

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES )  
UNION OF MASSACHUSETTS, INC., )

Plaintiff, )

vs. )

THE CENTRAL INTELLIGENCE )  
AGENCY, *et al.*, )

Defendants. )

Civil Action No. 1:22-cv-11532

**MOTION FOR 30-DAY EXTENSION OF TIME**

Defendants the Central Intelligence Agency (“CIA”), the Office of the Director of National Intelligence (“ODNI”), the United States Department of Defense (“DoD”), and the National Security Agency (“NSA”) (collectively, “Defendants”) respectfully request a 30-day extension of time to comply with the Court’s May 11, 2023 Order, ECF No. 33, to permit the Solicitor General adequate time to assess whether to appeal the Court’s Order.

This Freedom of Information Act (“FOIA”) case concerns Plaintiff’s request that Defendants produce what Plaintiff terms the “Alleged Declassification Standing Order,” a “standing order that documents removed from the Oval Office and taken to the residence were deemed to be declassified the moment [then-President Trump] removed them.” Compl., ECF No. 1, ¶¶ 27, 36. Defendants each issued a *Glomar* response to the request, declining to confirm or deny whether responsive records exist due to the harm such a disclosure would cause to an ongoing criminal investigation concerning, *inter alia*, the potential improper removal and storage of classified information in unauthorized spaces, as well as the potential unlawful concealment or

removal of government records. In its May 11, 2023 Order, the Court found that Defendants had not sufficiently demonstrated the harm of disclosure, and ordered Defendants to confirm or deny the existence of responsive records by May 25, 2023. *See* May 11, 2023 Order at 23.

Neither the defendant agencies nor the Department of Justice counsel who have been litigating this case may determine whether the United States will appeal from this Court's May 11 order. Rather, only the Solicitor General may make such a determination. *See* 28 C.F.R. § 0.20(b). Rule 4(B) of the Federal Rules of Appellate Procedure provides the Government 60 days from the date of a court's order to file a notice of appeal, a timeframe that permits the Solicitor General to obtain and consider the views of every agency with an interest in this litigation, whether or not they are named as defendants. Indeed, the 60-day timeframe reflects the amount of time typically needed for the Government to assess whether to take an appeal.

The history of *Leopold v. CIA*, another case in which a district court had disapproved a *Glomar* response, is illustrative. *See Leopold v. Cent. Intel. Agency*, 419 F. Supp. 3d 56 (D.D.C. 2019), *rev'd*, 987 F.3d 163 (D.C. Cir. 2021). There, following the court's order requiring disclosure within 30 days of whether the CIA possessed responsive records, *see id.* at 69, the CIA filed a consent motion seeking an additional 31 days to evaluate whether to appeal. *See Leopold v. Cent. Intel. Agency*, 19-cv-1978, ECF No. 18. After the court granted the requested extension, the CIA filed a timely notice of appeal, alongside a consent motion for a stay pending appeal. *See Leopold v. Cent. Intel. Agency*, 19-cv-1978, ECF Nos. 19, 21. The district court then granted the stay motion, *see Leopold v. Cent. Intel. Agency*, 19-cv-1978, Minute Order (Jan. 6, 2020), and on appeal, the D.C. Circuit entered an opinion confirming that it had appellate jurisdiction and reversing on the merits, *see Leopold*, 987 F.3d 163.

Although the Federal Rules provide the Solicitor General with 60 days within which to make an appeal determination, Defendants herein seek a more modest 30 additional days (for a total of 46) in which to complete this process. Defendants are moving forward as quickly as practicable with consideration of whether to appeal, but, especially in light of the number of agencies and components involved, the 14 days allowed by the current May 25, 2023 deadline is inadequate. Particularly given the importance and sensitivity of the criminal investigation at issue—which Defendants contend would be harmed by disclosure of whether the requested records exist—Defendants respectfully ask that the Court grant the extension requested herein and set their deadline for compliance with the May 11, 2023 Order on June 26, 2023.<sup>1</sup>

Defendants conferred with Plaintiff regarding the requested relief, and Plaintiff indicated that Plaintiff opposes this motion.

Dated: May 15, 2023

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General

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<sup>1</sup> If authorized by the Solicitor General, Defendants would seek a stay of that Order, since compliance with the Order would moot the issue, and result in disclosure of the information Defendants are seeking to protect through their appeal. *See, e.g., Providence Journal v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979) (granting stay in FOIA case because “the Constitution and laws entitle litigants to have their cases independently reviewed by an appellate tribunal,” “[m]eaningful review entails having the reviewing court take a fresh look at the decision of the trial court before it becomes irrevocable,” and “[o]nce the documents are surrendered pursuant to the lower court's order, confidentiality will be lost for all time”); *Irons v. FBI*, 811 F.2d 681, 683 (1st Cir. 1987) (holding that orders requiring disclosure in FOIA cases are immediately appealable because “[t]o hold otherwise would be to force the government to let the cat out of the bag, without any effective way of recapturing it if the district court’s directive was ultimately found to be erroneous”).

ELIZABETH J. SHAPIRO  
Deputy Director  
Federal Programs Branch

/s/ Julia A. Heiman  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document, along with accompanying Proposed Order, was filed through the ECF system and will therefore be sent electronically to Plaintiff's counsel identified on the Notice of Electric Filing (NEF).

/s/ Julia A. Heiman  
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\_\_\_\_\_ )

[PROPOSED] ORDER

The Court, having fully considered the Defendants’ Motion for 30-Day Extension of Time hereby **ORDERS** that the Motion is **GRANTED**. Defendants’ deadline for compliance with the Court’s May 11, 2023 Order is hereby extended until June 26, 2023.

IT IS SO **ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Hon. Denise J. Casper  
United States District Judge