

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RAYMOND BONNER

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
DEFENSE,

Defendant.

Civil Action No. 21-cv-1955

**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. Plaintiff submitted two FOIA requests (the “Requests”) to defendant Department of Defense agency on January 26, 2021. These clearly defined requests are both narrow and specific. The first sought the audio recordings and any photographs or video recordings of Periodic Review Board (“PRB”) hearings held on August 23, 2016 and February 4, 2020 to review the need for continued detention of Zayn al-Abidin Muhammad Husayn, more commonly known as Abu Zubaydah (the “PRB Request”). The second sought the audio recordings and any photographs or video recordings of Abu Zubaydah’s March 27, 2007 Combatant Status Review Tribunal (“CSRT”) hearing (the “CSRT Request”). A written transcript of portions of this hearing was previously made public and is available at:

[https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainee\\_Related/15-L-1645\\_CSRT%20Transcript%20ISN%2010016\\_27-mar-07.pdf](https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainee_Related/15-L-1645_CSRT%20Transcript%20ISN%2010016_27-mar-07.pdf). Defendant has denied

expedited processing of the PRB Request and has failed to provide records in response to either Request.

3. Abu Zubaydah is the longest-held detainee at the U.S. military base at Guantanamo Bay, Cuba, and was one of the first victims of the U.S. Government's rendition and enhanced interrogation program after the 9/11 attacks. The limited and specific records sought by plaintiff concern the basis for Abu Zubaydah's continuing detention at Guantanamo. The records requested from Abu Zubaydah's two PRB hearings will shed light on the basis for the Government's determination that he continues to pose a significant threat to national security, and the records sought from his CSRT hearing will inform the procedures followed and grounds on which the Government initially determined that he was an enemy combatant.

4. There is a compelling need for the prompt release of this information. Plaintiff is producing a documentary film scheduled to be televised on the 20th anniversary of the 9/11 attacks this September. This anniversary will be a time when public attention and debate will uniquely focus on the issues raised by our nation's response to those attacks and the wisdom of continued operation of the Guantanamo detention facility. Renewed public debate on this issue has already been sparked by the Biden administration's recent announcement that it would study how best to close the detention facility at Guantanamo Bay.<sup>1</sup> The information sought through this FOIA action is needed to ensure that the documentary is able to provide the American public with a complete and accurate narrative of the basis for Abu Zubaydah's continued captivity, the value and consequences of the CIA's "enhanced interrogation" of him, and the Government's mechanisms for determining whether Abu Zubaydah's continued detention for nearly two decades is necessary and legal.

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<sup>1</sup> See, e.g., Carol Rosenberg, *Biden Plans to Close Guantanamo Prison, But Details Remain Hazy*, N.Y. TIMES, February 23, 2021, at A16.

## PARTIES

5. 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*, *The New Yorker*, *The Atlantic*, and the *New York Review of Books*. He 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 Abu 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/>.

6. 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) that has possession and control of the records sought by plaintiff.

## JURISDICTION AND VENUE

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

8. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because plaintiff resides in this district.

## FACTS

9. 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 Select Committee Intelligence Report on Torture, released in December 2014, Abu Zubaydah was one of the first post-9/11 terror suspects to be interviewed by the FBI and CIA and was subject to the CIA's "enhanced interrogation techniques" at a CIA run "black site." *See* S. REP. NO. 113-288 (2014).

11. On March 27, 2007, a Combatant Status Review Tribunal was held at Guantanamo Bay to determine whether Abu Zubaydah could properly be classified as an "enemy combatant."

12. Abu Zubaydah filed a habeas petition in 2008 challenging his detention, which remains pending today. *See Husayn v. Mattis*, No. 1:08-cv-1360 (D.D.C. Aug. 6, 2008).

13. The U.S. government has held Abu Zubaydah without charge for more than eighteen 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. His name appears 1001 times in the publicly-released five-hundred-page summary of the Senate Intelligence Committee Report on Torture. *See* S. REP. NO. 113-288 (2014).

14. In March 2011, President Obama created the Guantanamo Periodic Review Board, an interagency organization created to review whether the detainees being held at Guantanamo without charge present continuing threats to national security.

15. The Periodic Review Board has held two hearings to consider the need for the continued confinement of Abu Zubaydah; one on August 23, 2016, and a second on February 4, 2020.

16. 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 several books by former CIA officials.<sup>2</sup>

#### **FOIA Request for Periodic Review Board Records**

17. On January 26, 2021, Mr. Bonner submitted to Defendant DoD a FOIA request seeking copies of documents falling into four clearly-defined categories:

- a. The audio recording of the August 23, 2016 Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).
- b. Any video recording and any photographic images of the August 23, 2016 Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn)
- c. The audio recording of the February 4, 2020 Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).
- d. Any video recording and any photographic images of the February 4, 2020 Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn)

A true and correct copy of Mr. Bonner's PRB FOIA request is annexed hereto as Exhibit A.

18. Mr. Bonner requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because he is "a representative of the news media" within the meaning of the statute.

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<sup>2</sup> See, e.g., 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).

19. Mr. Bonner requested expedited processing so that the information will be available in time to finalize the documentary to be released on the upcoming 20th anniversary of the 9/11 attacks.

20. By letter dated February 1, 2021, Stephanie L. Carr, Chief of the Freedom of Information Division of DoD, denied Mr. Bonner's request for expedited processing, asserting that he had failed to demonstrate "a particular value" of the requested information would be lost "if not disseminated quickly." A true and correct copy of the DoD response is annexed hereto as Exhibit B.

21. Mr. Bonner administratively appealed the denial of expedited processing for the PRB Request by letter dated February 3, 2021. A true and correct copy of his appeal is annexed hereto as Exhibit C.

22. By email dated February 22, 2021, DoD informed Mr. Bonner that the agency would be unable to complete appellate review of the denial of expedited processing for the PRB Request within the statutory time requirement "[d]ue to an extremely heavy FOIA workload."

23. More than twenty (20) business days have passed since Mr. Bonner submitted his request to DoD. None of the requested documents have been made available to Plaintiff, in full or in part.

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

25. DoD has "fail[ed] to comply with the applicable time limit provisions" of FOIA, and plaintiff has exhausted his administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

### **FOIA Request for Combatant Status Review Tribunal Records**

26. On January 26, 2021, Mr. Bonner submitted to Defendant DoD Southern Command (SOUTHCOM) a FOIA request seeking copies of documents falling into two clearly-defined categories:

- a. The audio recording of the March 27, 2007 Combatant Status Review Tribunal for Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn) that includes, at a minimum, all sections of that proceeding made public in the written transcript available at:  
[https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainee\\_Related/15-L-1645\\_CSRT%20Transcript%20ISN%2010016\\_27-mar-07.pdf](https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainee_Related/15-L-1645_CSRT%20Transcript%20ISN%2010016_27-mar-07.pdf).
- b. Any video recording and any photographic images of the March 27, 2007 Combatant Status Review Tribunal for Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn)

A true and correct copy of Mr. Bonner's CSRT FOIA request is annexed hereto as Exhibit D.

27. 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.

28. Mr. Bonner's requested expedited processing so that the information is available in time to be included in the documentary to be released on the upcoming 20th anniversary of the 9/11 attacks, when public attention and debate will be uniquely focused on the continuing issues raised by our nation's response to them.

29. More than twenty (20) business days have passed since Mr. Bonner submitted his request to DoD. None of the requested documents have been made available to plaintiff, in full or in part.

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

31. DoD has “fail[ed] to comply with the applicable time limit provisions” of FOIA, and plaintiff has exhausted his administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

**CLAIMS**

**FIRST CLAIM FOR RELIEF  
(Violation of FOIA for failure to expedite plaintiff’s requests)**

32. Plaintiff repeats, re-alleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

33. DoD’s failure to expedite the processing of plaintiff’s requests violates FOIA, 5 U.S.C. § 552(a)(6)(E), and DoD’s regulations promulgated thereunder, 32 C.F.R. § 286.8(e).

**SECOND CLAIM FOR RELIEF  
(Violation of FOIA for failure to make records promptly available)**

34. Plaintiff repeats, re-alleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

35. DoD’s failure to comply with the statutory time limit for rendering a determination on plaintiff’s requests violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and DoD’s regulations promulgated thereunder, 32 C.F.R. § 286.8(e).

36. DoD’s failure to make promptly available records that are responsive to plaintiff’s requests violates FOIA, 5 U.S.C. § 552(a)(3)(A).

**REQUESTED RELIEF**

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

- a) Expedite consideration of this complaint pursuant to 28 U.S.C. § 1657;



- b) Declare that the records sought are subject to FOIA and must be disclosed by defendant in the manner prescribed by FOIA;
- c) Declare that plaintiff's FOIA requests are entitled to expedited processing by defendant;
- d) Declare that plaintiff is entitled to fee waivers;
- e) Order Defendant to immediately conduct a thorough search for the records requested by plaintiff;
- f) Order defendant to immediately and expeditiously process the responsive records and produce them to plaintiff forthwith;
- g) Enjoin defendant from charging plaintiff fees for processing his requests;
- h) Award plaintiff the cost of this proceeding, including any reasonable attorneys' fees, as expressly permitted by FOIA; and
- i) Grant such other and further relief as the Court deems just and proper.

March 5, 2020

Respectfully submitted

MEDIA FREEDOM AND INFORMATION  
ACCESS CLINIC

By:           /s/          

David A. Schulz

Charles Crain (*pro hac vice* forthcoming)

Sam Aber, law student intern

Nicole Ng, law student intern

Braden Currey, law student intern

MEDIA FREEDOM & INFORMATION ACCESS CLINIC

ABRAMS INSTITUTE

YALE LAW SCHOOL

P.O. Box 208215

New Haven, CT 06520

Email: david.schulz@yale.edu

*Counsel for Plaintiff*

# **EXHIBIT A**



ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

## Yale Law School

January 26, 2021

Stephanie Carr, Chief,  
OSD/JS FOIA Requester Service Center, Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

**Re: FOIA Request 21-F-0483 on behalf of Journalist Raymond Bonner**

To Whom It May Concern:

We represent journalist Raymond Bonner. We submitted on his behalf through your FOIA portal a request for the following records:

1. The audio recording of the **August 23, 2016** Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).
2. Any video recording and any photographic images of the **August 23, 2016** Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn)
3. The audio recording of the **February 4, 2020** Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).
4. Any video recording and any photographic images of the **February 4, 2020** Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn)

This request was assigned Case No. 21-F-0483. We are submitting this letter to be sure you are aware of the requests for expedited processing and a fee waiver that were also sought in the electronic submission.

**Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E), Mr. Bonner requests expedited processing for this request because of an urgent need to inform the public about a federal government activity. The treatment of detainees taken into American custody as part of the U.S War on Terror—in particular the fates of detainees who were captured in the aftermath of September 11 and remain in custody nearly two decades later—is a matter of ongoing and urgent public concern. The past treatment and current status of Abu Zubaydah remains a frequent subject of national and international reporting. *See, e.g.,* Peter Bergen, *Exclusive: More drawings allege CIA's horrific treatment of Abu Zubaydah*. CNN (February 13, 2020), <https://www.cnn.com/2020/02/12/opinions/bergen-more-drawings-allege-cias-horrific->

MEDIA  
FREEDOM &  
INFORMATION  
ACCESS CLINIC

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treatment-of-abu-zubaydah/index.html; Sheren Khaleel, *Guantanamo parole board reviews case of 'forever prisoner' Abu Zubaydah*, Middle East Eye (February 4, 2020), <https://www.middleeasteye.net/news/guantanamo-parole-board-reviews-case-forever-prisoner-abu-zubaydah>; Greg Myre, *For Ex-FBI Interrogator Ali Soufan, Sept. 11 Still Frames His Life*, WAMU (September 11, 2020), <https://wamu.org/story/20/09/11/for-ex-fbi-interrogator-ali-soufan-9-11-still-frames-his-life/>. Moreover, Mr. Bonner seeks this information for use in a documentary about Abu Zubaydah and his detention, the release of which will coincide with the 20th anniversary of the September 11 attacks this year. The records are needed as soon as possible for inclusion in the documentary. Mr. Bonner and his counsel certify that the information above is true and correct to the best of their knowledge, pursuant to 5 U.S.C. § 552(a)(6)(E)(vi).

### **Request for a Waiver of Fees**

Mr. Bonner also requests a waiver of search and review fees because he is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Mr. Bonner is a Pulitzer Prize-winning investigative journalist and author with over 35 years of professional experience.

Throughout his career, he has reported and written for major publications, including *The New York Times*, *The New Yorker*, *The Atlantic*, *The New York Review of Books*, and *The New York Times Book Review*. He is currently a contributing writer for ProPublica, which has published several of his articles regarding the detention of and legal proceedings involving Abu Zubaydah. He has also written extensively about international security, the U.S. War on Terror, and U.S. detention practices at Guantanamo Bay, Cuba.

Mr. Bonner meets the statutory definition of a “representative of the news media” as an individual who “gathers information of potential interest to a segment of the public, uses [his] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii). Mr. Bonner’s current role in the production of a documentary about Abu Zubaydah and as a contributing writer for ProPublica make clear he “can demonstrate a solid basis for expecting publication.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

If a fee waiver is denied, please contact us before incurring fees in excess of \$100.00.

Please let me know if these requests need to be separately directed to any other unit within the Department of Defense. Thank you for your prompt attention.

Very truly yours,

A handwritten signature in black ink that reads 'David Schulz'. The signature is written in a cursive style with a large, stylized 'S' at the end.

David Schulz

## Submit New Request

### Requester Details

To modify request details please update your requester profile or contact the our office for assistance.

#### David Schulz

Media Freedom & Information Access Clinic  
Yale Law School, Box 208215  
127 Wall St  
New Haven, 06511  
Phone 917-733-9014  
david.schulz@yale.edu

Requester Default Category: Educational or Non-Commercial Scientific

### Custom Fields

Requester Control # :  
Previous Address 2 :

### General Information

Request Type FOIA  
Requester Category News Media

### Shipping Address

Street1 Yale Law School, Box 208215  
Street2 127 Wall St  
City New Haven  
State Connecticut  
State (Other)  
Country United States  
Zip Code 06511

### Request Information

Description Document  
Description

We represent journalist Raymond Bonner, and make this request on his behalf. Mr. Bonner seeks:

1. The audio recording of the August 23, 2016 Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).
2. Any video recording and any photographic images of the August 23, 2016 Periodic Review Board hearing concerning Abu Zubaydah.
3. The audio recording of the February 4, 2020 Periodic Review Board hearing concerning Abu Zubaydah.
4. Any video recording and any photographic images of the February 4, 2020 Periodic Review Board hearing concerning Abu Zubaydah.

**Expedited Processing.** Pursuant to 5 U.S.C. § 552(a)(6)(E), Mr. Bonner requests expedited processing for this request because of an urgent need to inform the public about a federal government activity. The treatment of detainees taken into American custody as part of the U.S. War on Terror—in particular the fates of detainees who were captured in the aftermath of September 11 and remain in custody nearly two decades later—is a matter of ongoing and urgent public concern. The past treatment and current status of Abu Zubaydah remains a frequent subject of national and international reporting. Mr. Bonner seeks this information for use in a documentary about Abu Zubaydah and his detention, the release of which will coincide with the 20th anniversary this year of the September 11 attacks. The records are needed as soon as possible for use in making the documentary. Mr. Bonner and his counsel certify that the information above is true and correct to the best of their knowledge, pursuant to 5 U.S.C. § 552(a)(6)(E)(vi).

**Request for a Waiver of Fees.** Mr. Bonner requests a waiver of search and review fees because he is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Mr. Bonner is a Pulitzer 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,

The New Yorker, The Atlantic, The New York Review of Books, and The New York Times Book Review. He is currently a contributing writer for ProPublica, which has published several of his articles regarding the detention of and legal proceedings involving Abu Zubaydah. Mr. Bonner has also written extensively about international security, the U.S. War on Terror, and U.S. detention practices at Guantanamo Bay, Cuba.

Mr. Bonner meets the statutory definition of a "representative of the news media" as an individual who "gathers information of potential interest to a segment of the public, uses [his] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). Mr. Bonner's current role in the production of a documentary about Abu Zubaydah and as a contributing writer for ProPublica make clear he "can demonstrate a solid basis for expecting publication." 5 U.S.C. § 552(a)(4)(A)(ii)(III).

08/01/2016

Date Range for Record Search:From  
Date Range for Record Search:To  
Consent  
Proof of Identity

01/26/2021

**Fee Information**

Willing Amount \$100

**Billing Address**

State (Other)

**Other Information**

State (Other)

**Custom Fields**

Requester #

# **EXHIBIT B**



**DEPARTMENT OF DEFENSE  
FREEDOM OF INFORMATION DIVISION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

Ref: 21-F-0483  
February 1, 2021

Mr. David Schulz  
Media Freedom & Information Access Clinic  
Yale Law School, Box 208215  
127 Wall St  
New Haven, CT 06511

Dear Mr. Schulz:

This is an interim response to your January 26, 2021 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on January 27, 2021, and assigned it FOIA case number 21-F-0483. We ask that you use this number when referring to your request.

Although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances that impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more, of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for the Office of the Secretary of Defense (OSD), the Joint Staff (JS), and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required record searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination.

Expedited processing may be granted when the requester demonstrates a compelling need for the information and shows that the information has a particular value that would be lost if not processed on an expedited basis. A key word here is "demonstrates." Therefore, it is incumbent upon you to demonstrate that the requested records will serve an urgency purpose and that they will also be meaningful in the sense that they will provide a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated. Consequently, it must be clearly demonstrated that such information has a particular value that will be lost if not disseminated quickly. After carefully considering your request, this Office finds that you have not clearly demonstrated how the information will lose its value if not processed on an expedited basis. For this reason, your request for expedited processing is denied.

Your request has been placed in our complex processing queue and is being worked based on the order in which the request was received. Our current administrative workload is approximately 3,572 open requests.



If you have requested a fee waiver, please note that decisions to waive or reduce fees are made on a case-by-case basis, and we will make a determination concerning your fee waiver request at the conclusion of the search and assessment of responsive records, should they exist. However, this office will only assess fees if we provide the final response to your FOIA request within the statutory time allotted by the FOIA or if the responsive records total more than 5,000 pages, even after a good faith effort on our part to limit the scope of your request.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests. If you wish to narrow the scope of your request or have questions about the foregoing, please do not hesitate to contact the Action Officer assigned to your request, Michael Coen at [Michael.e.coen2.civ@mail.mil](mailto:Michael.e.coen2.civ@mail.mil) or 571-372-0413.

Additionally, if you have concerns about service received by our office, please contact a member of our Leadership Team at 571-372-0498 or Toll Free at 866-574-4970.

Should you wish to inquire about mediation services, you may contact the OSD/JS FOIA Public Liaison, Tonya R. Fuentes, at 571-372-0462 or by email at [OSD.FOIALiaison@mail.mil](mailto:OSD.FOIALiaison@mail.mil), or the Office of Government Information Services (OGIS) at the National Archives and Records Administration. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

You have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to the following address: 4800 Mark Center Drive, ATTN: DPCLTD, FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700.

Your appeal must be postmarked within 90 calendar days of the date of this response. Alternatively, you may email your appeal to [osd.foia-appeal@mail.mil](mailto:osd.foia-appeal@mail.mil). If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference FOIA case number 21-F-0483 in any appeal correspondence.

We regret the delay in responding to your request and appreciate your patience. As previously stated, please contact the Action Officer assigned to your request, Michael Coen, and reference FOIA case number 21-F-0483, if you have any questions or concerns.

Sincerely,

*Stephen L. Fisher*

*for* Stephanie L. Carr  
Chief

Enclosure:  
As stated

# **EXHIBIT C**



ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

Yale Law School

**FREEDOM OF INFORMATION ACT APPEAL**

February 3, 2021

**VIA First Class Mail**

Ms. Joo Chung  
Director of Oversight and Compliance  
4800 Mark Center Drive  
ATTN: DPCLTD, FOIA Appeals, Mailbox #24  
Alexandra, VA 22350-1700

**Re: Appeal of FOIA Request, Case No. 21-F-0483**

Dear Ms Chung:

We represent investigative journalist Raymond Bonner in connection with this matter. This letter constitutes an administrative appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, of the denial by the Department of Defense (DOD) of Mr. Bonner's request for expedited processing of his January 26, 2021 FOIA request, No. 21-F-0483. That request seeks a very limited number of specifically identified records created on just two dates, February 4, 2020 and August 23, 2016. These records are urgently needed for the preparation of a documentary that is to be shown later this year on the 20<sup>th</sup> anniversary of the 9/11 attacks. As explained below, the information Mr. Bonner seeks is directly relevant to a time-sensitive topic of intense public interest regarding actual or alleged federal activity. Pursuant to 5 U.S.C. § 552(a)(6)(E), Mr. Bonner has a compelling need for the information and his request is entitled to expedited processing

**Procedural Posture of Mr. Bonner's Request**

On January 30, 2021, Mr. Bonner's FOIA request was submitted to DOD via email and First-Class Mail. The request seeks:

1. The audio recording of the August 23, 2016 Periodic Review Board hearing concerning Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).
2. Any video recording and any photographic images of the August 23, 2016 Periodic Review Board hearing concerning Abu Zubaydah.
3. The audio recording of the February 4, 2020 Periodic Review Board hearing concerning Abu Zubaydah.



4. Any video recording and any photographic images of the February 4, 2020 Periodic Review Board hearing concerning Abu Zubaydah.

By letter dated February 1, 2021, Stephanie L. Carr, Chief of the Freedom of Information Division, denied Mr. Bonner's request for expedited processing citing a failure to demonstrate that "a particular value" of the requested information "will be lost if not disseminated quickly." This denial fails to appreciate Mr. Bonner's time-sensitive need for this information or to fully appreciate that disclosing these records will indeed "be meaningful in the sense that they will provide a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated"—the standard for expedited processing cited by Ms. Carr. We urge you to reconsider and reverse the denial of expedited processing.

### **Mr. Bonner Has an Urgent Need for the Information Requested**

As set forth in greater detail in the FOIA request, Mr. Bonner is a Pulitzer Prize-winning investigative journalist and author with over 35 years of professional experience who has written extensively about international security, the U.S. War on Terror, and U.S. detention practices at Guantanamo Bay, Cuba. He is currently producing a documentary addressing these issues tied to the 20th anniversary of the 9/11 attacks, for which facts concerning the detention and interrogation of terrorist suspect Abu Zubaydah are indispensable. Abu Zubaydah is the longest held detainee at the Guantanamo detention center, and his rendition and interrogation after the 9/11 attacks are a main focus of the "Study of the Central Intelligence Agency's Detention and Interrogation Program" issued by the Senate Select Committee on Intelligence in December 2012.

The limited information about Abu Zubaydah that Mr. Bonner seeks from DOD concerns the basis for his continuing captivity at Guantanamo. Both his past treatment and his continuing status as an uncharged Guantanamo detainee remain subjects of ongoing national and international reporting.<sup>1</sup> The specific records sought are needed to educate the public not only about Zubaydah specifically, but more generally to inform discussion about our government's response to the 9/11 attacks and its continued operation of the detention center at Guantanamo Bay. The information will enlighten an ongoing public debate about the policies that we should

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<sup>1</sup> See, e.g., Peter Bergen, *Exclusive: More drawings allege CIA's horrific treatment of Abu Zubaydah*, CNN (February 13, 2020), <https://www.cnn.com/2020/02/12/opinions/bergen-more-drawings-allege-cias-horrific-treatment-of-abu-zubaydah/index.html>; Sheren Khaleel, *Guantanamo parole board reviews case of 'forever prisoner' Abu Zubaydah*, Middle East Eye (February 4, 2020), <https://www.middleeasteye.net/news/guantanamo-parole-board-reviews-case-forever-prisoner-abu-zubaydah>; Greg Myre, *For Ex-FBI Interrogator Ali Soufan, Sept. 11 Still Frames His Life*, WAMU (September 11, 2020), <https://wamu.org/story/20/09/11/for-ex-fbi-interrogator-ali-soufan-9-11-still-frames-his-life/>.



pursue as a country in our continuing battle against foreign terrorism, and how terrorists should be brought to justice.<sup>2</sup>

Moreover, expedited processing is urgently needed so that the information is available in time to be included in the documentary to be released on the upcoming 20<sup>th</sup> anniversary of the 9/11 attacks, when public attention and debate will be uniquely focused on the continuing issues raised by our nation's response to them. In *Leadership Conference on Civil Rights v. Gonzales*, an organization disseminating voting rights information was held to be entitled to expedited processing of a request for information about Department of Justice monitoring of federal elections, because the information was needed to inform a campaign seeking reauthorization of the Voting Rights Act that was set to expire two years later. 404 F. Supp2d 246, 260 (D.D.C. 2005). The need for expedition is even more compelling here.

Mr. Bonner and his counsel certify that the information above is true and correct to the best of their knowledge, pursuant to 5 U.S.C. § 552(a)(6)(E)(vi).

Pursuant to the requirements of FOIA, we request a response to this appeal within twenty (20) working days.

Very truly yours,


A handwritten signature in black ink, appearing to read 'David A. Schulz', is written over a white rectangular background.

David A. Schulz

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<sup>2</sup> See, e.g., Daphne Eviatar, *On Guantanamo's 19th Anniversary, A Renewed Call to Close It*, Just Security (January 12, 2021) <https://www.justsecurity.org/74147/on-guantanamos-19th-anniversary-a-renewed-call-to-close-it/> (noting that then-Vice President Biden announced the Obama administration's intention to close Guantanamo in 2009, and encouraging him to follow through on that intention as President); Carol Rosenberg, *Pentagon Official Approves Guantánamo Trial of 3 Men for Indonesia Bombings*, *New York Times* (January 21, 2021), <https://www.nytimes.com/2021/01/21/us/politics/guantanamo-trial-indonesia-bombings.html> (reporting on the first new case set for trial at Guantanamo since 2014); *U.S. congressmen request Guantánamo prison camp remain open*, *OnCuba* (February 2, 2021), <https://oncubanews.com/en/cuba-usa/u-s-congressmen-request-guantanamo-prison-camp-remain-open/> (reporting on a letter sent from U.S. congressmen to incoming Defense Secretary Lloyd Austin asking him to reconsider the Biden Administration's stated intention to close the prison); Brian Bouffard and Aaron Shepard, *There's no justice in Guantanamo Bay. For America's sake, that must change.*, *Washington Post* (January 12, 2021), <https://www.washingtonpost.com/opinions/2021/01/12/theres-no-justice-guantanamo-bay-americas-sake-that-must-change/> (arguing that fair trials and fair treatment of detainees is no longer possible at Guantanamo).

# **EXHIBIT D**

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**Submission ID:** 189856

# Success!

**Your FOIA request has been created and is being sent to the U.S. Central Command.**

You'll hear back from the agency confirming receipt in the coming weeks using the contact information you provided. If you have questions about your request, feel free to reach out to the agency FOIA personnel using the information provided below.

### Contact the agency

Evlyn Hearne, FOIA Officer

(813) 529-6285

[centcom.macdill.centcom-hq.mbx.freedom-of-information-act@mail.mil](mailto:centcom.macdill.centcom-hq.mbx.freedom-of-information-act@mail.mil)

FOIA Requester Service Center

813-529-6285

Tonya Fuentes, FOIA Public Liaison

571-372-0462



[osd.mc-alex.ocmo.mbx.foia-liaison@mail.mil](mailto:osd.mc-alex.ocmo.mbx.foia-liaison@mail.mil)

CCJ6-RDF (FOIA/PA)

7115 South Boundary Boulevard

MacDill AFB, FL 33621-5101


[centcom.macdill.centcom-hq.mbx.freedom-of-information-act@mail.mil](mailto:centcom.macdill.centcom-hq.mbx.freedom-of-information-act@mail.mil)

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## Request summary

Request submitted on **January 26, 2021**.

The confirmation ID for your request is **189856**.

 The confirmation ID is only for identifying your request on FOIA.gov and acts as a receipt to show that you submitted a request using FOIA.gov. This number does not replace the information you'll receive from the agency to track your request. In case there is an issue submitting your request to the agency you selected, you can use this number to help.

## Contact information

### Name

David Schulz

### Mailing address

Yale Law School, P.O. Box 208215

127 Wall Street

New Haven, CT 06511

United States

### Phone number

917-733-9014

**Fax number**

203-432-3034

**Company/organization**

Media Freedom &amp; Information Access Clinic

**Email**

david.schulz@yale.edu

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**Your request**

We represent journalist Raymond Bonner, and make this request on his behalf. Mr. Bonner seeks: 1. The audio recording of the March 27, 2007 Combatant Status Review Tribunal for Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn) that includes, at a minimum, all sections of that proceeding made public in the written transcript available at:

[www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainee\\_Related/15-L-1645\\_CSRT%20Transcript%20ISN%2010016\\_27-mar-07.pdf](http://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainee_Related/15-L-1645_CSRT%20Transcript%20ISN%2010016_27-mar-07.pdf) 2.

Any video recording and any photographic images of the March 27, 2007 Combatant Status Review Tribunal for Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).

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**Fees****What type of requester are you?**

media

**Fee waiver**

yes

**Fee waiver justification**

Mr. Bonner requests a waiver of search and review fees because he is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Mr. Bonner is a Pulitzer Prize-winning investigative journalist and author with over 35 years of professional experience. Throughout his career, he has reported and written

for major publications, including The New York Times, The New Yorker, The Atlantic, The New York Review of Books, and The New York Times Book Review. He is currently a contributing writer for ProPublica, an independent, non-profit, online newsroom based in New York. He has written extensively about international security, the U.S. War on Terror, the treatment of terrorist suspects in the aftermath of 9/11, and U.S. detention practices at Guantanamo Bay, Cuba. ProPublica has published several of his articles regarding the detention of and legal proceedings involving Abu Zubaydah. He therefore meets the statutory definition of a “representative of the news media” as an individual who “gathers information of potential interest to a segment of the public, uses [his] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii). Mr. Bonner’s role as a contributing writer for ProPublica, combined with his previous record of publication, make it clear that he “can demonstrate a solid basis for expecting publication through” ProPublica. 5 U.S.C. § 552(a)(4)(A)(ii)(III). For these reasons, Mr. Bonner respectfully request that all fees related to the search, review, and duplication of the requested records be waived.

### **The amount of money you’re willing to pay in fees, if any**

If a fee waiver is denied, please contact us before incurring fees in excess of \$100.00

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## **Request expedited processing**

### **Expedited processing**

yes

### **Justification for expedited processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E), Mr. Bonner requests expedited processing for this request because of an urgent need to inform the public about a federal government activity. The treatment of detainees taken into American custody as part of the U.S War on Terror—in particular the fates of detainees who were captured in the aftermath of September 11 and remain in custody nearly two decades later—is a matter of ongoing and urgent public concern. The past treatment and current status of Abu Zubaydah remains a frequent subject of national and

international reporting. See, e.g., Peter Bergen, Exclusive: More drawings allege CIA's horrific treatment of Abu Zubaydah. CNN (February 13, 2020), <https://www.cnn.com/2020/02/12/opinions/bergen-more-drawings-allege-cias-horrific-treatment-of-abu-zubaydah/index.html>; Sheren Khaleel, Guantanamo parole board reviews case of 'forever prisoner' Abu Zubaydah, Middle East Eye (February 4, 2020), <https://www.middleeasteye.net/news/guantanamo-parole-board-reviews-case-forever-prisoner-abu-zubaydah>; Greg Myre, For Ex-FBI Interrogator Ali Soufan, Sept. 11 Still Frames His Life, WAMU (September 11, 2020), <https://wamu.org/story/20/09/11/for-ex-fbi-interrogator-ali-soufan-9-11-still-frames-his-life/>. Moreover, Mr. Bonner seeks this information for use in a documentary about Abu Zubaydah and his detention, the release of which will coincide with the 20th anniversary of the September 11 attacks this year. The records are needed as soon as possible for inclusion in the documentary. Mr. Bonner and his counsel certify that the information above is true and correct to the best of their knowledge, pursuant to 5 U.S.C. § 552(a)(6)(E)(vi).



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## CONTACT

Office of Information Policy (OIP)  
U.S. Department of Justice  
441 G St, NW, 6th Floor  
Washington, DC 20530  
E-mail: [National.FOIAPortal@usdoj.gov](mailto:National.FOIAPortal@usdoj.gov)

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