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Yale Law School

FREEDOM OF INFORMATION ACT APPEAL

February 9, 2021

VIA OIP FOIA STAR Portal

Bobak Talebian, Director
Office of Information Policy
United States Department of Justice
441 G Street, N.W., 6th Floor
Washington, D.C. 20530

Re: Appeal of FOIA Request 1482931-000 (Abu Zubaydah)

Dear Mr. Talebian:

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 Federal Bureau of Investigation (FBI) of Mr. Bonner's request for expedited processing of his December 4, 2020 FOIA request, No. 1482931-000. Mr. Bonner urgently needs the records requested 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 December 4, 2020 Mr. Bonner's FOIA request was submitted to FBI via its eFOIPA portal and First-Class Mail. Mr. Bonner made just one request:

1. All notes prepared by FBI agent Ali Soufan, in whatever form and wherever located, that concern the interrogation or treatment of Zubaydah at any point after March 28, 2002

By letter dated December 29, 2020, Michael G. Seidel, Section Chief, Record/Information Dissemination Section, denied Mr. Bonner's request for "failure to provide enough information concerning the statutory requirements for expedition." This denial fails to appreciate the import of facts provided by Mr. Bonner concerning his time-sensitive need for this information, or to fully appreciate that disclosing these records will indeed allow a person "primarily engaged in disseminating information" to meaningfully inform about actual and



alleged federal government activity. 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 notes prepared by Agent Ali Soufan about the interrogation of Abu Zubaydah that Mr. Bonner seeks from FBI concern the basis for Zubaydah’s 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 pursue as a country in our continuing battle against foreign terrorism, and how terrorists should be brought to justice.²

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 Khalel, *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/>.

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),



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, which appears to read "David A. Schulz", is enclosed within a thin black rectangular border.

David A. Schulz

<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).