, as well as their request to be placed in the "news media" fee category. That letter placed plaintiffs' request in the "other" fee category, providing plaintiffs two hours of search time and 100 pages of duplication free of charge.

71. On June 30, 2014, plaintiffs administratively appealed. The particulars of that appeal, as well as all DOD appeals, are set forth above.

72. By letter dated July 3, 2014, European Command wrote to plaintiffs, "[w]e understand the standard time frame for FOIA request is 20 working days from the day it was received, however due to the complexity of your request; your case has been assigned to the complex tracking queue."

Exhaustion of Administrative Remedies

73. European Command received plaintiffs' administrative appeal on July 1. Taking into account the ten working day extension as memorialized by defendant in its July 3 letter, the time for defendant to rule on plaintiff's appeal had exceeded

twenty working days, and plaintiffs had exhausted their administrative remedies when they filed their initial Complaint, on September 19, 2014.

74. By letter dated December 4, 2014, European Command "respond[ed] to Accuracy in Media's June 30, 2014, Freedom of Information Act (FOIA) appeal... [of] the U.S. European Command's (USEUCOM) decision to deny their request for news media status and expedited processing for the FOIA." Defendant denied plaintiffs' request for expedited processing, and "grant[ed] Accuracy in Media's request to be placed in the 'news media' category."

Central Command
March 31, 2014 FOIA Request

75. On March 31, 2014, by certified mail to defendant Central Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought production of:

Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

76. In an effort to avoid the necessity of Central Command to refer the requests to other components of defendant Department of Defense, plaintiffs wrote, "[k]indly note that this Request is simultaneously being made to (a) HQ USEUCOM (U.S. European Command), (b) HQ U.S. AFRICOM (U.S. Africa Command), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

77. Plaintiffs' FOIA request sought (a) news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), (b) a public interest waiver of duplication fees under 5

U.S.C. § 552(a)(4)(A)(iii), and (c) expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

78. By letter dated April 9, 2014, Central Command informed plaintiffs that the requested information "falls under United States Africa Command's (AFRICOM) purview. Since you simultaneously submitted your FOIA request to AFRICOM, USCENTCOM is administratively closing your FOIA request." Defendant's April 9 letter did not apprise plaintiffs of their right to administratively appeal. Defendant's April 9 letter was not an adverse determination.

**Constructive Exhaustion
of Administrative Remedies**

79. The twenty day period since plaintiff's ' March 31 FOIA request was in April. Central Command has not substantively responded. Plaintiffs have constructively exhausted their administrative remedies by virtue of the DOD's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

**Africa Command
First FOIA Request—March 31, 2014**

80. On March 21, 2014, by certified mail to defendant Africa Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Plaintiffs sought disclosure of:

1. **AFRICOM communications.** All records of **AFRICOM Joint Operations Center (JOC)** Chief's communications subsequent to that Officer's receipt of messages emanating from the Compound's TOC. This request is to be read to include all communications **to all US personnel, whether armed forces or civilians**, and includes communications to General Carter Ham, the Unified Combatant Command, the Pentagon, CIA, Department of State, and White House including the Situation Room.

2. **Appeals for help.** Records of **requests for help** for personnel at the Special Mission Compound and the CIA Annex, to:
 - (a) The **Turkish Consulate** in Benghazi;
 - (b) The **Italian Consulate** in Benghazi; and
 - (c) The **U.K. Security Team**.
3. **Maps.** Maps **depicting all assets** that could have been dispatched to Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
4. **Audio.** All records of **radio communications** emanating from the **Compound's Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.
6. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned **off the coast of Tripoli** on October 18, 2011, when Secretary Clinton visited Libya.

81. In an effort to avoid the necessity of Africa Command to refer the requests to other components of defendant Department of Defense, plaintiffs' FOIA request notes:

[R]ecords sought in Request No. 2, regarding any appeals for help for Special Mission Compound or CIA Annex personnel, made to the Turkish or Italian Consulates or the U.K. Security Team, is simultaneously being submitted to OSD/JS (Office of the Secretary of Defense and the Joint Staff). Request No. 3, for maps of depicting assets, is simultaneously being made to (a) the HQ USEUCOM (U.S. European Command), (b) the United States Central Command CCJ6-RDF (FOIA), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

82. Plaintiffs' FOIA request also sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

83. By correspondence dated April 14, 2014, defendant denied plaintiffs' request for expedited processing, and similarly denied plaintiff's requests for news media and public interest statutory fee waivers.

84. Plaintiffs' June 12, 2014 administrative appeal includes their points and authorities recounted above.

85. By letter dated June 18, 2014, DOD's Defense Freedom of Information Policy Office notified plaintiffs that it was "unable to complete your appeal within the [twenty working-day] statutory time requirement."

Exhaustion of
Administrative Remedies

86. By letter dated August 25, 2014, DOD's Office of the Deputy Chief Management Officer responded to plaintiffs' June 12 administrative appeal, granting plaintiffs' prayer to be recognized as members of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), and granting them a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii), but denying their request for expedited processing.

Africa Command
Second FOIA Request—October 1, 2014

87. On October 1, 2014, by certified mail to defendant Africa Command, plaintiffs requested disclosure of:

1. Records **identifying**, and concerning, all **US aircraft in Djibouti** on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.
2. Records of all **communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

88. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

Constructive Exhaustion
of Administrative Remedies

89. Africa Command has not responded, nor produced any responsive records or demonstrated that they are exempt from disclosure. Over twenty working days has passed since defendant received plaintiffs' October 1 FOIA

request. Plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

Special Operations Command
March 31, 2014 FOIA Request

90. On March 31, 2014, by certified mail to defendant Special Operations Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs seek disclosure of:

1. **Rota.** Records revealing the status of **two Marine Corps Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.

2. **Croatia.** Records regarding the readiness status of, and orders given to, **airborne special operations unit, Commanders In-extremis Force ("CIF")**, assigned to the European Command, and **in Croatia**, including:
 - (a) **Orders** for the CIF to deploy to NAS Sigonella; **and**
 - (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

3. **United States.** Records disclosing the readiness status of, and orders given to, **Special Operations Forces ("Special Ops" or "SOF") in the United States**, including:
 - (a) **Orders** for Special Ops to deploy to Libya; and
 - (b) **Communications** from SOF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for Libya, and, if applicable, orders to abort or turn back.

4. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

91. And plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

92. In an effort to avoid the necessity of Special Operations Command to refer the requests to other components of the DOD, plaintiffs' FOIA request included:

Kindly note that Request No. 1, regarding orders given to the two Marine Corps Fleet Antiterrorism Security Teams at Naval Station Rota, is being simultaneously submitted to (a) the Commandant of the Marine Corps, and (2) HQ USEUCOM (U.S. European Command). Request No. 2, seeking orders given to the Commanders In-extremis Force in Croatia, is also being made to (a) the Department of the Army, and (b) HQ USEUCOM (U.S. European Command). Request No. 4, for the radio transmission recording, "Feet dry over Libya" or the like, is also submitted to (a) the Air Force, and (b) HQ U.S. AFRICOM (U.S. Africa Command).

93. By letter dated August 29, Special Operations acknowledged receipt of plaintiffs' March 31 FOIA Request. That letter placed plaintiffs in the "News Media" category for fee purposes, denied its request for a public interest fee waiver, but, otherwise, contained no substantive response. It did not apprise plaintiffs of any right to administratively appeal. Defendant Special Operations' August 29 correspondence was not an adverse determination.

Constructive Exhaustion
of Administrative Remedies

94. The twenty day period since March 31 was in April. Special Operations has not responded, and, so, plaintiffs have constructively exhausted their administrative remedies by virtue of the DOD's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

Office of Secretary of Defense and Joint Staff
March 31, 2014 FOIA Request

95. On March 31, 2014, by certified mail to defendant Office of Secretary of Defense and Joint Staff, plaintiffs wrote, "FOIA request Nos. 1, 2 and 3 are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, the CCB sought production of:

1. Maps. Maps **depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
2. **Appeals for help.** Records of requests for help for the Special Mission Compound and the CIA Annex, to:
 - (a) The **Turkish Consulate** in Benghazi;
 - (b) The **Italian Consulate** in Benghazi; and
 - (c) The **U.K. Security Team.**
3. Records concerning **joint military contingency plans:**
 - (a) **Plan Identification (PID) Number and title of the operation plan or plans** prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, for use by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.

- (b) Operation **plan** or plans **for use by the supported combatant commander** to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (c) List of commands, organizations and agencies comprising the **joint planning and execution community** (JPEC), found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
 - (d) Supported **combatant commander's Joint Intelligence Preparation** of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
 - (e) List of commands, organizations, agencies and offices comprising the **supported combatant commander's joint interagency coordinating group** (JIACG), established to support the plans referenced under (a) above.
 - (f) Copies of any **combatant command commercial contracts** established to **support** military, diplomatic and interagency activities at **Tripoli and at Benghazi** prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.
4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned **off the coast of Tripoli** on October 18, 2011, when Secretary Clinton visited Libya.
96. Plaintiffs' FOIA request also sought:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

97. In an effort to avoid the necessity of defendant Office of Secretary of Defense and Joint Staff to refer the requests to other components of the DOD, plaintiffs' FOIA request states:

Kindly note that Request No. 1, seeking maps of assets, is also being simultaneously made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCJ6-RDF (FOIA), and (c) HQ U.S. AFRICOM (U.S. Africa Command). Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

98. By correspondence on April 10, 2014, Office of Secretary of Defense and Joint Staff denied plaintiffs' request for expedited processing, and failed to grant plaintiff's prayers for news media and public interest statutory fee waivers.

99. On June 6, 2014, plaintiffs administratively appealed the denial of expedited processing, and include additional points and authorities in support of their prayers for statutory fee waivers and expedited processing.

100. By letter dated June 11, 2014, DOD's Defense Freedom of Information Policy Office notified plaintiffs that it was "unable to complete your appeal within the [twenty working-day] statutory time requirement."

Exhaustion of
Administrative Remedies

101. By July 2, 2014 letter, the Office of the Secretary of Defense denied plaintiffs' appeal for expedited processing and granted plaintiffs' request for news media status.

102. By letter dated September 19, 2014, DOD's Office of Freedom of Information denied twelve pages of records responsive to plaintiffs' request. On that same day, September 19, plaintiffs filed their Complaint.

103. Plaintiffs submitted their administrative appeal on September 29, 2014. By letter dated October 8, 2014, DOD's Freedom of Information Division acknowledged receipt of plaintiffs' appeal and wrote that "[d]ue to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement."

104. Whether defendant's September 19 response was made before, or after, plaintiffs filed their initial Complaint, the time for Office of the Secretary of Defense to timely rule on plaintiff's September 29 appeal has expired, and plaintiffs have exhausted their administrative remedies.

Defense Intelligence Agency
First FOIA Request—April 7, 2014

105. On April 7, 2014, by certified mail to the Defense Intelligence Agency, plaintiffs requested disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, plaintiffs sought disclosure of:

1. **Maps.** Maps depicting **all assets** within fifteen hundred miles of Benghazi, Libya, on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
2. **Military assets pre-positioned in October 2011.** Records of all Defense Department assets that were pre-positioned **off the coast of Tripoli on October 18, 2011**, when Secretary Clinton visited Libya.

* * *

[Item 3 withdrawn]

106. In an effort to avoid the necessity of defendant Defense Intelligence Agency to refer the requests to other components of defendant Department of Defense, plaintiffs' FOIA request recites:

Kindly note that on March 31st, Request No. 1, seeking maps of assets, was also made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command C/J6-RDF (FOIA), (c) HQ U.S. AFRICOM (U.S. Africa Command), and (d) OSD/JS (Office of the Secretary of Defense and the Joint Staff). Request No. 2, regarding records of military assets pre-positioned off Tripoli on October 18, 2011, was also submitted on March 31st to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ U.S. AFRICOM (U.S. Africa Command), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

107. Plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

108. Defendant Defense Intelligence Agency has failed to acknowledge receipt of plaintiffs' FOIA requests or otherwise respond to plaintiffs' April 7, 2014 FOIA request.

Constructive Exhaustion
of Administrative Remedies

109. The twenty day period since DOD's receipt of plaintiffs' April 7 FOIA request expired in May. The Defense Intelligence Agency has not to date responded, and plaintiffs have constructively exhausted their administrative remedies by the DOD's failure to respond within twenty working days. 5 U.S.C. § 552 (b)(6)(A)(i).

Defense Intelligence Agency
Second FOIA Request—May 28, 2014

110. On May 28, 2014, by certified mail to defendant Defense Intelligence Agency, plaintiffs requested disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, plaintiffs sought disclosure of:

1. **Op Rep 3's.** The OPEREP-3 PINNACLE **reports used** to provide any Department of Defense division (or office or entity) with notification of, or **information about**, the September 11th and 12th, 2012 **attacks** on U.S. facilities in Benghazi, Libya.
2. **Orders regarding readiness status.** For the period of July 1, 2012, through September 30, 2012, records of all **directives, orders and other communications regarding the readiness status** of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

EUCOM (European Command);
CENTCOM (United States Central Command);
AFRICOM (U.S. Africa Command);
USSOCOM (Special Operations Command);
OSD/JS (Office of Secretary of Defense and Joint Staff);
Naval Air Station Sigonella, Sicily;
Spanish naval base Naval Station Rota, Spain;
Aviano Air Base iii northeastern Italy; and
Special Operations Forces in the United States

111. Plaintiffs' FOIA request sought (a) news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), (b) a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii), and (c) expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

112. By correspondence on June 30, defendant denied plaintiffs' request for expedited processing, and failed to grant plaintiff's requests for statutory fee waivers.

113. On July 7, 2014, plaintiffs administratively appealed. That appeal begins:

This letter is an appeal of the Defense Intelligence Agency's June 30, 2014 denial of expedited processing for the captioned May 28 FOIA request. As I have received no response to the April 7, FOIA request (a copy of which I enclose), if possible, kindly include this submission in the record of the appeal of the April 7, 2014 FOIA request.

114. Plaintiffs' appeal includes the additional points and authorities in support of their prayers for expedited processing and fee waivers, as described above.

Exhaustion of
Administrative Remedies

115. The Defense Intelligence Agency received plaintiffs' July 7 appeal in mid-July. The applicable twenty-day period expired in mid-August. The DOD has not ruled on plaintiffs' administrative appeal, and, thus, plaintiffs have exhausted their administrative remedies by this failure to respond within twenty working days, under 5 U.S.C. § 552 (b)(6)(A)(i).

DEPARTMENT OF STATE
First FOIA Request—February 21, 2014

116. On February 21, 2014, by certified mail to defendant State Department, plaintiffs made the following FOIA requests for records activities in Libya:

[Item 1 withdrawn]

2. Any and all **videos** depicting the United States Consulate in Benghazi, Libya (including the Special Mission Compound and the Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.
3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.
4. All records of radio **communications** emanating from the Compound's **Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.

* * *

[Item 5 withdrawn]

6. All records of Secretary **Clinton's actions and communications** for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include:
 - (1) All records generated by Secretary Clinton, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of her telephone calls placed or received

* * *

[Item 6(3) withdrawn]

* * *

[Item 7 through 10 withdrawn]

11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher **Stevens or any other Tripoli Embassy official, and one or more of the following** individuals:
 - Ahmed Abu Khattala, a **commander** of the Libyan **Ansar al-Shariah** militia group

- Mustafa Abdul Jalil, **Chairman of the Libyan National Transitional Council** from 5 March 2011-8 August 2012
- Mahmoud Jibril, **Interim Prime Minister of Libya** and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
- Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the **head of al-Qa'eda in Libya**
- Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, **commander** of the AQ franchise militia, **Libyan Islamic Fighting Group (LIFG)** (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
- Ismael al-Sallabi (brother of Ali), **commander** of the Al-Qa'eda-linked **al-Sahati Brigade** during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
- Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, **led effort** with Seif al-Qaddafi and US Embassy Tripoli **to gain release of jihadi detainees from Libyan jails**
- Mohammad al-Sallabi, father of Ali and Ismael, among the **founders of the Libyan Muslim Brotherhood** in the 1960s
- Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and [said to have] **led Benghazi Mission attack** in Sep 2012.

* * *

[Items 12 through 15 withdrawn]

117. By letter dated May 5, 2014, plaintiffs narrowed this February 21

State Department FOIA request, writing:

Request number one as currently written begins:

All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex. Responsive records include those that disclose...

Please note that we hereby narrow this item to exclude any records "regarding (1) the Benghazi consulate," leaving only records in State's custody regarding (2), the CIA annex. Thus, full disclosure under this item will still reveal the relationship between State and CIA activities at the annex, but will eliminate the necessity to produce numerous other records.

118. By letter dated August 5, 2014, plaintiffs further narrowed this FOIA request to the State Department:

Please note that we further narrow the requests, and withdraw Request Nos. 1(10), 5, 7, 8, 10, 12, 13, and 14. Request 1(10) sought CIA situation reports. Request 5 sought "records of Secretary Panetta's actions and communications..." Request 7 asked for disclosure of records of "the President's first notification that the Benghazi Consulate was under attack..." Request 8 sought disclosure of records reflecting Ambassador Stevens' schedule on September 11, 2012. Request 10 sought disclosure Ambassador Stevens correspondence on September 10th and 11th, 2012. Request 12 sought "DOD and CIA... records shared with members of Congress regarding... collection, storage, transportation of arms and equipment in Libya." Request 13 asked that "DOD and CIA... records of Congressional approval for CIA transport of arms to Syrian rebel forces" be disclosed. Request 14 sought "records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi."

119. By letter dated March 21, the State Department granted plaintiffs' request to be placed in the news media status and as well their request for a waiver

of duplication costs, and denied their request for expedited processing, writing that they "ha[d] not provided adequate justification for expedition."

120. On April 18, 2014, plaintiffs administratively appealed the denial of expedited processing.

Exhaustion of
Administrative Remedies

121. On May 8, 2014, defendant State Department denied plaintiffs' appeal of its request for expedited processing. Plaintiffs have exhausted their administrative remedies, under 5 U.S.C. § 552 (b)(6)(A)(i).

**State Department
Second FOIA Request—April 7, 2014**

122. On April 7, 2014, by certified mail to defendant State Department, plaintiffs made five more FOIA requests. Also seeking news media fee waivers, and expedited processing, plaintiffs requested:

1. Records generated from August 2009, through October of 2011, regarding Secretary of State **Clinton's recommendations** regarding U.S. support to those seeking **to oust** forces loyal to Colonel Muammar **Gaddafi** and his government.
2. Records generated from March of 2011 through September of 2012, regarding Secretary of State **Clinton's recommendations to support those seeking to oust** forces loyal to the government of Bashar al-**Assad**.

[Requests 3, 4, and 5 withdrawn]

123. By letter dated April 21, the State Department granted plaintiffs news media status, but denied their request for expedited processing.

124. Because plaintiffs neglected to timely appeal the State Department's denial of expedited processing, on July 1, 2014, plaintiffs wrote:

Kindly consider accepting this letter as an appeal of the State Department's April 21 denial of expedited processing of the captioned April 7, 2014, FOIA request. Alternatively, this letter is a part of the accompanying July 1 FOIA request, submitted in support of prayers for fee waivers and expedited processing. The April 7, 2014, FOIA request, and the July 1 FOIA request, are identical.

Plaintiffs' July 1 submission includes its additional points and authorities in support of its request for expedited processing under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Exhaustion of
Administrative Remedies

125. On August 25, 2014, the State Department responded that it was treating plaintiffs' July 1 submission as a late-filed "appeal of the denial of expeditious processing in your April 7 request," but "uph[eld] the decision to deny expeditious processing." Thus, plaintiffs have exhausted their administrative remedies.

FEDERAL BUREAU OF INVESTIGATION
February 21, 2014 FOIA Request

126. On February 21, 2014, by certified mail to defendant FBI, plaintiffs requested disclosure of "the following records of activities in Libya... regardless of the source" of the records:

* * *

[Items 1, 2, 3, and 4 withdrawn]

5. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.

[Items 6 and 7 withdrawn]

8. September **15th or 16th FBI 302 Interview Reports**, and corresponding handwritten notes, of interviews conducted in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities.
9. Records of the **video teleconference** on the afternoon of [] September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an excerpt from the December 30, 2012, Senate Committee On Homeland Security And Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi:"

On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

[Item 10 withdrawn]

127. Plaintiffs' FOIA request sought:
 - (a) News media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II); and
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).

128. On March 14, 2014, the FBI denied the requests in their entirety, reasoning that, because plaintiffs "have requested information about a third party," they should provide an "authorization and consent from the individual(s)," or "proof of death," or "justification that the public interest in disclosure outweighs personal privacy." "In the absence of such information," the response continued, the FBI "can

neither confirm nor deny the existence of any records responsive to your request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C)."

129. On March 31, 2014, plaintiffs administratively appealed, writing that "withholdings under FOIA Exemptions (b)(6) and (b)(7)(C) cannot justify the FBI's blanket denial" because release of most of the information sought would implicate no privacy concerns, and that redactions and segregation could vitiate any privacy concerns. "In sum," plaintiffs reasoned, disclosure of half of the information sought would implicate no privacy interest. As to the other half, plaintiff observed:

[T]here are no personal privacy interests in the records sought that could not be protected by proper redaction and segregation, and the absence of any third-party releases does not justify the FBI's blanket withholding. Moreover, the public interest in disclosure outweighs any cognizable personal privacy interests that may otherwise justify non-disclosure. The Benghazi tragedy and its aftermath is subject of numerous congressional probes and widespread, ongoing, publicity. The information sought is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and its inner workings. Disclosure will show the degree to which the Executive Branch has complied in good faith with relevant law, and whether it accurately informed Congress and the public about the Benghazi tragedy.

130. This March 31, Administrative appeal also narrowed the FBI FOIA requests, regarding the autopsy reports. Plaintiffs wrote:

Insofar as the request for complete autopsy reports of the victims of the September 11th and 12th, 2012 Benghazi attacks, the subject of Request 10, we agree that personal privacy interests justifies their non-disclosure, at least in the absence of a release by the primary next-of-kin. However, these FOIA requests seek to reveal, among other things, whether the FBI is conducting a thorough investigation. Thus, whether this murder probe includes any review of the autopsy

reports should be disclosed, and almost any response, even one withholding the reports, would suffice.

131. By letter dated August 5, 2014, plaintiffs further narrowed their FOIA request to the FBI, writing:

Please note that we further narrow the requests to withdraw Request Nos. 2(4), 3, 4, and 6. Request No. 2(4) sought records of "any probe into the meetings from January 2007 through September 2012 between Tripoli Embassy officials, including Christopher Stevens, and the individuals identified in the following Request 3 below." Additionally, plaintiffs withdraw Request No. 3, which sought records "regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following [nine] individuals..." Request No. 4 sought disclosure of "records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex for the time period of January 1st, 2011, through September 30th, 2012..." Lastly, Request No. 6 sought copies of "[a]ll calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11..."

132. On July 8, 2014, DOJ'S Office of Information Policy reversed its initial determination, and "remand[ed] your clients' request for a search for responsive records." Although the FBI's reversal did not seek a commitment from plaintiffs to pay search or review fees, it did not grant plaintiffs' request to be treated as a member of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Exhaustion of
Administrative Remedies

133. On July 10, 2014, plaintiffs sent, by overnight "express mail," a letter "submitted in [further] support of prayers for fee waivers, and expedited processing, for the captioned request." In this submission, plaintiffs explained that "the letter was submitted on July 7 for inclusion in the record on appeal, but, on July 9, I received a letter by email that the case had been remanded on July 8."

134. Twenty working days since plaintiffs' February 21 FOIA request has long since passed. The FBI has not yet responded to plaintiffs' request for news media fee waiver under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), or their request for a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii). Nor has it produced any records, or demonstrated that records are exempt from disclosure. Plaintiffs have exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

135. By August 19 letter, the DOJ's Office of Information Policy wrote to plaintiff that the administrative appeal from the action of the FBI had been received on August 14, 2014. The parties dispute whether July 11 or August 14 is the correct date of the FBI's receipt of the materials, but, in either event, on September 19, 2014, when plaintiffs filed their Complaint, over twenty working days had elapsed since plaintiffs submitted their appeal, and, thus, plaintiffs had exhausted their administrative remedies.

CENTRAL INTELLIGENCE AGENCY
First FOIA Request—February 24, 2014

136. On February 24, 2014, by certified mail to defendant CIA, plaintiffs requested disclosure of "the following records of activities" in Libya:

1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or "Ambassador's compound" or "**Benghazi Mission**" and (2) the **CIA Annex**, *for the time period of January 1st, 2011, through September 30th, 2012*. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:

- (1) The **comings and goings of all persons**, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of **all weapons** brought into the **Annex**, including small arms, ammunition, and man-portable air defense systems, or **Manpads**, and missiles;
 - (3) The **sources** of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended **destinations and recipients** of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of **arms out of Libya**, bound for Syria, thorough Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All **communication and cryptographic equipment** at the CIA Annex and Benghazi Mission;
 - (7) The **weaponry**, communication, cryptographic equipment, and electronic or paper files, **left in the Annex and Benghazi Mission** when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the **weapons recovered from fallen attackers** at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the **identities and affiliations of any of those fallen fighters** as well as the disposition of their bodies, alive or dead; and
 - (10) CIA **situation reports**, or "sitreps," sent, including on September 11th, 12th, and 13th.
2. Any and all **videos** depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.
4. All records of **radio communications** emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. All records of CIA Director David **Petraeus' actions** and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack.
Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
6. All records of Deputy CIA Director Michael **Morell actions** and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack.
Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.

* * *

[Items 7 and 8 withdrawn]
9. All records of the purpose of Ambassador **Stevens' meetings** on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.

* * *

[Item 10 withdrawn]
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher **Stevens or any other Tripoli Embassy official, and one or more of the following** individuals:

- Ahmed Abu Khattala, a **commander** of the Libyan **Ansar al-Shariah** militia group
 - Mustafa Abdul Jalil, **Chairman of the Libyan National Transitional Council** from 5 March 2011-8 August 2012
 - Mahmoud Jibril, **Interim Prime Minister of Libya** and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the **head of al-Qa'eda in Libya**
 - Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, **commander** of the AQ franchise militia, **Libyan Islamic Fighting Group (LIFG)** (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - Ismael al-Sallabi (brother of Ali), **commander** of the Al-Qa'eda-linked **al-Sahati Brigade** during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, **led effort** with Seif al-Qaddafi and US Embassy Tripoli **to gain release of jihadi detainees from Libyan jails**
 - Mohammad al-Sallabi, father of Ali and Ismael, among the **founders of the Libyan Muslim Brotherhood** in the 1960s
 - Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and [said to have] **led Benghazi Mission attack** in Sep 2012.
12. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared **with members of Congress, regarding collection, storage, transportation of arms** and equipment in Libya.

13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of **Congressional approval for CIA transport of arms** to Syrian rebel forces.

* * *

[Item 14 withdrawn]

15. Records of the **video teleconference** on the afternoon of the **September 16th, 2012**, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an excerpt from the December 30, 2012, Senate Committee On Homeland Security And Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi:"

On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

16. **Non-Disclosure Agreements** signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD.
137. Plaintiffs' FOIA request also sought:
 - (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II); and
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).
138. By letter dated August 5, 2014, plaintiffs narrowed the request,

writing:

Please note that the FOIA requesters hereby withdraw three of their requests, numbered seven, eight, and ten. Request 7 sought disclosure of "the President's first notification that the Benghazi Mission was under attack..." Request 8 sought disclosure of "records reflecting Ambassador Stevens' schedule on September 11, 2012," and Request 10 sought "correspondence to or from Ambassador Stevens on September 10th and 11th, 2012."

139. By letter dated April 14, 2014, the CIA acknowledged receipt of plaintiffs' request, writing only that its "officers will review your request and will advise you should they encounter any problems or if they cannot begin the search without additional information."

140. On July 1, 2014, plaintiffs submitted additional points and authorities in support of their requests for statutory fee waivers, and, additionally, sought expedited processing under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

141. By letter dated July 17, 2014, the CIA acknowledged receipt of plaintiffs' July 1 submission, and denied plaintiffs' request for expedited processing.

142. Despite the defendant's failure to apprise plaintiffs of their right to administratively appeal the CIA's position, on July 25, 2014, plaintiffs did appeal.

They wrote:

This is an appeal of the captioned denial of expedited processing. Additionally, the CIA did not respond to the requesters' prayers for news media and public interest fee waivers. Nor has the CIA produced any records. Kindly also accept this as an appeal of these matters.

Exhaustion of
Administrative Remedies

143. By letter dated July 31, defendant CIA responded to plaintiffs' July 25 administrative appeal. Defendant granted plaintiffs' request for a news media fee waiver, writing that it had "reviewed your request for a fee waiver and determined

that it meets the standard... we will charge no fees associated with the processing of your request." The CIA also granted plaintiffs' request for a public interest fee waiver of duplication costs. It denied plaintiffs' request for expedited processing, advising that CIA "regulations do not provide for appeals of denials of expedited processing requests."

CIA
Second FOIA Request—October 1, 2014

144. On October 1, 2014, by certified mail to defendant CIA, plaintiffs requested disclosure of:

1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding **allegations that Executive Branch personnel deleted**, destroyed, erased, obliterated, or obscured, **records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks** in Benghazi, Libya, including but not limited to records in possession of the CIA Office of Inspector General.
2. Records of all **communications generated in March of 2011** regarding Colonel Muammar **Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

145. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and

(c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

146. By letter dated November 3, 2014, the CIA acknowledged receipt of plaintiffs' request.

**Constructive Exhaustion
of Administrative Remedies**

147. Beyond its November 3 acknowledgment of having received plaintiffs' October 1 FOIA request, the CIA has not responded. As of the date of this Amended Complaint, over twenty working days has passed since defendant received plaintiffs' October 1 FOIA request, and defendant has not produced the records nor demonstrated that they are exempt. Thus, plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

**Count I
Prompt Disclosure
(All Defendants)**

148. Plaintiffs restate paragraphs 1-147 as if fully repeated here.

149. As of the date of this complaint, defendants have failed to produce any responsive records. Nor have they demonstrated that such records are exempt from disclosure, with the possible exception of the Office of Secretary of Defense and Joint Staff in its September 19, 2014 correspondence, denying 12 pages of records responsive to plaintiffs' requests for maps depicting available assets.

150. Plaintiffs have a statutory right to the records they seek, and there is no legal basis for defendants' refusal to disclose them.

**Count II
Expedited Processing
(All Defendants)**

151. Plaintiffs restate paragraphs 1-150 as if fully repeated here.

152. All FOIA requests, and corresponding administrative appeals, seek expedited processing. Defendants' failure to expedite the processing of the information sought violates 5 U.S.C. § 552(a)(4)(A)(ii)(II). Additionally, plaintiffs meet the requisite requirements as set forth in the respective agency regulations to be entitled to expedited processing of their FOIA requests, and plaintiffs have a legal right under the respective regulations of the agency defendants to be granted expedited processing.

Count III
News Media Status
(Defendants FBI and four of ten DOD components—
(1) Army, (2) Marine Corps, (3) Central Command, and (4) DIA)

153. Plaintiffs restate paragraphs 1-152 as if fully repeated here.

154. Plaintiffs are entitled to recognition as members of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

155. Plaintiffs were not afforded News Media Status by defendants FBI, and four DOD components:

- (1) Army
- (2) Marine Corps
- (3) Central Command
- (4) DIA

156. Plaintiffs were afforded News Media status by defendants CIA, State Department, and six components of the DOD:

- (1) Navy
- (2) Air Force
- (3) Africa Command
- (4) European Command
- (5) Special Operations Command
- (6) Office of the Secretary of Defense and Joint Staff

Count IV
Public Interest Fee Waiver
(Defendants FBI and six DOD components (1) Army (2) Air Force
(3) Marine Corps (4) Central Command (5) European Command (6) DIA)

157. Plaintiffs restate paragraphs 1-156 as if fully repeated here.

158. Plaintiffs are entitled to a partial or complete waiver of costs associated with reproduction of the requested records, in the public interest, under 5 U.S.C. § 552(a)(4)(A)(iii).

159. Plaintiffs' requests for public interest waiver of reproduction costs were denied by defendants FBI and four components of the defendant DOD:

- (1) Army
- (2) Air Force
- (3) Central Command
- (4) DIA

160. Two components of the DOD denied plaintiffs' requests for a public interest fee waiver, and placed the requests in the "other" fee category, affording plaintiffs two hours of search time and 100 pages of duplication free of charge:

- (1) European Command
- (2) Marine Corps

161. Defendants State Department and CIA granted plaintiffs' requests for public interest waiver of reproduction costs, as did four components of defendant DOD:

- (1) Navy
- (2) Africa Command
- (3) Special Operations Command
- (4) Office of the Secretary of Defense and Joint Staff

WHEREFORE, plaintiffs respectfully pray that this Court:

- I. Grant plaintiffs' requests for:
 - A. Expedited processing under 5 U.S.C. § 552(a)(4)(A)(ii)(II);
 - B. Status as representatives of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II); and
 - C. A waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).

- II. Order defendants to:
 - A. Conduct a thorough search for all responsive records;
 - B. Promptly coordinate or refer requested records or portions thereof to other government agencies, as appropriate;
 - C. Provide a *Vaughn* index inventorying all responsive records and itemizing and justifying all withholdings; and
 - D. Promptly disclose the requested information, as it is processed, on a rolling basis, in electronic form.

- III. Award plaintiffs their costs and reasonable attorneys' fees, under 5 U.S.C. § 552 (a)(4)(E) and 28 U.S.C. § 2412(d).

DATE: May 26, 2015.

Respectfully submitted,

_____/ s/
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