

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN CIVIL LIBERTIES UNION OF
MASSACHUSETTS, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF DEFENSE,

Defendant.

C.A. No. 26- 13447-PBS

STATEMENT OF FACTS
IN SUPPORT OF PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Local Rule 56.1, the American Civil Liberties Union of Massachusetts, Inc. (“ACLU”) submits this statement of material facts in support of its Motion for Partial Summary Judgment, filed herewith.

Background Facts

1. The Department of Defense (“DOD”) is a department of the United States government. 10 U.S.C. § 111(a).
2. The Department of the Navy (“DON”) is a department of the United States government. It is a component of DOD. 10 U.S.C. §§ 111(b), 8011.
3. The United States Marine Corps (“USMC”) is a military service of the United States. It is a component of DON and DOD. 10 U.S.C. §§ 8041, 8061, 8063.
4. The Office of the Secretary of Defense (“OSD”) and the Joint Chiefs of Staff (“Joint Staff” or “JS”) are components within DOD. 10 U.S.C. § 111(b).
5. For Freedom of Information Act (“FOIA”) purposes, records in the possession and/or control of OSD and/or the Joint Staff, as well as certain other components of DOD, are

processed through the FOIA Requester Service Center that DOD refers to as “OSD/JS,” “OSD/Joint Staff,” and/or “OSW/JS.” *See e.g.*, 32 C.F.R. § 286.3; Declaration of Daniel L. McFadden (“McFadden Decl.”) Ex. C (Dec. 3, 2025 OSD/JS Response); “FOIA Request” instruction, <https://www.esd.whs.mil/FOID/Submit-Request/>. For clarity, this statement of facts will use the term “OSD/JS” throughout to refer to this FOIA Requester Service Center.

The FOIA Request to OSD/JS

6. On October 22, 2025, the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) submitted a records request pursuant to FOIA to OSD/JS (the “OSD/JS Request”). McFadden Decl. ¶5.

7. A true and accurate copy of the OSD/JS request is attached as Exhibit A to the Declaration of Daniel L. McFadden.

8. OSD/JS assigned the OSD/JS Request case number 26-F-0130. McFadden Decl. Ex. B.

9. On December 4, 2025, OSD/JS sent ACLUM an interim response for the OSD/JS Request. McFadden Decl. Ex. C.

10. OSD/JS has not provided a final response to the OSD/JS Request, produced any records in response to that request, or asserted any FOIA exemptions for any records responsive to that request. McFadden Decl. ¶9.

11. As of August 14, 2026, the online FOIA portal for OSD/JS lists the status of the OSD/JS Request as “In Process.” McFadden Decl. Ex. D.

The FOIA Request to DON
and the Three Records Referred to OSD/JS for Determination

12. On October 22, 2025, ACLUM submitted a records request pursuant to FOIA to DON (the “DON Request”). McFadden Decl. ¶10.

13. A true and accurate copy of the DON Request is attached as Exhibit A to the Declaration of Daniel L. McFadden.

14. DON assigned the DON Request case number 2026-NavyFOIA-001117. McFadden Decl. Ex. E.

15. On or about March 10 or 11, 2026, DON referred the DON Request to USMC. McFadden Decl. Ex. F.

16. USMC assigned the DON Request file number 2026-USMCFOIA-002677. McFadden Decl. Ex. F.

17. On or about June 11, 2026, USMC transmitted three records (the “Referred Records”) to OSD/JS for OSD/JS to make a release determination and respond directly to ACLUM. The Referred Records are:

- Memorandum of August 27, 2025: “Identification of Judge Advocate General Officers and Civilian Attorneys for Potential Detail to the Department of Justice;”
- Memorandum of August 27, 2025: “Potential Department of Defense Support for Immigration Adjudication;” and
- Memorandum of Agreement Between the Department of Justice Executive Office for Immigration Review and the Department of War for the Detailing of Temporary Immigration Judges.

McFadden Decl. Ex. G.

18. OSD/JS assigned the Referred Records case number 26-F-2511. McFadden Decl. Ex. H.

19. OSD/JS has not provided a final response regarding the Referred Records, produced any of the Referred Records, or asserted any FOIA exemptions for the Referred Records. McFadden Decl. ¶17.

The Referred Records Are Responsive and Subject to Release Under FOIA

20. The Referred Records are in the custody of OSD/JS. McFadden Decl. Ex. I.

21. The Referred Records are responsive to the OSD/JS Request. McFadden Decl. Exs. A, G.

22. The Referred Records are responsive to the DON Request and, in connection with that request, were referred to OSD/JS for a determination. McFadden Decl. Exs. A, G, H, I.

23. The Referred Records are not subject to any exemption from release under FOIA. McFadden Decl. McFadden Decl. ¶17; *id.* Ex. G.

Dated: August 14, 2026

Respectfully submitted,

/s/ Julian Bava

Jessie J. Rossman (BBO #670685)
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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2026, a copy of the foregoing document will be served on all registered participants through the Court's CM / ECF system. No counsel has yet appeared for the government. A copy of the foregoing document will therefore also be served on the U.S. Attorney's Office for the District of Massachusetts by electronic mail.

Date: August 14, 2026

/s/ Julian Bava
Julian Bava