

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 FIRST AMENDMENT COALITION,

No. C 12-1013 CW

5                                    Plaintiff,

ORDER SETTING A  
FURTHER SCHEDULE

6                                    v.

7 U.S. DEPARTMENT OF JUSTICE,

8                                    Defendant.

9 \_\_\_\_\_/

10                                   In this case, Plaintiff First Amendment Coalition (FAC)  
11 challenges Defendant United States Department of Justice (DOJ)'s  
12 denial of its Freedom of Information Act (FOIA) request for a copy  
13 of a purported DOJ legal memorandum providing a legal analysis and  
14 justification for the United States government's targeted killing  
15 of Anwar al-Aulaqi. In denying of Plaintiff's FOIA request, DOJ  
16 issued a so-called "Glomar response" in which it refused to  
17 confirm or deny the existence of any such memorandum.

18                                   The parties have fully briefed cross-motions for summary  
19 judgment addressing whether DOJ properly issued a Glomar response  
20 to FAC's FOIA request and whether it had waived its ability to  
21 issue such a response. In its briefing, DOJ argued among other  
22 things that the United States government had never officially  
23 taken responsibility for the killing of al-Aulaqi and that, in  
24 order to confirm or deny the existence of documents responsive to  
25 FAC's request, the government would have to confirm or deny that  
26 it had killed al-Aulaqi.

27                                   On May 17, 2013, Plaintiff First Amendment Coalition (FAC)  
28 filed a motion for leave to submit additional evidence "to the

1 Court to assist its consideration of whether the Government has  
2 waived its ability to assert a Glomar response to FAC's Freedom of  
3 Information Act request." Docket No. 58. FAC and Defendant  
4 United States Department of Justice (DOJ) also filed a stipulation  
5 agreeing that FAC may file the additional evidence. Docket No.  
6 57.

7 Subsequently, on May 22, 2013, DOJ withdrew its motion for  
8 summary judgment. Docket No. 59. In its notice of withdrawal,  
9 DOJ stated that, on that day, "at the direction of the President,  
10 the Attorney General officially confirmed that the United States  
11 Government targeted Anwar al-Aulaqi and conducted an operation  
12 that resulted in his death," and thus no longer sought to keep  
13 that fact classified. Id. at 1-2. DOJ suggests that it be  
14 permitted thirty days to issue a modified response to FAC's FOIA  
15 request and that, within fourteen days thereafter, the parties  
16 submit a joint status report addressing whether a dispute remains  
17 and, if one does, proposing a briefing schedule. Id. at 2. As of  
18 the date of this Order, FAC has not opposed DOJ's proposed  
19 schedule.

20 In light of DOJ's abandonment of its Glomar response, it  
21 appears that additional evidence on the issue of waiver of that  
22 response need not be submitted at this time. Accordingly, the  
23 Court DENIES FAC's motion for leave to submit additional evidence  
24 and DECLINES the parties' stipulation to submit that evidence  
25 (Docket Nos. 57 and 58).<sup>1</sup>

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27 <sup>1</sup> This denial is without prejudice to either party offering  
28 this evidence at a later time, should they believe it to be  
relevant to another issue.

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In addition, the Court sets the following schedule. DOJ shall provide a modified response to Plaintiff's FOIA request by Friday, June 21, 2013. Within two weeks thereafter, the parties shall meet and confer to determine whether there are any remaining disputes regarding the modified response that will require judicial resolution. By Friday, July 5, 2013, the parties shall file a joint status report notifying the Court whether such a dispute remains and, if required, proposing a schedule for further briefing.

IT IS SO ORDERED.

Dated: 6/3/2013

  
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CLAUDIA WILKEN  
United States District Judge