No. 14-658

# In the Supreme Court of the United States

CENTER FOR CONSTITUTIONAL RIGHTS, PETITIONER

*v.*

CENTRAL INTELLIGENCE AGENCY, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

**BRIEF FOR THE RESPONDENTS IN OPPOSITION**

DONALD B. VERRILLI, JR.
*Solicitor General*
*Counsel of Record*
JOYCE R. BRANDA
*Acting Assistant Attorney General*
TARA M. LA MORTE
EMILY E. DAUGHTRY
BENJAMIN H. TORRANCE
*Attorneys*

*Department of Justice*
*Washington, D.C. 20530-0001*
*SupremeCtBriefs@usdoj.gov*
*(202) 514-2217*

## QUESTION PRESENTED

Whether certain classified photographs and videos depicting a detainee held in United States custody at the military detention facility at Guantánamo Bay, Cuba, are exempt from mandatory disclosure under Exemption 1 of the Freedom of Information Act, 5 U.S.C. 552(b)(1).

## TABLE OF CONTENTS



## TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page



Treaty, statutes and regulations:

# In the Supreme Court of the United States

No. 14-658

CENTER FOR CONSTITUTIONAL RIGHTS, PETITIONER

*v.*

CENTRAL INTELLIGENCE AGENCY, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

**BRIEF FOR THE RESPONDENTS IN OPPOSITION**

## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-19) is reported at 765 F.3d 161. The opinion of the district court (Pet. App. 20-53) is reported at 968 F. Supp. 2d 623.

## JURISDICTION

The judgment of the court of appeals was entered on September 2, 2014. The petition for a writ of certiorari was filed on December 1, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. The Freedom of Information Act (FOIA), 5 U.S.C. 552, generally requires federal agencies to make records available to members of the public upon request unless the records fall within an enumerated exemption. See 5 U.S.C. 552(a)(3)(A). As particularly

relevant here, FOIA Exemption 1 shields from mandatory disclosure those "matters that are * * * (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. 552(b)(1).

Executive Order 13,526 is the currently applicable Order governing the classification of national-security information. See 75 Fed. Reg. 707 (Jan. 5, 2010) (50 U.S.C. 3161 note (Supp. 2013)). Under that Executive Order, a person designated by the President or certain other officials as an "original classification authority" may classify information that "is owned by, produced by or for, or under the control of the United States government" if he "determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security" and "is able to identify or describe the damage." Exec. Order No. 13,526 §§ 1.1(a)(1), (2) and (4), 6.1(gg). "National security" encompasses "the national defense or foreign relations of the United States," including "defense against transnational terrorism." *Id.* § 1.1(a)(4), 6.1(cc). The information also must "pertain[]" to one or more classification categories, which include "military plans, weapons systems, or operations"; "intelligence activities (including covert action)"; "intelligence sources or methods, or cryptology"; and "foreign relations or foreign activities of the United States, including confidential sources." *Id.* §§ 1.1(a)(3), 1.4(a), (c) and (d). Depending on the degree of "damage to the national security" that "the unauthorized disclosure of the information reasonably could be expected to result in," such information is

then classified as "Top Secret," "Secret," or "Confidential." *Id.* §§ 1.1(a)(4), 1.2(a)(1), (2) and (3).

If a person believes that an agency has improperly withheld a record under a FOIA exemption, she may bring a civil action against the agency in a federal district court. 5 U.S.C. 552(a)(4)(B). The court "has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." *Ibid.*

2. a. Petitioner submitted a FOIA request seeking certain photographs, videos, and other records relating to the detention of Mohammed al-Qahtani, a Saudi national who has been detained by the United States at the military detention facility at Guantánamo Bay, Cuba, since 2002. Pet. App. 22-23, 27. al-Qahtani "is widely believed to be the intended 20th hijacker during the terrorist attacks of September 11, 2001." *Id.* at 22-23; see *id.* at 4-5 & n.2. Petitioner contended that the records warranted public disclosure given al-Qahtani's connection to those attacks, the U.S. government's previous disclosures about his confinement and cooperation, and a statement by the Convening Authority for Military Commissions in a 2009 newspaper article that al-Qahtani had been subject to torture while in U.S. custody. *Id.* at 4-6, 22-26.

Before the government had finished processing petitioner's FOIA request, petitioner filed suit under FOIA in the United States District Court for the Southern District of New York against the Department of Defense (DoD), the Department of Justice (DOJ), the Central Intelligence Agency (CIA), and other federal agencies seeking an order requiring the agencies to release the records. See Pet. App. 6, 27.

DoD and DOJ then identified 56 videos and six photographs of al-Qahtani responsive to petitioner's request. See *id.* at 6-7. Fifty-three of the videos depict al-Qahtani in his cell, either alone or interacting with DoD personnel, between August 2002 and November 2002. *Id.* at 6-7, 28-29. One video contains two segments depicting separate incidents in which a team of DoD personnel forcibly removed al-Qahtani from his cell after he had refused to emerge voluntarily. *Id.* at 7, 30-31. The final two videos depict intelligence debriefings in July 2002 and April 2004. *Id.* at 7, 31. Of the six photographs, four are forward-facing mug shots of al-Qahtani and two are profile shots. *Id.* at 7, 32.

All of these images (both videos and photographs) are classified under Executive Order 13,526 at the Secret level, which means that an original classification authority determined that their "unauthorized disclosure * * * reasonably could be expected to cause serious damage to the national security." Exec. Order No. 13,526 § 1.2(a)(2). The agencies accordingly invoked FOIA Exemption 1 as a basis to withhold all of the images. Pet. App. 7. They also invoked FOIA Exemptions 3, 6, 7(A), and 7(C) as bases to withhold some or all of the images. See 5 U.S.C. 552(b)(3), (6), (7)(A) and (C). Pet. App. 7 n.6.[1]

---

[1] The CIA responded to petitioner's FOIA request by explaining that it could neither confirm nor deny whether it had any responsive records because the fact of the existence or non-existence of such records was currently and properly classified and otherwise exempted from disclosure by statute. Pet. App. 32; see *Wolf* v. *CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007) ("[T]he CIA may refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable under an FOIA exception.") (internal quotation marks omitted). Petitioner did not

b. The parties cross-moved for summary judgment. Pet. App. 21. The government filed several declarations in the district court detailing the searches that the agencies had conducted, identifying the responsive records that they had found, and describing the government's bases for withholding those records. *Id.* at 28. Those submissions included declarations setting forth independent explanations for the determination that the responsive images are properly classified under Executive Order 13,526.

One declaration was signed by Major General Karl R. Horst, who was then Chief of Staff of the United States Central Command. See Pet. App. 8-9, 39-40; C.A. App. 1295-1303. General Horst explained in detail that the images of al-Qahtani could reasonably be expected to cause serious harm to national security by "increas[ing] anti-American sentiment, thereby placing the lives of U.S., [International Services Assistance Forces (ISAF)], and Afghanistan service members at risk," "adversely impact[ing] the political, military and civil efforts of the United States," "providing a recruiting tool for insurgent and violent extremist groups," and "destabilizing partner nations." C.A. App. 1301, 1303.[2] He cited specific examples of previous instances in which enemy forces had used videos and photographs taken out of context to incite violence and recruit members. See Pet. App. 40; C.A. App. 1300-1301. "The Taliban and associated

---

challenge the CIA's response in the court of appeals (see Pet. App. 6 n.5) and does not challenge that response in its certiorari petition.

[2] ISAF was a NATO-led security mission in Afghanistan established by the United Nations Security Council in December 2001. S.C. Res. 1386, U.N. Doc. S/RES/1386 (Dec. 20, 2001).

enemy forces," he explained, "have used previously published photographs of U.S. forces interacting with detainees to incite violence, promulgate extremists' recruiting, and garner support for attacks against the U.S. forces and ISAF." *Ibid.* General Horst based his conclusions on his 34 years of military experience, his "intimate familiarity [with] the current fragile situations in Pakistan, Afghanistan and other locations" in the Middle East and Central Asia, and his "extensive personal knowledge" of the "enemies who threaten United States Forces, International Security Assistance Forces, and Afghanistan Forces and interests," as well as the "assessments of [his] subordinate commanders." *Id.* at 1296-1297, 1303.

The government submitted additional declarations by other military officials that provided independent justifications for the classification of the images (in addition to declarations relating to other aspects of the case). They explained that public disclosure of the images could compromise relationships with cooperating detainees, jeopardize foreign relations, and enable detainees to send coded messages to confederates. See Pet. App. 41-44; C.A. App. 1274-1289, 1304-1312. The government also submitted a classified declaration containing further explanation of the classification decision. The district court reviewed that declaration *in camera*. See Pet. App. 18 n.16.

c. The district court granted summary judgment to the government. Pet. App. 20-53. The court held that the government had properly withheld all of the images under FOIA Exemption 1 and therefore did not address whether other FOIA exemptions applied. See *id.* at 44-49. The court found it "both logical and plausible that extremists would utilize images of al-

Qahtani * * * to incite anti-American sentiment, to raise funds, and/or to recruit other loyalists, as has occurred in the past," particularly given the fact that al-Qahtani is "a high-profile detainee, the treatment of whom the Convening Authority for Military Commissions * * * determined met the legal definition of torture." *Id.* at 44-45 (internal quotation marks omitted). The court also found it "entirely plausible that disclosure of the [images] could compromise the Government's cooperative relationships with other Guantánamo detainees." *Id.* at 45.

The district court rejected petitioner's argument that release of the images posed no national-security threat because the government had previously released photographs of other detainees. See Pet. App. 46-47. The court explained that, with "limited exceptions," the government had "not disclosed any images in which a specific detainee is identifiable," and that "the Government's release of *written* information concerning al-Qahtani does not diminish its explanations for withholding *images* of al-Qahtani." *Ibid.* The court acknowledged that the result might be different if the government had "'officially disclosed the specific information the requester seeks,'" but it found that principle inapplicable because the images at issue "were not previously disclosed." *Id.* at 47-48 (quoting *Halpern* v. *FBI*, 181 F.3d 279, 294 (2d Cir. 1999)).

3. The court of appeals affirmed, concluding that "the government has met its burden of establishing that the[] images are exempt from disclosure pursuant to Exemption 1." Pet. App. 3; see *id.* at 1-19.

The court of appeals began by stating that the government bears the burden of demonstrating the ap-

plicability of a FOIA exemption and that "all doubts" as to its applicability "must be resolved in favor of disclosure." Pet. App. 11 (internal quotation marks omitted). The court of appeals further explained, however, that "when the claimed exemption implicates national security, 'an agency's justification for invoking a FOIA exemption is sufficient if it appears logical or plausible.'" *Id.* at 12 (quoting *Wilner* v. *National Sec. Agency*, 592 F.3d 60, 73 (2d Cir. 2009), cert. denied, 131 S. Ct. 387 (2010)). Applying those principles, the court concluded that General Horst's declaration, considered in the context of the entire record, established the applicability of Exemption 1. See Pet. App. 14-19. The court agreed with the government's contention that "release of the mug-shots and videos of al-Qahtani could logically and plausibly serve as propaganda for extremists and incite anti-American violence, which, in turn, could reasonably be expected to result in damage to national security." *Id.* at 13.

The court of appeals cautioned, however, that its holding did not mean that the justification for withholding the images described in General Horst's declaration would suffice for images of any Guantánamo detainee. See Pet. App. 14-15, 18. The court explained that "the particular facts and circumstances of this case" made "clear that al-Qahtani is not just any detainee." *Id.* at 15, 18. In addition to "his notable profile" as the "20th Hijacker," the court said, al-Qahtani "is unusual because a significant government official has publicly opined that the interrogation methods used on him met the legal definition of torture." *Id.* at 15-16.

The court of appeals found unpersuasive petitioner's argument that the government's prior written

disclosures about al-Qahtani undercut its justification for withholding the images under Exemption 1. "On the contrary," the court stated, "inasmuch as these disclosures have heightened al-Qahtani's prominence, here and abroad, they increase the likelihood that official release of images of al-Qahtani—even images that do not depict abuse or mistreatment—could be exploited by extremist groups as tools to recruit or to incite violence." Pet. App. 16-17. And it found "that *images* of al-Qahtani, alone and interacting with military personnel, particularly when released directly by the FBI or DoD, may prove more effective as propaganda than previously released written records." *Id.* at 17.

The court of appeals did not address the government's other bases for withholding the images under Exemption 1 or any of the other exemptions that the government had invoked in the district court. See Pet. App. 7 nn.6-7.

**ARGUMENT**

Petitioner contends (Pet. 19-32) that the court of appeals erred in holding that FOIA Exemption 1 applies to the images of al-Qahtani that petitioner seeks. That contention lacks merit. The decision below is correct, and petitioner does not argue that the court of appeals' case-specific application of FOIA to the particular records at issue here conflicts with any decision of this Court or another court of appeals. Further review is therefore not warranted.

1. The court of appeals correctly held that FOIA Exemption 1 applies to the images sought by petitioner, each of which is properly classified under Executive Order 13,526 at the Secret level.

a. When the government asserts that FOIA Exemption 1 applies to a record, a reviewing court must determine (i) whether the record has been classified and (ii) whether that classification is proper. See 5 U.S.C. 552(b)(1). Because it is undisputed that all of the images at issue here are classified, the only question is whether that classification is proper.

As petitioner acknowledges, in evaluating whether classification is proper, "the courts of appeals have uniformly held that the Executive's assertion of harm to national security need only be 'logical' or 'plausible.'" Pet. 19 (quoting *Wilner* v. *National Sec. Agency*, 592 F.3d 60, 73 (2d Cir. 2009), cert. denied, 131 S. Ct. 387 (2010)); see *Judicial Watch, Inc.* v. *United States Dep't of Def.*, 715 F.3d 937, 940-941 (D.C. Cir. 2013) (per curiam), cert. denied, 134 S. Ct. 900 (2014); see also *McDonnell* v. *United States*, 4 F.3d 1227, 1243 (3d Cir. 1993); *Maynard* v. *CIA*, 986 F.2d 547, 555-556 (1st Cir. 1993); *Raven* v. *Panama Canal Co.*, 583 F.2d 169, 171-172 (5th Cir. 1978), cert. denied, 440 U.S. 980 (1979); cf. *Hunt* v. *CIA*, 981 F.2d 1116, 1119 (9th Cir. 1992) (applying "logical[]" standard in Exemption 3 case). They have likewise held that the government's predictive judgments about national-security harms should be given "substantial weight" in the analysis. See *Judicial Watch*, 715 F.3d at 940-941; *Wilner*, 592 F.3d at 68; *Minier* v. *CIA*, 88 F.3d 796, 800 (9th Cir. 1996); *Jones* v. *FBI*, 41 F.3d 238, 244 (6th Cir. 1994); *McDonnell*, 4 F.3d at 1243; *Bowers* v. *United States Dep't of Justice*, 930 F.2d 350, 357-358 (4th Cir.), cert. denied, 502 U.S. 911 (1991); *Miller* v. *United States Dep't of State*, 779 F.2d 1378, 1387 (8th Cir. 1985).

Those principles follow both from the text of Executive Order 13,526—which authorizes the classification of information so long as its disclosure "reasonably could be expected" to harm the national security, Exec. Order No. 13,526 § 1.1(a)(4)—and from this Court's longstanding view that the "[p]redictive judgment" inherent in assessing risks to national security "must be made by those with the necessary expertise in protecting classified information." *Department of the Navy* v. *Egan*, 484 U.S. 518, 529 (1988). As this Court has repeatedly instructed, "[f]or 'reasons . . . too obvious to call for enlarged discussion,' * * * the protection of classified information must be committed to the broad discretion of the agency responsible." *Ibid.* (quoting *CIA* v. *Sims*, 471 U.S. 159, 170 (1985)); see *Sims*, 471 U.S. at 180-181; *Gilligan* v. *Morgan*, 413 U.S. 1, 10 (1973); *Goldman* v. *Weinberger*, 475 U.S. 503, 507-508 (1986).

A deferential standard of review of the Executive Branch's national-security determinations also accords with the legislative history of FOIA Exemption 1, which was enacted in its current form in 1974. See Act of Nov. 21, 1974, Pub. L. No. 93-502, § 2(a), 88 Stat. 1563.[3] In providing for courts to review the basis for the Executive Branch's classification decisions, Congress expected courts to give "substantial weight" to officials' affidavits providing "details of the classified status of the disputed record[s]," in light of the fact that "the Executive departments responsible for

[3] As originally enacted, Exemption 1 covered all "matters that are * * * specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy." Act of July 4, 1966, Pub. L. No. 89-487, 80 Stat. 251 (5 U.S.C. 552(b)(1) (1970)).

national defense and foreign policy matters have unique insights into what adverse [e]ffects might occur as a result of public disclosure of a particular classified record." H.R. Rep. No. 1380, 93d Cong., 2d Sess. 12 (1974).

b. The court of appeals correctly applied the well-settled deferential standard of review for Exemption 1 claims to the particular records at issue in this case. Like the district court, the court of appeals found logical and plausible General Horst's explanation of the harm to national security that could reasonably be expected to result from the release of the al-Qahtani images. See Pet. App. 13-18. That was the only reasonable conclusion in light of General Horst's undisputed expertise and experience in assessing national-security threats and his extensive discussion of the threat that public release of the images would pose, including his identification of previous instances in which the release of images provoked violence against American forces and allies. See, *e.g.*, C.A. App. 1300-1301 ("The Taliban and associated enemy forces have used previously published photographs of U.S. forces interacting with detainees to incite violence, promulgate extremists' recruiting, and garner support for attacks against the U.S. forces and ISAF."). General Horst's predictive judgment was fortified by al-Qahtani's uniquely prominent status. See Pet. App. 15-16 & n.12. Thus, as the court of appeals concluded, "the record of this case establishes, at a minimum, a reasonable possibility that the government's release of the[] images of al-Qahtani, in the context of what is already publicly known about him, would be singularly susceptible to use by extremist groups to incite anti-American hostility," which "could reasonably be ex-

pected to damage the national security of the United States." *Id.* at 18.

Petitioner argues (Pet. 22-25) that the court of appeals erred by citing "al-Qahtani's status as the alleged 20th hijacker and as a torture victim" in confirming that the justification set out in General Horst's affidavit was logical and plausible. Pet. 24. Petitioner characterizes that information as "unfounded speculation" based on "facts absent from the record." Pet. 22, 24 (internal quotation marks omitted).

That contention is incorrect. The court of appeals based its conclusion on record evidence. Indeed, the court relied expressly not only on General Horst's declaration, but also on the public statements about al-Qahtani that petitioner itself had cited. See Pet. App. 15-17 & nn.12-14. That was entirely proper. When a reviewing court evaluates whether an asserted national-security justification for withholding a record under Exemption 1 is logical and plausible, it naturally considers the asserted justification in light of any other relevant information in the record. See *Gardels* v. *CIA*, 689 F.2d 1100, 1105 (D.C. Cir. 1982) ("[T]he issue is whether on the whole record the Agency's judgment objectively survives the test of reasonableness, good faith, specificity, and plausibility in this field of foreign intelligence in which the [Agency] is expert and given by Congress a special role."). As the court of appeals held, it was not required to "view the Horst Declaration in a vacuum," but rather could "consider the record as a whole in determining whether the justifications set forth in the declaration are logical and plausible *in this case*." Pet. App. 15. al-Qahtani's unique status and circumstances confirm

that the threats identified by General Horst are logical and plausible for the images at issue here, regardless of whether the justification he asserted would alone suffice for images of other detainees.

Petitioner also asserts (Pet. 23) that the national-security harms identified in General Horst's affidavit could "apply to *any* image of *any* detainee in U.S. custody," and that therefore it was improper for the court of appeals to evaluate the plausibility of General Horst's analysis only in light of the specific circumstances surrounding al-Qahtani. As an initial matter, General Horst's declaration makes clear that he reviewed and considered the specific images at issue in this case, and his assessment of the potential for harm to national security was tied to those records. But in any event, petitioner cites no decision of any court supporting his evident view that a reviewing court, when presented with a national-security justification that could apply to a broader set of records, may not cabin its analysis to only those records at issue in the case. Indeed, that the court of appeals limited its holding here "to the particular facts and circumstances of this case," Pet. App. 18, without deciding whether the national-security threats identified by General Horst would be logical and plausible with respect to images of any Guantánamo detainee, accords with the "cardinal principle of judicial restraint" that "if it is not necessary to decide more, it is necessary not to decide more.'" *PDK Labs., Inc.* v. *Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in judgment); see Pet. App. 18 ("We do not now hold that every image of a specifically identifiable detainee is exempt from disclosure pursuant to FOIA, nor do we hold that

the government is entitled to withhold any documents that may reasonably [be expected to] incite anti-American sentiment.").

Petitioner contends (Pet. 25-26) that the court of appeals erred by according "absolutely no weight" to record evidence showing that DoD had released images of some Guantánamo detainees and that media outlets had published photographs of every Guantánamo detainee. That contention is also incorrect. The court of appeals directly addressed those disclosures but concluded that they did not diminish the threat that would be posed by the release of images of al-Qahtani. See Pet. App. 17 n.15. Petitioner's fact-bound objection to those determinations does not demonstrate that the court of appeals failed to consider that evidence in light of the applicable standard of review.

Finally, petitioner argues (Pet. 26-32) that the court of appeals erroneously invoked what petitioner calls the "official acknowledgment doctrine," whereby, in certain circumstances, the government's official public acknowledgment of information will bar the government from invoking a FOIA exemption with respect to a record pertaining to that information. See Pet. 26 (citing *Wolf* v. *CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007)). But the court of appeals never even mentioned, much less applied, that doctrine. Rather, it simply found that the prior disclosures of information about al-Qahtani or detainees generally did not render illogical or implausible General Horst's predictive judgment of national-security harm. Petitioner's claim that the decision below "treat[ed] the official acknowledgment doctrine as a rule prohibiting courts from considering any evidence of prior disclosures

that were not identical to the records sought or were not subject to an official release" (Pet. 31-32) thus misconceives the court of appeals' holding and analysis.

c. In the court of appeals, the government asserted additional justifications, supported by detailed declarations from officials with relevant expertise, for invoking Exemption 1 to withhold the images of al-Qahtani. See pp. 6, 9, *supra*; Pet. App. 44-47; Gov't C.A. Br. 34-47. The court of appeals did not reach those justifications because it found General Horst's explanation sufficient. See Pet. App. 13 n.10. But if this Court were to grant review, the government would assert those additional justifications as alternative grounds to affirm the judgment below. Petitioner makes no argument in its certiorari petition that those justifications do not supply sufficient grounds to classify the images of al-Qahtani.[4]

2. Petitioner does not argue that the decision below conflicts with a decision of any other court of appeals with respect to any legal principle of general applicability. Nor does petitioner even argue that the court of appeals' application of settled standards of review to the facts here is in tension with a decision of another circuit. Accordingly, the factbound decision below does not merit further review.

Petitioner nevertheless contends (Pet. 15-22), citing law-review articles, that this Court's review is warranted because the Executive Branch has classi-

---

[4] In addition, were review granted, the government would renew its argument that if the Court were to hold that Exemption 1 does not apply, it should order a remand to the district court for evaluation in the first instance of the government's assertion of other FOIA exemptions. See Gov't C.A. Br. 48-51.

fied too many records and the courts of appeals have afforded too much deference to the Executive Branch's classification decisions. For the reasons discussed above, the decision below properly applied Exemption 1 to the records at issue here. This case is therefore not a suitable vehicle to address any broader concerns about Executive Branch classification decisions. That is particularly clear given that petitioner does not propose any alternative formulation for the standard of review that courts of appeals have uniformly applied to evaluate withholding decisions under Exemption 1.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
*Solicitor General*
JOYCE R. BRANDA
*Acting Assistant Attorney General*
TARA M. LA MORTE
EMILY E. DAUGHTRY
BENJAMIN H. TORRANCE
*Attorneys*

FEBRUARY 2015