

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RAYMOND BONNER,

Plaintiff,

v.

DEPARTMENT OF DEFENSE,  
CENTRAL INTELLIGENCE AGENCY, and  
FEDERAL BUREAU OF  
INVESTIGATION,

Defendants.

Civil Action No. 17-cv-9378  
ECF Case

**COMPLAINT**

**INTRODUCTION**

Plaintiff, Raymond Bonner, by his undersigned attorneys, alleges:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, for declaratory, injunctive, and other appropriate relief brought by Raymond Bonner, a prize-winning investigative journalist and author.

2. By this action, Mr. Bonner seeks to compel defendants, the Department of Defense, Central Intelligence Agency, and Federal Bureau of Investigation, to release records about the capture, interrogation, and detention of Zayn al-Abidin Muhammad Husayn, more commonly known as Abu Zubaydah (“Zubaydah”), who is currently being detained at the U.S. military base at Guantanamo Bay, Cuba.

**PARTIES**

3. Plaintiff Raymond Bonner is a prize-winning investigative journalist and author with over 35 years of professional experience. He has reported and written for major publications, including the *New York Times*, *New Yorker*, *Atlantic*, and *New York Review of Books*, and is currently a contributing writer for *ProPublica*, an independent, non-profit, online

newsroom based in New York. Mr. Bonner has published numerous articles about the U.S. War on Terror, treatment of terrorist suspects in the aftermath of 9/11, and detention practices at Guantanamo Bay, Cuba. He has written extensively on Zubaydah's capture, interrogation, and detention. *See, e.g.*, Raymond Bonner, *The Strange Case of the Forgotten Gitmo Detainee*, POLITICO (May 12, 2015), <https://www.politico.com/magazine/story/2015/05/abu-zubaydah-tortured-waterboarded-cia-dc-circuit-court-guantanamo-117833>.

4. Defendant Department of Defense ("DoD") is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

5. Defendant Central Intelligence Agency ("CIA") is an intelligence agency established within the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

6. Defendant Federal Bureau of Investigation ("FBI") is a component of the Department of Justice, a department of the executive branch of the U.S. government, and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

### **JURISDICTION AND VENUE**

7. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the defendants pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this district under § 552(a)(4)(B) because plaintiff resides in this district.

### **FACTS**

9. Zayn al-Abidin Muhammad Husayn, more commonly known as Abu Zubaydah, was captured in Pakistan in March 2002 and is currently being detained at the U.S. military base at Guantanamo Bay, Cuba.

10. According to the Senate Intelligence Committee Report on Torture, released in December 2014, Abu Zubaydah was one of the first post-9/11 terrorist suspects to be interviewed by the FBI and CIA and subjected to the CIA's "enhanced interrogation techniques," at a so-called "black site."

11. Abu Zubaydah filed a habeas petition in 2008, which remains pending today. *See Husayn v. Mattis*, 1:08-cv-1360 (D.D.C. Aug. 6, 2008).

12. The U.S. government has now held Abu Zubaydah without charge for more than fourteen years, during which time his capture, treatment, and continued confinement have been the subject of numerous investigations and reports, including by international tribunals, human rights groups, and the U.S. Senate.

13. Abu Zubaydah's name appears 1001 times in the publicly-released five-hundred-page summary of the Senate Intelligence Committee Report on Torture.

14. The facts and circumstances surrounding Abu Zubaydah's treatment remain matters of great public interest and concern. His capture and interrogation have been written about in numerous books by former CIA officials. These include: James E. Mitchell, *ENHANCED INTERROGATION: INSIDE THE MINDS AND MOTIVES OF THE ISLAMIST TERRORISTS TRYING TO DESTROY AMERICA* (2016)(written by the architect of the CIA's enhanced interrogation program and the chief interrogator of Abu Zubaydah at the black site); John Rizzo, *The Birth of the Enhanced Interrogation Program* (2002), in *COMPANY MAN: THIRTY YEARS OF CONTROVERSY AND CRISIS IN THE CIA 181-202* (2014); Jose A. Rodriguez, Jr., *Abu Zubaydah*, in *HARD MEASURES: HOW AGGRESSIVE CIA ACTIONS AFTER 9/11 SAVE AMERICAN LIVES 41-72* (written by the former head of the CIA's Counterterrorism Center); Ali H. Soufan, *The First High-Value Detainee*, in *THE BLACK BANNERS: THE INSIDE STORY OF 9/11 AND THE WAR*

AGAINST AL-QAEDA (2011)(written by the senior FBI agent who interrogated Abu Zubaydah at the black site).

### **FOIA Request to the Department of Defense**

15. On May 26, 2017, Mr. Bonner submitted to defendant DoD Southern Command (SOUTHCOM) a FOIA request seeking copies of three clearly identified documents:

- a) The original Arabic version of a diary prepared by Zubaydah, the English translation of which was publicly filed in *Husayn v. Mattis*, 1:08-cv-1360, ECF Nos. 474-1, 474-2 (D.D.C. Mar. 29, 2017).
- b) A viewable version of a video recording of Abu Zubaydah, the transcript of which (in English translation) was publicly filed in *Husayn v. Mattis*, 1:08-cv-1360, ECF No. 474-2 (D.D.C. Mar. 29, 2017).
- c) An email sent by Zubaydah to Sheikh Ali Al Koudeir regarding the September 11 attacks that is referred to by the presiding officer at the March 27, 2017, Combatant Status Review Tribunal hearing for ISN 10016 (Zubaydah) on page 6 of the hearing transcript, available at <https://www.aclu.org/other/abu-zubaydah-csrt-transcript>.

A true and correct copy of Mr. Bonner's request to DoD SOUTHCOM is annexed hereto as Exhibit A.

16. Mr. Bonner's request asked for a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because Mr. Bonner is "a representative of the news media" within the meaning of the statute.

17. By letter dated August 1, 2017, DoD SOUTHCOM informed Mr. Bonner that it was not the repository of the requested records and had therefore forwarded the FOIA request to the Office of the Secretary of Defense and Joint Staff (OSD/JS). A true and correct copy of the DoD SOUTHCOM response is annexed hereto as Exhibit B.

18. After waiting nearly two months for a further response, on September 27, 2017 Mr. Bonner wrote to DoD OSD/JS requesting an update on the status of his FOIA request. A true and correct copy of this letter is annexed hereto as Exhibit C.

19. By letter dated October 10, 2017, DoD OSD/JS belatedly indicated that it would not be able to respond within the statutory deadline due to "unusual circumstances." A true and correct copy of this letter is annexed hereto as Exhibit D.

20. More than twenty (20) business days have passed since Mr. Bonner submitted his request to DoD SOUTHCOM, and more than twenty (20) business days have passed since his request was forwarded to DoD OSD/JS. None of the three requested documents has been made available to plaintiff, in full or in part.

21. Even assuming that "unusual circumstances" apply in this case, the FOIA allows extensions of no more than ten (10) business days, per 5 U.S.C. § 552(a)(6)(B)(i). This time period has also expired.

22. Defendant DoD has constructively denied Mr. Bonner's FOIA request and plaintiff has thus exhausted his administrative remedies.

### **FOIA Request to the Central Intelligence Agency**

23. On May 26, 2017, Mr. Bonner submitted to defendant CIA a FOIA request seeking copies of the following clearly identified documents related to the detention and interrogation of Zubaydah:

- a) All cables, emails, letters, correspondence, notes, memoranda, or reports transmitted between August 4, 2002, and August 23, 2002, inclusive, which pertain or refer to the interrogation or detention of Zubaydah.
- b) Two or more cables identified in the public version of the report of the Senate Select Committee on Intelligence entitled "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program" (the "SSCI Study"):
  - i. The DETENTION SITE GREEN cable(s) referenced in the SSCI Study at p. 43 of 499, nn. 200, 201, 202, 203, 204, 205.
  - ii. The DETENTION SITE GREEN cable referenced in the SSCI Study at 36 of 499, n. 158.

- c) Eight drawings identified in the following excerpt from a letter dated Nov. 30, 2009 sent by the Justice Department to Zubaydah's lawyer and publicly filed in *Husayn v. Mattis*, No. 1:08-cv-1360 (D.D.C. ECF No. 341):
  - i. "The Government has conducted a search for drawings that were created by Petitioner [Zubaydah] while in the custody of the Central Intelligence Agency that may depict interrogation techniques applied to the Petitioner. The Government has located eight such drawings to date."

A true and correct copy of Mr. Bonner's request to CIA is annexed hereto as Exhibit E.

24. Mr. Bonner's request asked for a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because Mr. Bonner is "a representative of the news media" within the meaning of the statute.

25. By letter dated June 23, 2017, CIA acknowledged receipt of Mr. Bonner's request. A true and correct copy of this letter is annexed hereto as Exhibit F.

26. After waiting three months for further response, on September 27, 2017, Mr. Bonner wrote to CIA requesting an update on the status of his FOIA request. A true and correct copy of this letter is annexed hereto as Exhibit G.

27. CIA has not responded to the request for an update nor provided any information about when it anticipates responding substantively to Mr. Bonner's request.

28. More than twenty (20) business days have passed since Mr. Bonner submitted his FOIA request to CIA, and no responsive documents have been produced to Mr. Bonner in full or in part.

29. CIA has constructively denied plaintiff's FOIA request and Mr. Bonner has thus exhausted his administrative remedies.

#### **FOIA Request to the Federal Bureau of Investigation (FBI)**

30. On May 26, 2017, Mr. Bonner submitted to defendant FBI a FOIA request seeking copies of the following clearly identified documents related to the detention and interrogation of Zubaydah:

- a) All records created between January 1, 1995, and December 31, 2000, inclusive, which refer or pertain to Zubaydah.
- b) All records created between March 15, 2002, and April 2, 2002, inclusive, which refer or pertain to the March 28, 2002, raid in Pakistan in which Zubaydah was captured.
- c) All records created between April 2, 2002 and July 15, 2002, inclusive, which refer or pertain to Zubaydah.

A true and correct copy of Mr. Bonner's request to the FBI is annexed hereto as Exhibit H.

31. Mr. Bonner's request asked for a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because Mr. Bonner is "a representative of the news media" within the meaning of the statute.

32. By letter dated June 14, 2017, FBI stated that Mr. Bonner would need to show a public interest that outweighed Zubaydah's privacy interest before it would process the request.

A true and correct copy of this letter is annexed hereto as Exhibit I.

33. By letter dated June 26, 2017, FBI subsequently stated that it had performed a search of its "Central Records System" and had not identified any responsive records. A true and correct copy of this letter is annexed hereto as Exhibit J.

34. On July 23, 2017, Mr. Bonner submitted a timely administrative appeal challenging the adequacy of FBI's search. Mr. Bonner's appeal noted, *inter alia*, that the FBI's key role in the interrogation of Zubaydah is a matter of public record, such that the FBI's failure to find any responsive records was itself evidence of an inadequate search. A true and correct copy of this appeal is annexed hereto as Exhibit K.

35. By letter dated August 10, 2017, the FBI's Office of Information Policy acknowledged its receipt of Mr. Bonner's administrative appeal and assigned an identification number to Mr. Bonner's appeal—DOJ-AP-2017-005988. A true and correct copy of this letter is annexed hereto as Exhibit L.

36. By letter dated November 15, 2017, the FBI's Office of Information Policy again acknowledged receipt of Mr. Bonner's administrative appeal. The letter assigned a new identification number to Mr. Bonner's appeal—DOJ-AP-2017-007017. A true and correct copy of this letter is annexed hereto as Exhibit M.

37. More than twenty (20) business days have passed since Mr. Bonner submitted his administrative appeal, and no responsive documents have been produced to Mr. Bonner in full or in part.

38. Mr. Bonner has exhausted his administrative remedies concerning his FOIA request to FBI.

#### **FIRST CLAIM**

##### **Violation of FOIA for failure to respond to plaintiff's requests**

39. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

40. Defendants' failure to timely respond to plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(6)(A) and defendants' corresponding regulations.

#### **SECOND CLAIM**

##### **Violation of FOIA for failure to make records available**

41. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

42. Defendants' failure to make available the records sought by the requests violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and defendants' corresponding regulations.

43. Defendants' withholdings of specific responsive records, or portions thereof, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (6)(A), and defendants' corresponding regulations.



**THIRD CLAIM**

**Violation of FOIA for failure to perform adequate search**

44. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

45. Defendants failure to make a reasonable effort to search for records responsive to the plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and defendants' regulations.

**RELIEF REQUESTED**

**WHEREFORE**, plaintiff respectfully requests this Court to:

1. Declare that the records sought by plaintiff in his FOIA requests are public records under 5 U.S.C. § 552 and must be disclosed;
2. Order defendants immediately to conduct a thorough search for all records responsive to plaintiff's requests;
3. Order defendants to immediately disclose, in their entirety, all responsive records that are not specifically exempt from disclosure under FOIA;
4. Enjoin defendants from charging plaintiff for the search, review, or duplication fees for processing his requests;
5. Award plaintiff the costs of this proceeding, including reasonable attorneys' fees; and
6. Grant such other and further relief as the Court deems just and proper.

Dated: November 30, 2017

Respectfully submitted,

MEDIA FREEDOM AND INFORMATION  
ACCESS CLINIC

By: /s/ David A. Schulz

David A. Schulz  
919 3rd Avenue, 37th Floor  
New York, NY 10022  
Tel: (212) 850-6103  
schulzd@ballardspahr.com

Hannah Bloch-Wehba (*pro hac vice* application  
forthcoming)  
Michael Karpman, Law Student Intern

Paulina Perlin, Law Student Intern  
MEDIA FREEDOM AND INFORMATION ACCESS CLINIC  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215  
Tel: (203) 436-5824  
Fax: (203) 432-3034  
hannah.bloch-wehba@yale.edu  
*Counsel for Plaintiff Raymond Bonner*