

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 20th 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.¹ 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

¹ 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.²

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 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. 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 that reads 'David A. Schulz'. The signature is written in a cursive style and is contained within a rectangular box.

David A. Schulz

² 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).