UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THE NEW YORK TIMES COMPANY, : CHARLIE SAVAGE, SCOTT SHANE, : AMERICAN CIVIL LIBERTIES UNION, :

FOUNDATION,

Plaintiffs-Appellants,

Docket Nos.

v.

13-422(L), 455(Con)

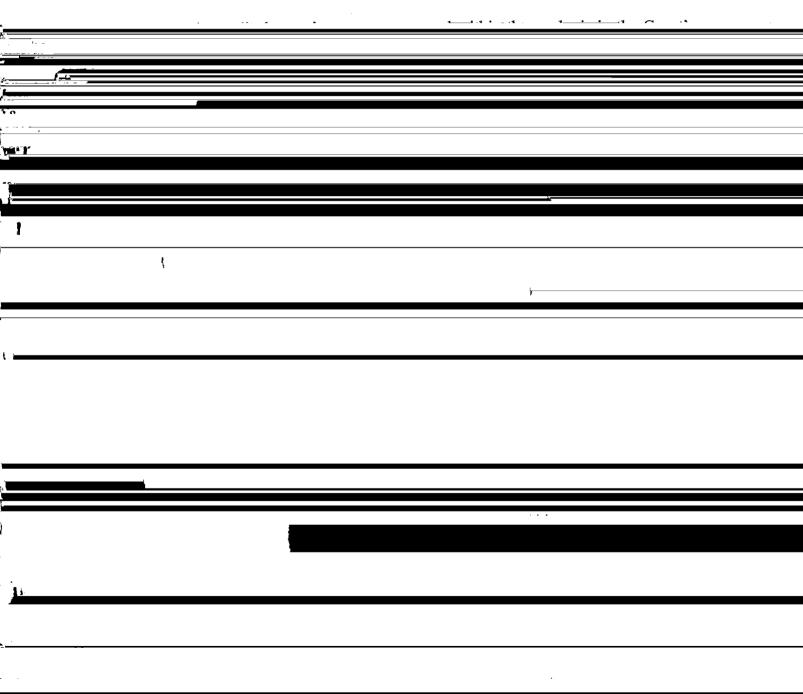
UNITED STATES DEPARTMENT OF

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Case: 13-422 Document: 217 Page: 2 06/05/2014 1241874 18

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[U] Defendants-appellees the Department of Justice (DOJ), the Department of Defense (DOD), and the Central Intelligence Agency (CIA), respectfully petition for rehearing of this Court's April 21, 2014 decision with respect to three distinct, limited categories of classified and privileged information.



	[U] The Court should (a) permit further redactions to the Court-redacted
	version of the OLC-DOD Memorandum to protect this information from
	compelled disclosure; (b) make modifications to its decision to correct certain
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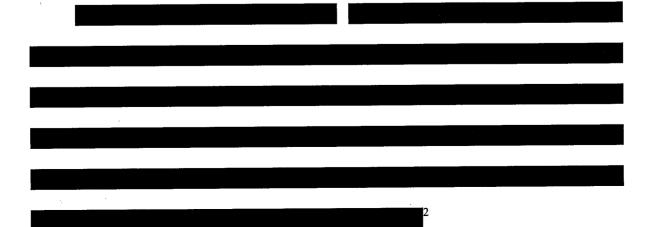
Case: 13-422 Document: 217 Page: 4 06/05/2014 1241874 18

TOP SECRET

Exemptions 1 and 5 by voluntary disclosure. Slip op. 31-32, 37-38. The panel decision makes clear, however, that certain information in the legal-reasoning

information that "the Covernment persuacively argues warrants continued

information that "the Government persuasively argues warrants continued secrecy." Slip op. 40.



	[U] Before issuing its decision, the Court provided drafts of the panel
	opinion and attachment to the government and requested a classification review.
	The government responded and also moved to stay release of portions of the
	Cover a conjugation and attachment Ga_the Court reducted version of the OLC-DOD
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	Memorandum) in its entirety, in order to preserve the government's ability to
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[U] The public version of the panel's April 21 decision contained certain redactions made at the request of the government, including to preserve its opportunities for further review. *See* slip op. 2 n.1. The Court indicated that, if its decision is not altered in the course of any further review, the opinion will be filed

subject of this petition for rehearing. The first version is intended as a permanent ex parte, in camera filing that highlights the redactions so the Court can read the

redaction. The second version is submitted ex parte and in camera at this point in time but whites out all the redactions proposed in the petition for rehearing as well as the redactions made by the Court so that the text cannot be read; this version could be released publicly by the Court if it agrees with the redactions requested in this petition. This second version should not be publicly released before the Court rules on this petition because, if the Court denies relief, the proposed redactions

Case: 13-422 Document: 217 Page: 8 06/05/2014 1241874 18

TOP SECRET

Compelled disclosure of that information, which is classified, protected by statute, and/or privileged, reasonably could be expected to cause exceptionally grave damage to national security and to significantly undermine the government's ability to engage in confidential deliberations and to seek legal advice.

1. The Court's decision explicitly upholds the withholding of information about ______, which is classified at the highest levels. See slip op. 40. The Court explains that "[w]e will

Case: 13-422 Document: 217 Page: 9 06/05/2014 1241874 TOP SECRET The Director of the CIA's National Case: 13-422 Document: 217 Page: 10 06/05/2014 1241874 18

TOP SECRET

III ? The nanel's decision reverses the district court's holding that the

OLC-DOD Memorandum may be withheld in full under Exemption 5. Rather than following the usual practice of remanding to the district court for admission of the Memorandum into the record and to permit the government to propose specific line-by-line redactions and to submit declarations supporting them, however, this Court took the unusual step of attaching the OLC-DOD Memorandum to its decision and making its own redactions. But the Court's legal rulings—that the government has officially disclosed that the Agency had a role in the operation that killed Anwar al-Awlaki, and that the government waived privilege for legal analysis in the OLC-DOD Memorandum—do not encompass other, discrete information in that Memorandum that remains classified and privileged and thus

* the citation to and description of an OLC memorandum cited at pages;
* a citation to a memorandum to OLC at page ; and
* the citation and description of a memorandum at page .
* the phrase immediately following "airplane attack, and" through the end of the sentence at page 32, lines 10-11 (which discloses information from classified sources and methods);
* the phrase ;
* the phrase ;
* the phrase .
* a classified code word at the end of The Court redacted these classification markings from the rest of the document, but appears to have inadvertently left this partial classification marking unredacted.
* the citation at page 25 n.31 to information regarding certain operations.
* the citation to and description of an OLC memorandum at pages 16 nn. 14 & 16.
* the carryover paragraph at pages 31-32. The contents of this paragraph, which cites to and discusses privileged. For the same reasons, redactions must be made at in the carryover paragraph at pages 38-39; and page 41 in three places (one of which, in context, is also classified;
[U] The Court's decision does not address these discrete items of
information or the exemptions that apply to them. The identified information
should be redacted from the version of the OLC-DOD Memorandum that is

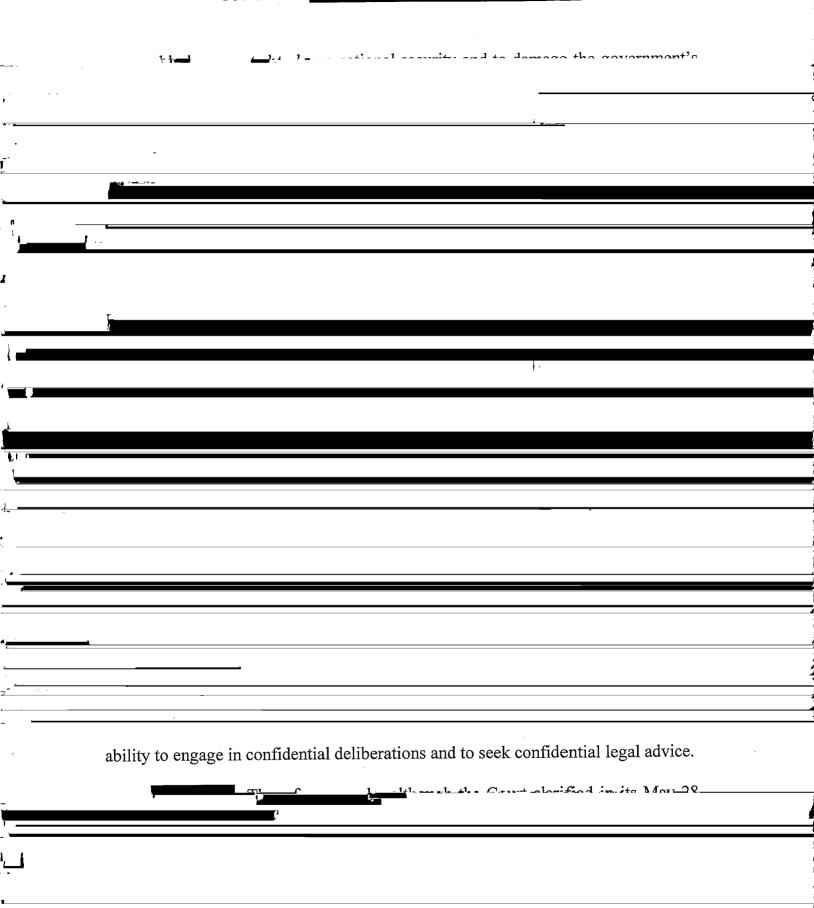
Case: 13-422 Document: 217 Page: 12 06/05/2014 1241874 18

TOP SECRET

publicly released. At the very least, this highly sensitive information should not be exemption claims to the district court. Remand to the district court would therefore he appropriate to address these issues.

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	refuse to confirm or deny the existence of certain responsive docum	ents, or to			

Case: 13-422 Document: 217 Page: 14 06/05/2014 1241874 18



		None of the p	uhlic statemer	nts referenced	in the Court	's decision	
	•	None of the p	done statemen	its referenced	m the court	5 decision .	
	concerns	. It thus	appears that the	he proposed di	sclosure of th	ese listings	
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Case: 13-422 Document: 217 Page: 16 06/05/2014 1241874 18

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Case: 13-422 Document: 217 Page: 17 06/05/2014 1241874 18

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Attorneys for Defendants-Appellees

CERTIFICATE OF SERVICE

I hereby certify that, on June 5, 2014, the Petition for Rehearing And, In the

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Court Security Officer. A redacted version of the Petition for Rehearing was filed with the Court and served on opposing counsel through the CM/ECF system.

/s/ Sharon Swingle SHARON SWINGLE Counsel for Defendants-Appellees