

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

KNIGHT FIRST AMENDMENT  
INSTITUTE AT COLUMBIA  
UNIVERSITY,

COMMITTEE TO PROTECT  
JOURNALISTS,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et*  
*al.*,

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO  
THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Points and Authorities, Declaration of Alexandra P. Swain, and Statement of Material Facts, upon all prior pleadings and proceedings herein, the undersigned, attorneys for Committee to Protect Journalists ("CPJ"), hereby moves this Court for an order granting Plaintiff CPJ's motion for summary judgment, denying the motion for summary judgment made by Defendants Central Intelligence Agency ("CIA"), Federal Bureau of Investigation ("FBI"), National Security Agency ("NSA"), and the Office of the Director of National Intelligence ("ODNI"), and for such other and further relief as the Court may deem just and proper on the grounds that there is no genuine issue of disputed material

fact and that it is entitled to judgment as a matter of law. The reasons supporting this motion are set forth in the concurrently filed memorandum.

Dated: New York, NY  
September 26, 2019

Respectfully submitted,

/s/ Timothy K. Beeken

Timothy K. Beeken (NY0083)  
Jeremy Feigelson (admitted *pro hac vice*)  
Alexandra P. Swain (admitted *pro hac vice*)  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, NY 10022  
(212) 909-6000  
tkbeeken@debevoise.com  
jfeigelson@debevoise.com  
apswain@debevoise.com

*Counsel for Plaintiff Committee to Protect  
Journalists*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

KNIGHT FIRST AMENDMENT  
INSTITUTE AT COLUMBIA  
UNIVERSITY,  
COMMITTEE TO PROTECT  
JOURNALISTS,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et*  
*al.*,

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

**ORAL ARGUMENT REQUESTED**

**MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFF COMMITTEE TO  
PROTECT JOURNALISTS IN SUPPORT OF ITS MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

Timothy K. Beeken  
(tkbeeken@debevoise.com)  
Jeremy Feigelson (admitted *pro hac vice*)  
(jfeigelson@debevoise.com)  
Alexandra P. Swain (admitted *pro hac vice*)  
(apswain@debevoise.com)

DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
(212) 909-6000

September 26, 2019

*Counsel for Plaintiff Committee to Protect  
Journalists*

**TABLE OF CONTENTS**

**Preliminary Statement..... 2**

**Undisputed Facts..... 5**

**I. The Brutal Murder of U.S. Journalist Jamal Khashoggi..... 5**

**II. The U.S. Government’s Public Denial of Any Prior Knowledge Triggering Its Duty to Warn Mr. Khashoggi and Investigative Press Reports To The Contrary..... 9**

**III. Bipartisan and Global Demand for Investigation and Transparency ..... 12**

**IV. CPJ’s Narrow FOIA Requests and the Government’s *Glomar* Responses ..... 17**

**Argument..... 21**

**I. Summary Judgment for CPJ Is in Order, Given the Government’s Public Statements Outside This Litigation..... 22**

A. The Government Has Publicly Denied Prior Knowledge Regarding the Threat to Mr. Khashoggi ..... 22

B. The Government Has Publicly Acknowledged That It Has Documents Related To The Murder ..... 24

**II. The Government Has Failed To Show Cognizable Harm Under Either Claimed FOIA Exemption Because CPJ’s Requests Do Not Require Disclosure Of Intelligence Activities, Sources, Or Methods. .... 25**

A. The Subject of CPJ’s FOIA Requests Is Not “Properly Classified” and Therefore Not Exempt from Disclosure Under Exemption 1..... 25

B. Exemption 3 Does Not Justify the Government’s *Glomar* Responses. .... 31

**III. The Public Record Suggests that the Government Is Relying on *Glomar* to Avoid Embarrassment, Which Is Not a Proper Basis for Nondisclosure..... 38**

**IV. As An Alternative, The Court Can And Should Require More Detailed Affidavits From The Government As Well As *In Camera* Review Of Responsive Documents. .... 42**

**Conclusion ..... 44**

### **PRELIMINARY STATEMENT**

The brutal murder of journalist Jamal Khashoggi by the Saudi Arabian government has sparked an extraordinary global demand for greater transparency into this terrible event. The consensus view that more facts are urgently needed reaches across national borders and across party lines. As another federal court has noted in ruling for greater responsiveness to Freedom of Information Act (“FOIA”) requests, Mr. Khashoggi’s killing is “a subject of considerable public importance.” *Open Soc’y Justice Initiative v. CIA*, Nos. 19 Civ. 234 (PAE), 19 Civ. 1329 (PAE), 2019 WL 3561889 (S.D.N.Y. Aug. 6, 2019) (ordering dramatically increased pace of response to FOIA requests about the killing).

In this FOIA case, plaintiff Committee to Protect Journalists (“CPJ”) seeks to shine a light on one crucial but largely unexplored piece of the story: Did U.S. government agencies know in advance of the threat to Mr. Khashoggi’s life and liberty, and if so, did they comply with their duty to warn him pursuant to Intelligence Community Directive 191 (“Directive 191”)? The government has publicly and summarily denied advance knowledge. CPJ, pursuant to its mission as a leading global advocate for press freedom, seeks to test that denial against the actual documentary record.

CPJ made narrowly targeted FOIA requests on this issue to remaining Defendants the Central Intelligence Agency (“CIA”), the Federal Bureau of Investigation (“FBI”), the National Security Agency (“NSA”), and the Office of the Director of National Intelligence (“ODNI”) (collectively the “Defendants” or the “Government”). With appropriate limited redactions, Defendants could readily provide a substantive response to CPJ without disclosing sensitive intelligence details. Yet Defendants all have responded instead with rote refusals to even

confirm or deny the existence of responsive records. In FOIA parlance these are “*Glomar*” responses, based on the case law arising out of the government’s denial of records regarding the CIA spy ship the Hughes Glomar Explorer. *See Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976).

The government’s rote *Glomar* responses are inadequate in this exceptional case. The purpose of FOIA is “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (quoting *Rose v. Dep’t of Air Force*, 495 F.2d 261, 263 (2d Cir. 1974)). Across-the-board *Glomar* responses ignore both the real-world circumstances of this case, where so much is already known and the demand for more knowledge is so legitimate and so intense. Defendants’ *Glomar* responses also ignore the governing law: Defendants have not carried their burden of showing that acknowledging the existence or nonexistence of responsive records would cause them to suffer cognizable harm under a FOIA exemption. *See, e.g., Bartko v. U.S. Dep’t of Justice*, 898 F.3d 51, 63 (D.C. Cir. 2018) (“A *Glomar* response to a FOIA request is permitted in that rare situation when either confirming or denying the very existence of records responsive to a request would ‘cause harm cognizable under an FOIA exception.’”) (quoting *Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1178 (D.C. Cir. 2011)).

There is no merit to the proposition that acknowledging the existence or nonexistence of the requested documents will somehow do damage to national security interests. Intelligence sources and methods need not be disclosed in response to CPJ’s requests. The amount of information already known to the public is exceptional and the increment sought here is limited:

- ***The Department of State has already publicly denied any prior knowledge by the U.S. government of the threat to Mr. Khashoggi's life.*** That statement, taken at face value, simply defeats the Government's own litigation position here. If the statement is true, then defendants can simply say here that they have no responsive documents, and the public position of the Government remains exactly the same. If that statement is false (as investigative reports by leading media organizations suggest), then—not to mince words—the Government has lied to the American people, and the *Glomar* responses here are part of a cover-up. Additionally, both the CIA and the ODNI have acknowledged that they have “records relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA's findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible,” *Open Soc'y Justice Initiative v. CIA*, No. 1:19-cv-00234-PAE, ECF No. 1 (S.D.N.Y. Jan. 9, 2019) in separate litigation. *See id.* at ECF No. 99 “Joint Status Letter” (Sept. 24, 2019).
- Culpability at the highest levels of the Saudi government is well established. Senior congressional leaders stepped out of a CIA briefing to announce that the Crown Prince was guilty of murder. The President of the United States has all but agreed with that assessment, openly brushing aside human rights concerns in favor of Saudi purchases of U.S. weapons.
- There is ample reason to believe that the government is seeking here not to protect intelligence sources and methods, but simply to avoid embarrassment—a rationale

that is legally insufficient to justify classification of records. The Government undoubtedly does not wish to discuss publicly what the world already knows: namely that this country and its allies routinely spy on each other. Given the global concerns about of the lackadaisical U.S. response to the murder, the Government also undoubtedly seeks to avoid further scrutiny of its efforts—or lack thereof—to protect Mr. Khashoggi.

The intelligence agencies should be ordered to acknowledge whether or not they have responsive documents, and, if they do, to produce them. To the extent that details of intelligence sources and methods are actually at stake, they can be protected through limited redactions. At bare minimum, Defendants should be ordered to supplement their declarations with additional detail and to produce responsive documents, if they exist, for *in camera* review.

### **UNDISPUTED FACTS**

#### **I. The Brutal Murder of U.S. Journalist Jamal Khashoggi**

Jamal Khashoggi was a U.S. resident, a Saudi dissident, and an internationally recognized journalist known for his human rights and press freedom advocacy in the Middle East. As a columnist for *The Washington Post*<sup>1</sup> and editor-in-chief of Al-Arab News Channel, Mr. Khashoggi regularly authored articles featuring criticisms of the Saudi government, and in particular of the Saudi Crown Prince Mohammed bin Salman (the “Crown Prince”). Fearing

---

<sup>1</sup> Donna Abu-Nasr, *Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic*, Bloomberg (Oct. 10, 2018, 9:00 PM), [https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/10/40f13dc4-ccf1-11e8-ad0a-0e01efba3cc1\\_story.html](https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/10/40f13dc4-ccf1-11e8-ad0a-0e01efba3cc1_story.html).



retaliation from the Saudi regime, Mr. Khashoggi fled Saudi Arabia. As a result, the Crown Prince repeatedly sought to bring Mr. Khashoggi back to Saudi Arabia.<sup>2</sup> After the Crown Prince's efforts failed, he instructed his top aide Saud al-Qahtani to arrange for Mr. Khashoggi to be killed.<sup>3</sup>

Approximately a week and a half before his 60<sup>th</sup> birthday, on October 2, 2018, Mr. Khashoggi arrived at the Saudi consulate in Istanbul, Turkey to obtain documentation for his upcoming marriage to his Turkish fiancé Hatice Cengiz.<sup>4</sup> Upon his arrival, a team of fifteen Saudi agents, led by Saud al-Qahtani, grabbed Mr. Khashoggi and tied him up.<sup>5</sup> The Saudi agents injected Mr. Khashoggi with an unknown heavy sedative then began suffocating him with

---

<sup>2</sup> Josh Lederman, *Khashoggi Met with Crown Prince's Brother Amid Efforts to Return Him to Saudi Arabia*, NBC News (Oct. 22, 2018, 5:13 PM), <https://www.nbcnews.com/news/mideast/khashoggi-met-crown-prince-s-brother-amid-efforts-return-him-n923031>.

<sup>3</sup> Warren B. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018, 1:33 AM), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>; see also Julian E. Barnes & Eric Schmitt, *Intercepts Solidify C.I.A. Assessment That Saudi Prince Ordered Khashoggi Killing*, N.Y. Times (Dec. 2, 2018), <https://www.nytimes.com/2018/12/02/us/politics/crown-prince-mohammed-qahtani-intercepts.html>.

<sup>4</sup> Bethan McKernan, *Jamal Khashoggi was Worried About Consulate Visit, Says Fiancee* (Oct. 26, 2018, 10:22 AM), <https://www.theguardian.com/world/2018/oct/26/jamal-khashoggi-was-worried-about-consulate-visit-says-fiancee>.

<sup>5</sup> Stephanie Kirchgaessner & Nick Hopkins, *US urges Saudi Prince to Ditch Aide Linked to Khashoggi Killing*, The Guardian (Apr. 12, 2019, 1:00 AM), <https://www.theguardian.com/world/2019/apr/12/us-urges-saudi-prince-to-ditch-aide-linked-to-khashoggi-killing>; Ben Hubbard & David D. Kirkpatrick, *Saudis Shift Account of Khashoggi Killing Again, as 5 Agents Face Death Penalty*, N.Y. Times (Nov. 15, 2018), <https://www.nytimes.com/2018/11/15/world/middleeast/saudi-arabia-khashoggi-death-penalty.html>.

a plastic bag.<sup>6</sup> Audio transcriptions, released by Turkish intelligence agencies, established that Mr. Khashoggi struggled and repeatedly pleaded for his life while the Saudi agents strangled him.<sup>7</sup> Next, according to Turkish officials, the Saudi agents began to mutilate Mr. Khashoggi's body with a bone saw, a surgical instrument manually used in forensics, torture, and dismemberment.<sup>8</sup> It is unclear if Mr. Khashoggi was alive or conscious during the dismemberment process.<sup>9</sup> The current whereabouts of his remains are unconfirmed.<sup>10</sup>

When Mr. Khashoggi failed to emerge from the consulate, his fiancé contacted the Turkish police.<sup>11</sup> The Turkish police and a prosecutor initiated an investigation into his

---

<sup>6</sup> Jackie Northam, *U.N. Report Implicates Saudi Crown Prince in Killing of Jamal Khashoggi*, NPR (Jun. 19, 2019, 5:06 PM), <https://www.npr.org/2019/06/19/734157980/u-n-report-implicates-saudi-crown-prince-in-killing-of-jamal-khashoggi>.

<sup>7</sup> *Saudi Hit Squad's Gruesome Conversations During Khashoggi's Murder Revealed*, Daily Sabah (Sep. 9, 2019, 2:49 PM), <https://www.dailysabah.com/investigations/2019/09/09/saudi-hit-squads-gruesome-conversations-during-khashoggis-murder-revealed>.

<sup>8</sup> Ben Hubbard, *One Killing, Two Accounts: What We Know About Jamal Khashoggi's Death*, N.Y. Times (Oct. 20, 2018), <https://www.nytimes.com/2018/10/20/world/middleeast/khashoggi-turkey-saudi-narratives.html>.

<sup>9</sup> *Saudi Hit Squad's Gruesome Conversations During Khashoggi's Murder Revealed*, Daily Sabah (Sep. 9, 2019, 2:49 PM), <https://www.dailysabah.com/investigations/2019/09/09/saudi-hit-squads-gruesome-conversations-during-khashoggis-murder-revealed>.

<sup>10</sup> *Id.*

<sup>11</sup> Kareem Fahim, *Turkey Concludes Saudi Journalist Jamal Khashoggi Killed by "Murder" Team*, *Sources Say*, Wash. Post (Oct. 6, 2018), [https://www.washingtonpost.com/world/middle\\_east/turkey-concludes-saudi-journalist-khashoggi-killed-by-murder-team-sources-say/2018/10/06/31ee4f86-c8d9-11e8-9c0f-2ffaf6d422aa\\_story.html](https://www.washingtonpost.com/world/middle_east/turkey-concludes-saudi-journalist-khashoggi-killed-by-murder-team-sources-say/2018/10/06/31ee4f86-c8d9-11e8-9c0f-2ffaf6d422aa_story.html).

disappearance.<sup>12</sup> Shortly thereafter, reports began speculating that Mr. Khashoggi had been killed inside the consulate.

Three days later, on October 5, 2018, the Crown Prince informed Bloomberg News that Mr. Khashoggi left the Saudi consulate “after a few minutes or one hour”; he added, “We have nothing to hide.”<sup>13</sup> The next day, the Saudi consulate’s Consul General responded that, “talk of [Khashoggi’s] kidnapping was baseless.”<sup>14</sup>

On October 10, 2018, the Turkish media released images of the fifteen-member team of Saudi agents allegedly responsible for Mr. Khashoggi’s execution.<sup>15</sup> Media outlets continued to report that Mr. Khashoggi had been killed. Finally, on October 20, 2018, after conflicting narratives, the Saudi government conceded that Mr. Khashoggi was killed in their consulate and

---

<sup>12</sup> Carlotta Gall, *Turkey Searches Saudi-Owned Mansion for Evidence in Khashoggi Case*, N.Y. Times (Nov. 26, 2018), <https://www.nytimes.com/2018/11/26/world/europe/turkey-saudi-arabia-khashoggi.html>.

<sup>13</sup> Benjamin Mueller, *Khashoggi’s Death Is Explained by the Saudis in Five Acts (and Counting)*, N.Y. Times (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/world/middleeast/saudi-trump-jamal-khashoggi.html>.

<sup>14</sup> *How the Saudi Narrative of Khashoggi’s Killing Changed*, Al Jazeera (Nov. 15, 2018), <https://www.aljazeera.com/news/2018/10/saudi-narrative-khashoggi-killing-changed-20-days-181020082300134.html>.

<sup>15</sup> *Jamal Khashoggi: Turkish Media Says Video Shows Disappearance Plot*, BBC News (Oct. 10, 2018), <https://www.bbc.com/news/world-europe-45809470>.

that an investigation was underway.<sup>16</sup> The following month, the CIA concluded that the Crown Prince likely ordered Mr. Khashoggi's killing.<sup>17</sup>

## **II. The U.S. Government's Public Denial of Any Prior Knowledge Triggering Its Duty to Warn Mr. Khashoggi and Investigative Press Reports To The Contrary**

This case centers on the Intelligence Community's contention that it would harm the national interest even to acknowledge whether there are or are not records related to the duty to warn Mr. Khashoggi. Yet, shortly after Mr. Khashoggi's murder, the U.S. Department of State deputy spokesman clearly stated in a public forum that "*the United States had no advanced knowledge of Jamal Khashoggi's disappearance*" (emphasis added).<sup>18</sup> The statement was unqualified, made on behalf of the United States generally, and did not purport to be limited to any particular agency or agencies.

This broad government denial was highly significant because the Intelligence Community, pursuant to Intelligence Community Directive 191, has a duty to warn individuals or groups about threats of intentional killing, serious bodily injury, and kidnapping.<sup>19</sup> Directive 191 provides broadly that any U.S. intelligence agency "that collects or acquires credible and specific information indicating an impending threat of intentional killing, serious bodily injury,

---

<sup>16</sup> *Jamal Khashoggi Case: Saudi Arabia Says Journalist Killed in Fight*, BBC News (Oct. 20, 2018), <https://www.bbc.com/news/world-middle-east-45923217>.

<sup>17</sup> Warren B. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018, 1:33 AM), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>.

<sup>18</sup> Office of the Spokesperson, Department Press Briefing, U.S. Dep't of State (Oct. 10, 2018), <https://www.state.gov/briefings/department-press-briefing-october-10-2018/>.

<sup>19</sup> Office of the Dir. of Nat'l Intelligence, Intelligence Community Directive 191, § E.1 (Jul. 21, 2015), <https://fas.org/irp/dni/icd/icd-191.pdf>.

or kidnapping directed at a person or group of people (hereafter referred to as intended victim) shall have a duty to warn the intended victim or those responsible for protecting the intended victim, as appropriate.”<sup>20</sup>

Directive 191 equally applies to both U.S. persons and non-U.S. persons, and includes “threats where the target is an institution, place of business, structure, or location.”<sup>21</sup> Further, Directive 191 requires Intelligence Community elements to “document and maintain records” in relation to actions taken pursuant to the duty to warn, including “justifications not to warn an intended victim based on waiver criteria identified in [the] Directive.”<sup>22</sup>

Thorough and apparently credible investigative news reports from leading media organizations indicate that a year before the assassination, U.S. intelligence agencies intercepted communications between the Crown Prince and one of his senior aides relaying a threat to Mr. Khashoggi’s life and a plot to kill him.<sup>23</sup> *The Wall Street Journal* reported that the CIA had

---

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Office of the Dir. of Nat’l Intelligence, Intelligence Community Directive 191, § F.13 (Jul. 21, 2015), <https://fas.org/irp/dni/icd/icd-191.pdf>. These actions also include “[t]he methods, means, and substance of any warning given by the [Intelligence Community] element”; “[s]enior officer reviews of threat information and determinations”; “[c]oordination with the FBI, or CIA . . . to determine how best to pass threat information to the intended victim”; “[d]ecisions to inform the intended victim in light of exigent circumstances that preclude prior consultation”; “[c]ommunication of threat information to another [Intelligence Community] element or U.S. government agency for delivery to the intended victim”; and “[n]otification to the originating [Intelligence Community] element of how and when threat information was delivered to the intended victim.” *Id.*

<sup>23</sup> Mark Mazzetti, *Year Before Killing, Saudi Prince Told Aide He Would Use “a Bullet” on Jamal Khashoggi*, N.Y. Times (Feb. 7, 2019), <https://www.nytimes.com/2019/02/07/us/politics/khashoggi-mohammed-bin-salman.html>.

identified at least eleven messages from the Crown Prince to Saud al-Qahtani in the time leading up to and after Mr. Khashoggi's murder.<sup>24</sup> *The Washington Post* also reported that information about Mr. Khashoggi being targeted had "been disseminated throughout the U.S. government and was contained in reports that are routinely available to people working on U.S. policy toward Saudi Arabia or related issues."<sup>25</sup>

In the communications dated August 2017, Crown Prince Mohammed bin Salman allegedly told his associates that if further efforts to persuade Mr. Khashoggi to return were not successful, they "could possibly lure him outside Saudi Arabia and make arrangements."<sup>26</sup> According to another conversation from August 2017 that was intercepted by U.S. intelligence agencies, the Crown Prince told an aide he would use "a bullet" on Mr. Khashoggi if the journalist did not go back.<sup>27</sup>

---

<sup>24</sup> Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018, 1:33 AM), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>.

<sup>25</sup> Philip Bump, *What We Know About What the Government Knows About Jamal Khashoggi's Disappearance*, Wash. Post (Oct. 17, 2018), <https://beta.washingtonpost.com/politics/2018/10/17/what-we-know-about-what-government-knows-about-jamal-khashoggis-disappearance/>.

<sup>26</sup> Warren B. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018, 1:33 AM), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>; see also Julian E. Barnes & Eric Schmitt, *Intercepts Solidify C.I.A. Assessment That Saudi Prince Ordered Khashoggi Killing*, N.Y. Times (Dec. 2, 2018), <https://www.nytimes.com/2018/12/02/us/politics/crown-prince-mohammed-qahtani-intercepts.html>.

<sup>27</sup> Mark Mazzetti, *Year Before Killing, Saudi Prince Told Aide He Would Use "a Bullet" on Jamal Khashoggi*, N.Y. Times (Feb. 7, 2019), <https://www.nytimes.com/2019/02/07/us/politics/khashoggi-mohammed-bin-salman.html>.

These same intercepted communications helped the CIA conclude, after the fact, that the Crown Prince had likely ordered Mr. Khashoggi's execution.<sup>28</sup> The intelligence agency noted that the communications seemed "to foreshadow the Saudi operation launched against Khashoggi."<sup>29</sup>

### III. Bipartisan and Global Demand for Investigation and Transparency

As another federal court has recently noted, "[Mr.] Khashoggi's disappearance, and the facts or allegations regarding his killing in Saudi custody, have continued to be a matter of intense interest among the public, legislators, other policymakers, and journalists." *Open Soc'y Justice Initiative v. CIA*, No. 19-234, 2019 WL 3561889, at \*4 (S.D.N.Y. Aug. 8, 2019) (opinion and order denying motion to reduce FOIA response rate). Numerous U.S. officials, foreign governments, and international human rights groups not only condemned the killing but also called for an immediate investigation and increased transparency.

Among those expressing concern were both Republican and Democratic U.S. Senators:

- Senator Bob Corker, Republican of Tennessee, then chair of the Foreign Relations Committee, said: "I think a price needs to be paid .... I, along with others in the Senate, requested the administration conduct a thorough Global Magnitsky sanctions determination regarding the murder of Jamal Khashoggi."<sup>30</sup>

<sup>28</sup> Warren B. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018, 1:33 AM), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>.

<sup>29</sup> *Id.*

<sup>30</sup> 'A Price Needs to Be Paid': US Senate Bill Targets Saudi Arabia, Aljazeera (Nov. 16, 2018), <https://www.aljazeera.com/news/2018/11/senate-bill-targets-saudi-arabia-khashoggi-murder-yemen-181115190143285.html>; Press Release, U.S. Senate Comm. on Foreign

- Senator Ben Sasse, Republican of Nebraska, said: “[T]he disappearance of Saudi journalist Jamal Khashoggi will not be ‘swept under the rug,’” and “there should be an ‘international investigation’ into what happened.”<sup>31</sup>
- Senator Cory Booker, Democrat of New Jersey, said: “I’m worried about efforts to cover this up and I’m worried about our administration willing to just go along and get along because of a lot of the financial interests that we might have.”<sup>32</sup>

A week after Mr. Khashoggi’s death, the Senate Foreign Relations Committee issued a letter to President Trump pursuant to the Global Magnitsky Human Rights Accountability Act (the “Global Magnitsky Act”)<sup>33</sup> which required the President to make “a determination on the imposition of sanctions pursuant to the Global Magnitsky Human Rights Accountability Act with respect to any foreign person responsible for such a violation related to Mr. Khashoggi.”<sup>34</sup>

---

Relations, Corker Statement on U.S. Sanctions Against Saudi Arabian Officials For Murder of Jamal Khashoggi (Nov. 15, 2018) (on file with author).

<sup>31</sup> Mick Krever, *Republican Senator: Khashoggi Disappearance Won’t Be ‘Swept Under the Rug’*, CNN (Oct. 17, 2018, 2:42 PM), <https://www.cnn.com/2018/10/17/politics/khashoggi-sasse-amanpour/index.html>.

<sup>32</sup> Hunter Walker, *Cory Booker Says the U.S. Needs to ‘Reexamine’ Its ‘Entire Relationship’ with Saudi Arabia*, Yahoo News! (Oct. 18, 2018), <https://www.yahoo.com/news/cory-booker-says-u-s-needs-re-examine-entire-relationship-saudi-arabia-211344667.html>.

<sup>33</sup> The Global Magnitsky Act requires the President to determine whether a foreign person is responsible for an extrajudicial killing, torture, or other gross violation of internationally recognized human rights against an individual exercising freedom of expression.

<sup>34</sup> Press Release, U.S. Sen. Comm. on Foreign Relations, Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi (Oct. 10, 2018), <https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi>.



On October 22, 2018, over fifty congressional representatives sent a letter to then-Director of National Intelligence Daniel Coats, inquiring about what actions were taken relating to Directive 191 and Mr. Khashoggi. The following week, another group of senators sent an additional letter to Director Coats: “Directive [191] is a clear message to the American people that the U.S. government takes targeted threats seriously and prioritizes the protection of individuals as a matter of national security. Consequently, questions regarding whether Mr. Khashoggi was notified of known threats to his life have raised serious concerns.”<sup>35</sup>

On December 13, 2018, the Senate unanimously passed a resolution that held the Crown Prince personally responsible for the death of Mr. Khashoggi.<sup>36</sup> In the same session, the Senate also for the first time in its history invoked the War Powers Act, and voted to end U.S. military assistance to Saudi Arabia over Mr. Khashoggi’s execution.<sup>37</sup>

In December 2018, CIA director Gina Haspel briefed Senate committees on the matter.<sup>38</sup> Based on public comments, the closed-door briefing plainly affirmed that the Crown Prince had ordered the execution of Mr. Khashoggi. Immediately afterward, Senator Corker publicly

---

<sup>35</sup> Letter from Richard Blumenthal et al., U.S. Senators, to Daniel Coats, Dir. of Nat’l Intelligence (Oct. 30, 2018), <https://www.blumenthal.senate.gov/imo/media/doc/2018.10.30%20Letter%20to%20DNI%20on%20Duty%20to%20Warn.pdf>.

<sup>36</sup> Julie Hirschfeld Davis & Eric Schmitt, *Senate Votes to End Aid for Yemen Fight Over Khashoggi Killing and Saudis’ War Aims*, N.Y. Times (Dec. 13, 2018), <https://www.nytimes.com/2018/12/13/us/politics/yemen-saudi-war-pompeo-mattis.html>.

<sup>37</sup> *Id.*

<sup>38</sup> Olivia Gazis, Bo Erickson, Camilo Montoya-Galvez, *Lindsey Graham After CIA Briefing on Jamal Khashoggi Murder: “There’s a Smoking Saw,”* CBS News (Dec. 4, 2018, 12:19 PM), <https://www.cbsnews.com/news/khashoggi-murder-cia-director-gina-haspel-briefs-senators-on-killing-today-live-updates/>.

informed reporters that “[i]f the crown prince went in front of a jury, he would be convicted [of murder] in 30 minutes.”<sup>39</sup> Senator Lindsay Graham added that “[t]here’s not a smoking gun—there’s a smoking saw.”<sup>40</sup>

Congress has continued to urge additional investigation and transparency. Earlier this year, several U.S. Senators reintroduced legislation requiring a public report on the killing of Mr. Khashoggi. Senator Martin Heinrich, Democrat of New Mexico and one of the sponsors of the bill, stated that “[t]he American people deserve nothing less than the truth and transparency about the Saudi government’s involvement in this shameful act. That starts with ensuring the public hears directly from the intelligence community identifying who carried out or ordered Mr. Khashoggi’s death.”<sup>41</sup> In July 2019, Senator Marco Rubio, Republican of Florida, joined Foreign Relations Committee Chairman Jim Risch, Republican of Idaho, to introduce the Saudi Arabia Diplomatic Review Act of 2019, a bill to mandate an Executive Branch review of America’s relationship with the Saudi government.<sup>42</sup>

International bodies and foreign leaders have echoed the widespread demand for transparency and action. On October 25, 2018, the European Parliament adopted, in a single

---

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Press Release, Senators Coons, Wyden, Heinrich, Reed, Harris Reintroduce Bill Requiring Public Report on Khashoggi Murder by Saudi Arabia (Feb. 26, 2019), <https://www.coons.senate.gov/news/press-releases/senators-coons-wyden-heinrich-reed-harris-reintroduce-bill-requiring-public-report-on-khashoggi-murder-by-saudi-arabia>.

<sup>42</sup> Press Release, Rubio Joins Risch, Shaheen, Coons on New Bill to Review U.S.-Saudi Relations (Jul. 10, 2019), [https://www.rubio.senate.gov/public/index.cfm/press-releases?ContentRecord\\_id=D957B587-1384-424F-A955-ED0F0E50BC60](https://www.rubio.senate.gov/public/index.cfm/press-releases?ContentRecord_id=D957B587-1384-424F-A955-ED0F0E50BC60).

reading, by 325 votes to 1, with 19 abstentions, the “Resolution on the Killing of Journalist Jamal Khashoggi in the Saudi Consulate in Istanbul.”<sup>43</sup> The text adopted by the Parliament emphasized, “the need for a continued thorough, credible and transparent investigation, in order to shed proper light on the circumstances of the murder of Jamal Khashoggi and to ensure that all those bearing responsibility are held fully to account.”<sup>44</sup>

The United Nations launched an urgent six-month investigation into Mr. Khashoggi’s death. The United Nations Special Rapporteur, Agnes Callamard, determined that Mr. Khashoggi’s “killing represent[ed] no less than six violations” of international human rights law.<sup>45</sup> Her office also appealed to the UN Human Rights Council, the UN Security Council, and the UN Secretary-General for an “international criminal investigation.”<sup>46</sup>

Despite the global and bipartisan call for investigation and transparency, the U.S. government has remained largely unresponsive. The tone has been set at the top. In a June 23, 2019 interview, President Donald Trump dismissed both calls for further investigations and calls to hold the Saudi regime accountable. He stated that the murder had already been “heavily investigated,” and said pointedly that the U.S. would favor continued arms sales to the Saudi

---

<sup>43</sup> Resolution on the Killing of Journalist Jamal Khashoggi in the Saudi Consulate in Istanbul, EUR. PARL. DOC. B8-0500/2018.

<sup>44</sup> *Id.*

<sup>45</sup> *Khashoggi Murder ‘an International Crime’, Says UN-Appointed Rights Investigator: Special In-Depth UN News Interview*, UN News (June 20, 2019), <https://news.un.org/en/story/2019/06/1040951>.

<sup>46</sup> *Id.*

government over additional investigation.<sup>47</sup> Saudi Arabia, he noted, continues to buy “massive amounts, \$150 billion worth of military equipment . . . . So Saudi Arabia is a big buyer of America product. That means something to me. It’s a big producer of jobs.”<sup>48</sup> The president argued that to give priority to human rights in those circumstances would make him a “fool.”

After meeting with Saudi King Salman, Secretary of State Mike Pompeo told reporters that he simply did not “want to talk about any of the facts,” and “[the Saudi government] didn’t want to either.”<sup>49</sup> In the latest turn of events, it was reported just today that the Crown Prince has now reportedly claimed “all the responsibility” for the killing of Khashoggi, while still denying that he had prior knowledge of the plot.<sup>50</sup>

#### **IV. CPJ’s Narrow FOIA Requests and the Government’s *Glomar* Responses**

On October 19, 2018, CPJ sent FOIA requests to the CIA, FBI, NSA, and ODNI seeking records related to the Government’s duty to warn and any records in relation to the duty to warn as it relates to Mr. Khashoggi. CPJ did not ask the Government to disclose any intelligence activities, sources, or methods; rather the requests sought only the following:

---

<sup>47</sup> Chuck Todd, *President Trump’s Full, Unedited Interview with Meet the Press*, NBC News (June 23, 2019), <https://www.nbcnews.com/politics/meet-the-press/president-trump-s-full-unedited-interview-meet-press-n1020731>.

<sup>48</sup> *Id.*

<sup>49</sup> Megan Keller, Pompeo: Saudis Didn’t Want to Discuss ‘Any of the Facts’ in Khashoggi Disappearance, *The Hill* (Oct. 17, 2018, 12:06 PM), <https://thehill.com/homenews/administration/411848-pompeo-saudi-arabia-didnt-want-to-discuss-any-of-the-facts-in>.

<sup>50</sup> Ben Hubbard, *Saudi Prince Accepts Responsibility for Khashoggi Killing, but Denies Involvement*, *N.Y. Times* (Sept. 26, 2019, 6:16 AM), <https://www.nytimes.com/2019/09/26/world/middleeast/mbs-khashoggi-killing-responsibility.html?>

Request 1: Procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191.<sup>51</sup>

Request 2: Records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him.

Request 3: Records concerning any issue arising among IC elements regarding a determination to warn Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

Request 4 (for ODNI only): Records relating to any dispute referred to the ODNI regarding a determination to warn Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.<sup>52</sup>

On November 20, 2018, after the Defendants failed to respond to the Knight Institute's FOIA requests within the statutorily mandated time period, the Knight Institute initiated this lawsuit to compel the Defendants to produce responsive documents. CPJ joined as a plaintiff on January 17, 2019. Dkt. No. 17.

Defendants eventually responded as follows:<sup>53</sup>

**ODNI**: On February 14, 2019, ODNI informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located responsive records, all of which had originated with other Defendant agencies. Decl. of Patricia Gviria ("Gviria Decl.") ¶ 11.

---

<sup>51</sup> None of the Defendants issued *Glomar* responses to Request 1.

<sup>52</sup> The Knight First Amendment Institute at Columbia University made parallel FOIA requests prior to CPJ on October 19, 2018. First Amended Complaint ("FAC"), Dkt. No. 17, ¶¶ 15, 17; Exhibit A to First Amended Complaint, Dkt. No. 17-1 (the Knight Institute's October 19, 2018 requests).

<sup>53</sup> The Knight Institute voluntarily dismissed its claims on July 19, 2019. The court granted CPJ's motion to dismiss claims against the Department of State as defendant on July 30, 2019.

ODNI informed the Knight Institute and CPJ that these records had been referred to the respective other agencies for processing and production, because all responsive records originated with other Defendant agencies. *Id.*

ODNI also informed the Plaintiffs that, pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2, 3, or 4. *Id.* at ¶ 12. ODNI explained that the fact of the existence or nonexistence of such records “is itself currently and properly classified, and could reveal intelligence sources and methods information that is protected from disclosure pursuant to Section 102A(i)(1) of the National Security Act of 1947[.]” *Id.* at Ex. C.

**NSA:** On March 11, 2019, the NSA informed the Plaintiffs that it had completed a search as to Request 1, and had located two responsive records, totaling 21 pages, which it simultaneously produced. Decl. of Linda M. Kiyosaki (“Kiyosaki Decl.”) ¶ 13. The NSA claimed that, under FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2 or 3. *Id.* The NSA stated that the fact of the existence or nonexistence of such records “is a currently and properly classified matter,” and that “the existence or non-existence of the information” is protected from disclosure by 18 U.S.C. § 798, 50 U.S.C. §§ 3024(i), 3605. *Id.* at Ex. B.

**CIA:** On March 15, 2019, the CIA informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located responsive records. Decl. of Antoinette B. Shiner (“Shiner Decl.”) ¶ 13 & fn. 3. For Request 1, the CIA produced three records with redactions, totaling 19 pages, and withheld in full two additional records. *Id.* The CIA claimed

the redactions were pursuant to FOIA Exemption 1 and 3, and that it withheld two documents in full under FOIA Exemptions 1, 3, 5, and 6. Shiner Decl. ¶ 13 & Ex. C.

The CIA also claimed that, pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2 or 3. *Id.* The CIA explained that the fact of the existence or nonexistence of such records “is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1).” *Id.*

**FBI:** On March 29, 2019, the FBI informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located eight responsive records, totaling 33 pages, which it simultaneously produced, in part. With respect to Requests 2 or 3, the FBI informed the Plaintiffs it could neither confirm nor deny the existence of such records. Decl. of David M. Hardy (“Hardy Decl.”) ¶ 18. The Defendant claimed that “the mere acknowledgement of such records’ existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1).” *Id.* (citing Ex. C). On May 14, 2019, the FBI released a single additional page pursuant to its March 29, 2019 production. *Id.* at ¶ 19 (citing Ex. D).

The Defendants moved for summary judgment on August 28, 2019. CPJ hereby opposes that motion and seeks summary judgment in its favor on the Defendants’ *Glomar* responses.<sup>54</sup>

---

<sup>54</sup> CPJ will not challenge the CIA’s redactions and withholdings.

## ARGUMENT

Allowing the Government’s *Glomar* responses to stand would be to subvert the purpose of FOIA—that is, “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation and quotation omitted). *See also Am. Ctr. for Law & Justice v. U.S. Dep’t of State*, 354 F. Supp. 3d 1, 6 (D.D.C. 2018) (FOIA mandates a “strong presumption in favor of disclosure.”); *CIA v. Sims*, 471 U.S. 159, 165 (1985) (FOIA “calls for broad disclosure of Government records.”). Contrary to Defendants’ expansive interpretation of Exemptions 1 and 3, courts “have consistently stated that FOIA exemptions are to be *narrowly* construed.” *U.S. Dep’t of Justice v. Julian*, 486 U.S. 1, 8 (1988) (emphasis added); *see also, Dep’t of Air Force v. Rose*, 425 U.S. at 361 (internal citations omitted) (“Nothing in FOIA ‘should be read to authorize withholding of information or limit the availability of records to the public, except as specifically stated.’”). “[The] limited exemptions [in FOIA] do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.” *Dep’t of Air Force v. Rose*, 425 U.S. at 361.

This Court should deny the Defendants’ summary judgment motion, and instead grant summary judgment in favor of CPJ for two independently sufficient reasons.

The Department of State’s public denial of any prior knowledge by the *entire* U.S. government of the threat to Mr. Khashoggi’s life is fatal to the Government’s *Glomar* responses. *See Electronic Frontier Foundation v. U.S. Dep’t of Justice*, 384 F.Supp.3d 1, 9 (D.D.C. 2019) (citing *James Madison Project v. U.S. Dep’t of Justice*, 302 F. Supp. 3d 12, 20 (D.D.C. 2018)) (“A requester may challenge a *Glomar* response either by arguing that ‘the agency has previously



official[ly] acknowledged the fact of the existence of a requested record’ or by arguing that disclosure would not cause any harm under the FOIA exemption invoked.”).

The Government has not carried its burden to show that acknowledging the existence or nonexistence of records would cause harm cognizable under FOIA Exemptions 1 or 3, 5 U.S.C. 552 §§ (b)(1), (3). See *Bartko v. U.S. Dep’t of Justice*, 898 F.3d 51, 63 (D.C. Cir. 2018) (citation omitted) (requiring a showing of “harm cognizable under an FOIA exemption.”); see also *Smith v. CIA*, 246 F. Supp. 3d 28, 31 (D.D.C. 2017) (“[T]he burden is on the government agency to show that nondisclosed, requested material falls within a stated exemption.”); 5 U.S.C. § 552(a)(4)(B) (“the burden is on the agency to sustain its action [of withholding a record under a stated exemption]”); *Elec. Frontier Found. v. Dep’t of Justice*, 384 F. Supp. 3d 1, 9 (D.D.C. 2019) (“It is well established that ‘the vast majority of FOIA cases can be resolved on summary judgment.’”) (citing *Brayton v. Office of the U.S. Trade Representative*, 641 F.3d 521, 527 (D.C. Cir. 2011)). The Government’s boilerplate declarations simply do not sufficiently explain why the existence or nonexistence of the requested records is a fact that is exempt from disclosure under any FOIA exemption. Courts review the Government’s responses to FOIA requests *de novo* (5 U.S.C. § 552 (a)(4)(B); *Am. Ctr. for Law*, 354 F. Supp. 3d at 7), and careful review is especially warranted here given the widely recognized importance of this matter.

**I. Summary Judgment for CPJ Is in Order, Given the Government’s Public Statements Outside This Litigation**

**A. The Government Has Publicly Denied Prior Knowledge Regarding the Threat to Mr. Khashoggi**

The Department of State’s public statement that “[t]he United States had no advanced knowledge of Jamal Khashoggi’s disappearance,” Press Briefing, U.S. Dep’t of State,

Department Press Briefing with Robert Palladino (Oct. 10, 2018), <https://www.state.gov/briefings/department-press-briefing-october-10-2018/> (last visited Sep. 15, 2019), constitutes an official acknowledgment by the Government that records responsive to CPJ's FOIA requests not exist, and thereby waives the Government's ability to invoke *Glomar*. See *Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2012) (finding that agencies are not entitled to assert a *Glomar* response if the government has already officially acknowledged the existence of the requested records); *ACLU v. CIA*, 710 F.3d 422, 427 (D.C. Cir. 2013) (“[T]he plaintiff can overcome a *Glomar* response by showing that the agency has already disclosed the fact of the existence (or nonexistence) of responsive records, since that is the purportedly exempt information that a *Glomar* response is designed to protect.”).

The Department of State's public disclosure encompasses the duty to warn, because it necessarily addresses the Government's knowledge or lack thereof regarding Mr. Khashoggi's disappearance. See *Fitzgibbon v. CIA*, 911 F.2d 755, 765 (D.C. Cir. 1990) (requiring “the information requested must be as specific as the information previously released” to defeat a *Glomar* invocation). Stated differently, if the Government indeed had no advance knowledge of Mr. Khashoggi's disappearance, then it necessarily could not have documents concerning any decision to warn or not warn Mr. Khashoggi.

Notably, the Department of State spoke on behalf of “the United States” – that is, on behalf of all agencies and not just itself. This defeats any argument the Government might advance on reply that the admission must come from a defendant agency.

The significance of the Department of State's denial can hardly be overstated. In light of that denial, one of two things must be true. First, if the denial is true, then the defendant

agencies here logically could have no documents related to the duty to warn – and they logically must be free to say so, since that would add nothing of substance to the Department of State’s denial. Second, if the denial is inaccurate, then the Government has (whether deliberately or inadvertently) deceived the American people. In that scenario, there surely must be documents relevant under Directive 191, and the *Glomar* responses offered in this case are part and parcel of a troubling deception. Regardless of which scenario holds true, the case for this Court to require greater transparency from Defendants is compelling.

**B. The Government Has Publicly Acknowledged That It Has Documents Related To The Murder**

In separate litigation, both the CIA and the ODNI have acknowledged that they have “records relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA’s findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible,” *Open Soc’y Justice Initiative v. CIA*, No. 1:19-cv-00234-PAE, ECF No. 1. (S.D.N.Y. Jan. 9, 2019). *See id.* at ECF No. 99 “Joint Status Letter” (Sept. 24, 2019). The CIA and the ODNI do not contend here, nor could they, that the national interest has been harmed by acknowledging the existence of these records in the New York litigation. Their statements in that case waive the ability to rely on *Glomar* responses here as to CPJ. To the extent that the CIA and ODNI might try to distinguish the records whose existence it has admitted from records related to the duty to warn, any such distinction is surely too fine to withstand this Court’s scrutiny. Particularly given the compelling public interest in this matter, the *Glomar* responses here must be seen as legally inadequate.

**II. The Government Has Failed To Show Cognizable Harm Under Either Claimed FOIA Exemption Because CPJ's Requests Do Not Require Disclosure Of Intelligence Activities, Sources, Or Methods.**

Defendants' arguments that to acknowledge the mere *existence or nonexistence of records* would necessarily reveal particular *intelligence activities, sources, and methods* is a shopworn tactic in FOIA litigation over intelligence matters. It is unavailing in the specific circumstances of this case.

**A. The Subject of CPJ's FOIA Requests Is Not "Properly Classified" and Therefore Not Exempt from Disclosure Under Exemption 1.**

Exemption 1 protects records that are specifically authorized by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. 5 U.S.C. § 552(b)(1). The agencies claim that the existence or nonexistence of records responsive to CPJ requests, namely, information concerning the duty to warn Mr. Khashoggi is exempt from disclosure under Executive Order No. 13526, which protects classified national security information. Exec. Order No. 13526, 75 Fed. Reg. 707 (Dec. 29, 2009) (*hereinafter* the "Order"). In order for information to be properly classified under the Order, the information must, *inter alia*, "fall[] within one of the protected categories listed in section 1.4 of this order; *and* . . . the unauthorized disclosure of the requested information reasonably could be expected to result in damage to the national security. . . ." *See* Section 1.1 Exec. Order No. 13526 § 1.1(a) (emphasis added). Finally, the requested information must also be classified as "top secret, secret, or confidential" in accordance with Section 1.2 of the Order.

Defendants do not sufficiently satisfy their burden because they do not prove that the disclosure of information sought (1) would reveal intelligence activities, sources, or methods and

(2) could reasonably result in damage to national security. *Cf. Larson v. U.S. Dep't of State*, 565 F.3d 857, 862 (D.C. Cir. 2009) (courts may only grant summary judgment on the basis of an affidavit if it contains “reasonably specific detail to demonstrate that the information withheld logically falls within the claimed exemption”). Therefore, Defendants’ *Glomar* responses are not justified.

**1. Defendants Have Failed To Show That Acknowledging The Existence Or Nonexistence Of Documents Concerning The Directive 191 Duty To Warn As It Relates To Mr. Khashoggi Would Reveal Intelligence Activities, Sources, Or Methods.**

Defendants have not explained, and cannot explain, why merely acknowledging the existence or nonexistence of documents would tend to reveal specific targets of surveillance or sources in this particular case. To the extent that the documents requested would in fact reveal such details, Defendants also have shown no reason why they would not be able to simply redact that information instead of categorically refusing to acknowledge or deny the existence of the documents themselves.

Moreover, acknowledging the existence of responsive records would not necessarily reveal intelligence activities, sources, or methods to any degree greater than what is already widely known. As noted above, both the CIA and the ODNI have publicly acknowledged the possession of relevant records. Surely the Defendants can be at least as forthcoming here without doing damage to national security. FOIA and the strong public interest at stake in this case demand that they do so.

Common sense suggests that the Government is not necessarily concerned with protecting particular sources and methods, but also – or instead – with avoiding disclosure of the

extent of U.S. surveillance of allies. The fact that the U.S. spies on friendly nations is already widely known, however, and does not merit *Glomar* protection. Christopher Murphy, *Why Would the U.S. Spy on Its Allies? Because Everyone Does*, CNN (Jun. 25, 2015), <https://www.cnn.com/2015/06/25/opinions/france-spy-claims/index.html>.

Nor is the fact that the U.S. specifically collected information about Mr. Khashoggi a secret. First, *The Washington Post* has reported that information about Mr. Khashoggi was “disseminated throughout the U.S. Government” and “routinely available to people working on U.S. policy toward Saudi Arabia or related issues.” Philip Bump, *What We Know about What the Government Knows about Jamal Khashoggi’s Disappearance*, Wash. Post (Oct. 17, 2018), <https://beta.washingtonpost.com/politics/2018/10/17/what-we-know-about-what-government-knows-about-jamal-khashoggis-disappearance/>.

Second, reputable news sources repeatedly have noted that U.S. intelligence intercepted communications of Saudi officials discussing a plan to capture Mr. Khashoggi. Loveday Morris, et al., *Saudis Are Said to Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2019), [https://www.washingtonpost.com/world/saudis-lay-in-wait-for-jamal-khashoggi-and-left-turkey-quickly-sources-say/2018/10/09/0e283e2e-cbc5-11e8-ad0a-0e01efba3cc1\\_story.html](https://www.washingtonpost.com/world/saudis-lay-in-wait-for-jamal-khashoggi-and-left-turkey-quickly-sources-say/2018/10/09/0e283e2e-cbc5-11e8-ad0a-0e01efba3cc1_story.html). For example, as indicated above, at least one year before Mr. Khashoggi’s murder, U.S. intelligence agencies intercepted communications regarding the Crown Prince and one of his aides relaying deadly threats to Mr. Khashoggi. Mark Mazzetti, *Year Before Killing, Saudi Prince Told Aide He Would Use ‘a Bullet’ on Khashoggi*, N.Y. Times (Feb. 7, 2019), <https://www.nytimes.com/2019/02/07/us/politics/khashoggi-mohammed-bin-salman.html>. In addition, leading up to and following Mr. Khashoggi’s murder, the CIA identified messages from

the Crown Prince regarding plans to harm Mr. Khashoggi. Warren B. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>. Since Mr. Khashoggi's assassination, the CIA has warned multiple people that their pro-democracy work efforts has made them targets of potential retaliation from Saudi Arabia. Josh Meyer, *The CIA Sent Warnings to at Least 3 Khashoggi Associates About New Threats From Saudi Arabia*, TIME (May 9, 2019), <https://time.com/5585281/cia-warned-jamal-khashoggi-associates/>. Additionally, former NSA analyst John Schindler has publicly stated: "I can confirm that the National Security Agency, America's big ear, indeed intercepted Saudi communications that indicated Riyadh had something unpleasant in store for Mr. Khashoggi. ***Listening in on foreign governments, after all, is NSA's main job***, and that includes frenemies like Saudi Arabia as well as hostile regimes." John Schindler, *NSA: White House Knew Jamal Khashoggi Was In Danger. Why Didn't They Protect Him?*, Observer (Oct. 10, 2019), <https://observer.com/2018/10/nsa-source-white-house-knew-jamal-khashoggi-danger/> (emphasis added). This information is clearly not classified despite the fact that it recognizes that Government agencies, including the CIA and NSA, routinely collect intelligence information, have collected information concerning Mr. Khashoggi, and intercepted relevant Saudi communications.

There is likewise no merit to the Government's argument that acknowledging the nonexistence of records would reveal an agency's "blind spot" or indicate a "dearth of underlying information." See Shiner Decl. ¶ 44; Kiyosaki Decl. ¶ 19. As noted above, the Department of State has already publicly denied any prior knowledge of the plan to kill Mr.

Khashoggi. That statement alone makes clear that a denial of prior knowledge can be made on the public record without revealing any underlying details regarding intelligence sources or methods.

**2. None Of The Agency Declarations Establish The Requisite Reasonable Expectation Of “Identifiable or Describable Damage to National Security”**

The Government also has failed to show that acknowledgement of the existence or nonexistence of these documents “could reasonably be expected to cause identifiable or describable damage to national security” as required by Section 1.4(c) of the Order. Exec. Order No. 13526 § 1.4. Though deference is afforded to agencies in matters concerning national security exemptions, “deference is not equivalent to acquiescence.” *Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 30 (D.C. Cir. 1998) (internal citation omitted). The D.C. Circuit has cautioned that courts should not “stretch th[e] [*Glomar*] doctrine too far” and “give their imprimatur to a fiction of deniability that no reasonable person would regard as plausible.” *Elec. Frontier Found.* (citing *ACLU v. CIA*, 710 F.3d 422, 431 (D.C. Cir. 2013)). Consideration point by point of each defendant agency’s declaration confirms that intelligence sources and methods would not, in fact, have to be compromised by a non-*Glomar* response:

**(a) ODNI Declaration**

Acknowledging the existence or nonexistence of responsive documents would not necessarily disclose detailed information that *particular* individuals were surveilled prior to Mr. Khashoggi’s murder to a degree greater than what is already publically known, as ODNI contends in its declaration, Gaviria Decl. ¶ 21. As mentioned previously, there are credible



public news outlets that have reported that the Government had information concerning threats to Mr. Khashoggi. Therefore, ODNI has failed to show how agency acknowledgement of responsive documents would result in identifiable harm to national security.

**(b) NSA Declaration**

The fact that the NSA uses signals intelligence (“SIGINT”) and communications intelligence (“COMINT”) is public information. Kiyosaki Decl. ¶¶ 6, 8. The NSA has not shown why acknowledging documents relevant to the duty to warn in this case would *necessarily* provide critical information about the IC’s capabilities other than the public fact that it uses SIGNIT and COMINT. Therefore, the NSA’s conclusory statement of harm is insufficient.

**(c) CIA Declaration**

The CIA has not shown why “revealing aspects of what types of information or threats the Agency deems sufficient to qualify as ‘credible and specific,’ so as to trigger the duty to warn; internal processes related to how the Agency conducts the appropriate analysis of this question; and how warnings are, in certain instances, conveyed to the intended victim, would disclose details about the practice of intelligence gathering and specific aspects of Agency tradecraft.” Shiner Decl. ¶ 21.

The CIA report on Mr. Khashoggi’s killing already exists. In December 2018, U.S. Senators received a briefing on the matter from CIA Director Gina Haspel. Patricia Zengerale, *Top Senators Briefed by CIA Blame Saudi Prince for Khashoggi Death*, Reuters (Dec. 4, 2018), <https://www.reuters.com/article/us-saudi-khashoggi-cia/top-senators-briefed-by-cia-blame-saudi-prince-for-khashoggi-death-idUSKBN1O32BR>. The public is already aware of the fact that the CIA had enough information about Mr. Khashoggi to have a briefing that would lead senators to

state, “You have to be willfully blind not to come to the conclusion that this was orchestrated and organized by people under the command of MbS.” *Id.* Therefore, mere acknowledgement of records pertaining to parts 2 and 3 of Plaintiff’s request would not disclose details of the CIA’s intelligence gathering and is unlikely to cause damage or harm to national security.

**(d) FBI Declaration**

CPJ’s requests do not require disclosure or discovery of intelligence activities, sources, or method as the FBI contends in its declaration, Hardy Decl. ¶¶32-33. The FBI may acknowledge the existence or nonexistence of responsive documents without specifying details of properly classified information. To the extent that the requested information involves matters that are protected by Executive Order 13526, that information can be redacted or withheld to shield matters of national security.<sup>55</sup> Regarding the FBI’s proposition that indirect references to intelligence matters may have adverse effects on the Government, the Government has already made public references to intelligence information concerning Mr. Khashoggi. The FBI has not identified any harm that would result in acknowledgement of the existence or nonexistence of relevant records.

**B. Exemption 3 Does Not Justify the Government’s *Glomar* Responses.**

Exemption 3 provides that FOIA “does not apply to matters that are . . . specifically exempted from disclosure by statute” if the statute “(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular

---

<sup>55</sup> CPJ does not concede its ability to challenge any withheld or redacted documents that are acknowledged as a result of this litigation.

criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3).

In determining whether Exemption 3 properly applies, “courts ask: (1) whether the statute in question is a statute of exemption; and if so, (2) whether the information at issue satisfies the criteria in the statute.” *Judicial Watch, Inc. v. U.S. Dep’t of State*, 373 F. Supp. 3d 142, 147 (D.C. Cir. 2019) (citing *CIA v. Sims*, 471 U.S. 159, 167 (1985)).

The defendant agencies have all argued that the acknowledgement of the existence or nonexistence of responsive records is itself protected disclosure under the National Security Act § 102A(i)(1). Additionally, the NSA has invoked Section 6 of the NSA Act and 18 U.S.C. § 798 in an attempt to justify the lack of confirmation or denial as to the existence or nonexistence of responsive records. While all of these statutes have been found to constitute “statutes of exemption” for the purposes of Exemption 3, the agencies here have failed to provide “reasonably specific detail” to adequately demonstrate that the information at issue satisfies the criteria set forth in these statutes. *See Elec. Frontier Found. v. Dep’t of Justice*, 384 F. Supp. 3d 1, 9 (D.D.C. 2019); *See also, Founding Church of Scientology v. NSA*, 610 F.2d 824, 830 (D.C. Cir. 1979) (quoting *Vaughn v. Rosen*, 484 F.2d 820, 826 (D.C. Cir. 1973)) (“‘[C]onclusory and generalized allegations of exemptions’ are unacceptable; if the court is unable to sustain nondivulgence on the basis of affidavits, [i]n camera inspection may well be in order.”); *Larson v. Dep’t of State*, 565 F.3d 857, 864 (D.C. Cir. 2009) (“If an agency’s statements supporting exemption contain reasonable specificity of detail as to demonstrate that the withheld information logically falls within the claimed exemption and evidence in the record does not suggest otherwise . . . the court should not conduct a more detailed inquiry to test the agency’s

judgment and expertise or to evaluate whether the court agrees with the agency's opinions."'). Here, the agencies' statements do not provide reasonable specificity of detail as to demonstrate why exemption 3 applies; as such, Defendants' *Glomar* responses are not justified.

**1. The Government Has Not Shown That Section 102A(I)(1) Of The National Security Act Provides A Basis For Failing To Acknowledge The Existence Or Nonexistence Of Responsive Records.**

Acknowledging records responsive to the narrow requests related to the Government's duty to warn as it relates to the death of Mr. Khashoggi would not, as the agencies suggest, implicate "intelligence sources and methods." The National Security Act provides, in relevant part, that "[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." 50 U.S.C. § 3024(i)(1). Each agency has asserted that even so much as the acknowledgement of the existence or nonexistence of records responsive to Parts 2 and 3 (and for ODNI, Part 4) "would run afoul of Section 102A(i)(1) by tending to reveal exactly such information." Defs.' Mem. Supp. Mot. Summ. J., 28.

The National Security Act does not wholly exempt these agencies from FOIA requests by virtue of the fact that they all engage in work that is somehow related to "intelligence sources and methods information." Rather, FOIA Exemption 3 requires that the Agencies "demonstrate[] that an answer to the query 'can reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods.'" *Gardels v. CIA*, 689 F.2d 1100, 1103 (D.C. Cir. 1982) (quoting *Halperin v. CIA*, 629 F.2d 144, 147 (D.C. Cir. 1980)). Parts 2-4 of CPJ's requests do not ask that the agencies provide any information on intelligence sources or methods information. Rather, CPJ's requests pertain solely to records specifically related to a potential duty to warn with relation to Mr. Khashoggi. Merely acknowledging the existence or

nonexistence of such documentation and providing it, if it does exist, would not require the Agencies to provide any information on the sources from which they obtain information or on the methods by which they obtain information. The agencies may, if it is justified, apply redactions to certain portions of any responsive records should certain portions provide more specific information on intelligence sources and methods. The agencies have not demonstrated, however, how merely acknowledging the existence (or lack thereof) of responsive records would result in the unauthorized disclosure of intelligence sources and methods. Therefore, the agencies' *Glomar* responses may not be justified on the basis of the National Security Act.

**(a) The ODNI Has Failed To Explain How Disclosing The Mere Existence Or Nonexistence Of Responsive Records Would Result In The Unauthorized Disclosure Of "Intelligence Sources And Information."**

The ODNI incorrectly argues that "[d]isclosing whether or not the ODNI maintains records responsive to parts 2-4 of plaintiff's FOIA request would reveal the existence or non-existence of IC intelligence sources and methods information" because "[t]he information withheld . . . constitutes intelligence sources and information." Gaviria Decl., ¶ 29. ODNI's declarant provides no additional explanation as to how exactly providing records concerning the duty to warn as it specifically relates to Jamal Khashoggi would provide any information on the types of intelligence sources and methods that Section 102A(i)(1) of the National Security Act is meant to protect. While the requested information may or may not exist as a result of the existence or nonexistence of intelligence sources and methods information, the ODNI has not shown how acknowledging the existence or nonexistence of such documents would in fact reveal anything about those intelligence sources and methods information. Therefore, the ODNI may

not invoke the National Security Act § 102A(i)(1) does not support ODNI's reliance on Exemption 3.

**(b) The NSA Has Failed To Explain How Disclosing The Mere Existence Or Nonexistence Of Responsive Records Would Result In The Unauthorized Disclosure Of "Intelligence Sources And Methods".**

The NSA does not explain how confirming or denying the existence of responsive records necessitates the revelation of "underlying intelligence information relating to a threat to a particular individual" thereby disclosing "information about IC intelligence sources and methods." Kiyosaki Decl., ¶ 27. It does not necessarily follow that specific sources and methods would be implicated by the revelation of information that could have come (or not come) from any number of sources. Therefore, the NSA may not invoke the National Security Act § 102A(i)(1) as support for its reliance on Exemption 3.

**(c) The CIA Has Failed to Explain How Disclosing the Mere Existence or Nonexistence of Responsive Records Would Result in the Unauthorized Disclosure of "Intelligence Sources and Methods".**

While the CIA contends that the information sought would "concern[] intelligence sources and methods," Shiner Decl. ¶ 46, the declaration does not in fact explain how acknowledging the existence or nonexistence of the information would reveal those intelligence sources and methods. Therefore, the CIA may not invoke the National Security Act § 102A(i)(1) as support for its reliance on Exemption 3.

**(d) The FBI Has Failed to Explain How Disclosing the Mere Existence or Nonexistence of Responsive Records Would Result in the Unauthorized Disclosure of “Intelligence Sources and Information”.**

While the FBI asserts that “acknowledging the existence or non-existence of records responsive to Plaintiff’s request could reasonably be expected to reveal classified national security information” and “would pertain to ‘intelligence sources and methods’”, Hardy Decl. ¶ 43, the declaration does not explain how acknowledgement would *reveal* those intelligence sources and methods. The FBI has not correctly invoked the National Security Act § 102A(i)(1) as support for its reliance on Exemption 3.

**2. Section 6 Of The National Security Agency Act Does Not Provide A Basis For The NSA Failing To Acknowledge The Existence Or Nonexistence Of Responsive Records.**

Section 6 of the NSA Act provides that nothing in any law “shall be construed to require the disclosure of the organization or any function of the National Security Agency, or any information with respect to the activities thereof, or the names, titles, salaries, or number of the persons employed by such agency.” 50 U.S.C. § 3605.

The NSA argues that “[d]isclosure of *any* information relating to NSA activities is potentially harmful. Section 6 states unequivocally that NSA cannot be compelled by statute to disclose any information with respect to its activities.” Kiyosaki Decl., ¶ 28. While “the legislation’s scope must be broad in light of the agency’s highly delicate mission,” the D.C. Circuit has previously held that in this statute, “a term so elastic as ‘activities’ should be construed with sensitivity to the hazard(s) that Congress foresaw.” *Founding Church of Scientology*, 610 F.2d at 829 (internal citations omitted).

In this case, the NSA has simply asserted, without more, that “acknowledging the existence or non-existence of responsive records . . . would reveal information about NSA’s functions and activities.” Kiyosaki Decl., ¶ 28. While CPJ has requested information that may or may not be in the NSA’s possession, it has not requested information on the NSA’s functions or activities. The fact that the NSA has or does not have responsive records does not provide any actual information on the NSA’s functions or activities such that Section 6 would provide protection. Therefore, the NSA may not rely on Section 6 as support for its reliance on Exemption 3.

**3. 18 U.S.C. § 798 Does Not Provide A Basis For The NSA Failing To Acknowledge The Existence Or Nonexistence Of Responsive Records.**

There is no merit to the NSA’s argument that confirming or denying the existence of records responsive to Part 2 of the request “would reveal information related to NSA’s [communication intelligence] activities, targets, priorities, and capabilities” because “[t]he duty to warn . . . could only be triggered by the existence of intelligence information—and, with respect to NSA specifically, [communication intelligence].” Kiyosaki Decl. ¶ 29.

Section 798, in relevant part, makes it illegal to “make[] available to an unauthorized person . . . any classified information . . . concerning the communication intelligence activities of the United States or any foreign government.” 18 U.S.C. § 798(a)(3). “Communication intelligence” is defined within the statute to mean “all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients.” 18 U.S.C. § 798(b). Part 2 requests records concerning the duty to warn as it relates to Mr. Khashoggi, including records related to duty to warn actions



with respect to him. While there may be intelligence information for the responsive records to exist, the acknowledgement of the existence or nonexistence of responsive records does not provide any actual information on the “communication intelligence activities” protected by 18 U.S.C. § 798. Therefore, the NSA may not invoke 18 U.S.C. § 798 as support for its reliance on Exemption 3.

**III. The Public Record Suggests that the Government Is Relying on *Glomar* to Avoid Embarrassment, Which Is Not a Proper Basis for Nondisclosure.**

While “[a]gency affidavits are entitled to a presumption of good faith,” that presumption may be “called into question” – as it is here – “by contradictory record evidence or evidence of bad faith.” *Elec. Frontier Found.*, 384 F. Supp. 3d at 9 (citing *SafeCard Servs. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir.1991)). In particular, it is well recognized that the avoidance of embarrassment is not a proper basis for avoiding disclosure under FOIA. See Executive Order Section 1.7(a)(2) (information may not be classified “to prevent embarrassment to a person, organization, or agency”). Not only is avoidance of embarrassment an express limitation to Defendants’ Exemption 1 claim, but there is no sound reason why the Government should be able to rely on avoidance of embarrassment to support the use of Exemption 3.

Here, the public record and the record of this case indicate multiple sources of likely embarrassment that would tend to lead to *Glomar* responses:

- If there are documents that show that specific agencies knew of the threat to Mr. Khashoggi prior to the murder (as reputable investigative reports suggest), but that the agencies failed to consider or execute their obligations under Directive 191, then that of course would be critically embarrassing to the Government. That scenario could only indicate that the agencies either were negligent in the execution of Directive 191 duties, or that they had

deliberately turned a blind eye to human rights and the rule of law in support of an ally. *Cf. Elec. Frontier Found.*, 384 F. Supp. 3d at 9 (explaining that a typical presumption of good faith is called into question by evidence of bad faith).

- Conversely, were such documents *not* to exist, that too would indicate a serious failure of intelligence. The scale of the murder operation was substantial. Given (for example) the number of people involved, the need for electronic communication and the amount of travel, the Saudi operatives involved surely must have thrown off detectible clues. The U.S. government undoubtedly would not want to publicly disclose that the intelligence community had failed to spot those clues, but avoiding the embarrassment of that disclosure is not a cognizable interest under FOIA. *Cf. Josh Meyer, The CIA Sent Warnings to at Least 3 Khashoggi Associates About New Threats From Saudi Arabia*, TIME (May 9, 2019), <https://time.com/5585281/cia-warned-jamal-khashoggi-associates/>. To the extent that the Government argues that acknowledging such a failure in intelligence would reveal a blind spot and harm national security, that argument is lacking. America's intelligence failures are no secret and have been publicly criticized. Uri Friedman, *The Ten Biggest American Intelligence Failures*, Foreign Policy (Jan. 3, 2012, 2:39 AM), <https://foreignpolicy.com/2012/01/03/the-ten-biggest-american-intelligence-failures/>.
- A third distinct source of embarrassment is the clear possibility that the intelligence agencies were well aware of the threat to Mr. Khashoggi, but were ordered from above not to act on the threat. Defendants' own findings as to Saudi Arabia's involvement in the murder of Mr. Khashoggi are unmistakable. *See, e.g., Shane Harris et al., CIA Concludes Saudi Crown Prince Ordered Jamal Khashoggi's Assassination*, Wash. Post (Nov. 16, 2018),

[https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d\\_story.html](https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html). Yet the U.S. government has appeared alarmingly disinterested in the details of its ally's involvement, and from the very top has stated a preference to not let the murder damage the countries' strategic relationship. See Michael D. Shear, *Trump Shrugs Off Khashoggi Killing by Ally Saudi Arabia*, N.Y. Times (Jun. 23, 2019), <https://www.nytimes.com/2019/06/23/us/politics/trump-khashoggi-killing-saudi-arabia.html>; Jon Swaine, *Trump Dismisses UN Request for FBI to Investigate Jamal Khashoggi's Murder*, The Guardian (Jun. 23, 2019), <https://www.theguardian.com/world/2019/jun/23/jamal-khashoggi-trump-un-request-fbi-investigation>; Mark Landler, In Extraordinary Statement, Trump Stands with Saudis Despite Khashoggi Killing (Nov. 20, 2018), <https://www.nytimes.com/2018/11/20/world/middleeast/trump-saudi-khashoggi.html>. It stands to reason that if the Government had prior knowledge of the threat to Mr. Khashoggi's life, executive branch leadership would have shown a similar disinterest as it has shown—to widespread condemnation—after the fact. The Government's open placement of strategic and financial concerns above human rights is deeply at odds with the views of the American people. See, e.g., Washington Post-Schar School Battleground Districts Poll Oct. 25-28 (Oct. 29, 2018), [https://apps.washingtonpost.com/g/page/politics/washington-post-schar-school-battleground-districts-poll-oct-25-28/2345/?tid=lk\\_inline\\_manual\\_24](https://apps.washingtonpost.com/g/page/politics/washington-post-schar-school-battleground-districts-poll-oct-25-28/2345/?tid=lk_inline_manual_24) (84% of those polled believe top Saudi leaders were trying to cover up what happened to Mr. Khashoggi and that 55% thought that if Saudi leaders had ordered Mr. Khashoggi's murder, the U.S. should cut back ties with Saudi Arabia); Gallup, Country Ratings,

<https://news.gallup.com/poll/1624/perceptions-foreign-countries.aspx> (finding that as of February 2019, 67% of Americans have an unfavorable view of Saudi Arabia, a 12% increase from the prior year). While the Government may want to avoid the embarrassment of having to justify its widely condemned indifference to the murder and prioritization of weapons sales, see Nahal Toosi, *Trump's Deference to Saudi Arabia Infuriates Much of D.C.*, Politico (Sep. 16, 2019), <https://www.politico.com/story/2019/09/16/saudi-trump-oil-iran-1498147>; Daniel Politi, *Trump Brushes Off Call for FBI Probe Into Khashoggi, Cites Importance of Saudi Arms Sales*, Slate (Jun. 23, 2019), <https://slate.com/news-and-politics/2019/06/trump-dismisses-fbi-investigation-khashoggi.html>, that does not constitute a legal basis under which the Government can justify its *Glomar* responses.

- The Government also may be seeking not to disclose the extent to which it spies on its allies. Such information is, in fact, neither shocking nor a justification for classifying information or for *Glomar* responses. See Max Fisher, *Why America Spies on Its Allies (and Probably Should)*, Wash. Post (Oct. 29, 2013), <https://www.washingtonpost.com/news/worldviews/wp/2013/10/29/why-america-spies-on-its-allies-and-probably-should/>; Jonathan Marcus, *NSA Spying Allegations: Are US Allies Really Shocked?*, BBC (Oct. 26, 2013), <https://www.bbc.com/news/world-europe-24676392>.

Accordingly, close review of the Government's position is in order here. See *Jones v. FBI*, 41 F.3d 238, 243 (6th Cir. 1994) (If "it becomes apparent that the subject matter of a

request involves activities which, if disclosed, would publicly embarrass the agency . . . government affidavits lose credibility.”).<sup>56</sup>

Similarly, the Government may not impermissibly delay release of information about the duty to warn Mr. Khashoggi. See Order Section 1.7(a)(4) (“In no case shall information be classified . . . in order to . . . prevent or delay the release of information that does not require protection in the interest of the national security”). Almost one year has passed since Mr. Khashoggi was assassinated. Plaintiff has sought clarity concerning this tragic event for almost one year as well. This delay is expressly prohibited by Section 1.7(a)(4) of the Order.

**IV. As An Alternative, The Court Can And Should Require More Detailed Affidavits From The Government As Well As *In Camera* Review Of Responsive Documents.**

CPJ appreciates that, despite Defendants’ clear failure to meet their burden under FOIA thus far, the Court may wish to proceed cautiously given the intelligence community’s position. CPJ therefore notes that the Court has discretion to order that Defendants submit additional affidavits, either publicly or confidentially. The Court also can order the submission of responsive documents, to the extent they exist, for *in camera* review. See 5 U.S.C. § 552(a)(4)(b) (stating that a court may examine agency records “in camera to determine whether such records or any part shall be withheld” under applicable exemptions); See *Jones*, 41 F.3d at 243 (ordering *in camera* review of documents; “[i]n certain circumstances the court must play a more active role because no other party or institution is available to ensure that the agency’s

---

<sup>56</sup> Saudi Arabia is a recognized ally of the United States. According to the U.S. Department of State, the United States and Saudi Arabia have had a relationship since 1931. See U.S. Department of State, U.S. Relations With Saudi Arabia: Bilateral Relations Fact Sheet, Bureau of Near Eastern Affairs (Aug. 7, 2018), <https://www.state.gov/u-s-relations-with-saudi-arabia>.

assertions are reliable.”). The exercise of that discretion would be appropriate in this case if there is any hesitation about simply ordering full and prompt FOIA compliance.

As noted above, the Defendants’ conclusory justifications for *Glomar* responses are plainly insufficient and, at the very least, deserving of closer scrutiny. *See Hayden v. Nat’l Sec. Agency/Cent. Sec. Serv.*, 608 F.2d 1381, 1387 (D.C. Cir. 1979) (affidavits are inadequate if “the agency’s claims are conclusory, merely reciting statutory standards, or if they are too vague or sweeping.”). Strikingly, no agency explains exactly how information about its consideration of Directive 191 obligations as it relates to Mr. Khashoggi – including, potentially, redacted information – could reasonably be expected to expose intelligence, sources, and methods. Yet that is a requirement for both claimed exemptions. Defendants instead generally recite the statutory standards without meaningful explanation or connection to this case.

Recognizing that *in camera* inspection is not typically favored in national security cases, *Mobley v. CIA*, 806 F.3d 568, 588 (D.C. Cir. 2015), *in camera* review is appropriate here because of the unique circumstances in this case: the remarkable amount of information already acknowledged by the U.S. and Saudi governments; the enormous U.S. and global demand for further transparency; and the clear threat to American values posed by the Government’s public disinterest in human rights considerations. CPJ respectfully submits that these factors warrant heightened scrutiny into Directive 191 compliance, via more detailed affidavits and via *in camera* review to the extent the Court deems appropriate. Such relief would not require the Government to abandon its position in the first instance.

[remainder of page intentionally left blank]

**CONCLUSION**

CPJ respectfully requests that the Court grant its cross-motion for summary judgment, or in the alternative, order the Defendants to submit more detailed affidavits justifying their *Glomar* responses, to be reviewed *in camera* with responsive documents, if they exist, if necessary. CPJ requests that the Court deny the Defendants' motion for summary judgment.

Respectfully submitted,

/s/ Timothy K. Beeken

Timothy K. Beeken (NY0083)  
Jeremy Feigelson (admitted *pro hac vice*)  
Alexandra P. Swain (admitted *pro hac vice*)  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, NY 10022  
(212) 909-6000  
tkbeeken@debevoise.com  
jfeigelson@debevoise.com  
apswain@debevoise.com

*Counsel for Plaintiff Committee to Protect  
Journalists*

September 26, 2019

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT  
INSTITUTE AT COLUMBIA  
UNIVERSITY,

COMMITTEE TO PROTECT  
JOURNALISTS,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et*  
*al.*,

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

**PLAINTIFF COMMITTEE TO PROTECT JOURNALISTS' STATEMENT OF  
MATERIAL FACTS**

Pursuant to Local Civil Rule 7(h)(1), Plaintiff Committee to Protect Journalists ("CPJ") respectfully submits the following statement of material facts as to which there is no genuine dispute.<sup>1</sup>

**I. Known Facts Regarding the Murder of Jamal Khashoggi**

1. Jamal Khashoggi was a U.S. resident, a Saudi dissident, and internationally recognized journalist known for his human rights and press freedom advocacy in the Middle East.
2. As a columnist for *The Washington Post* and editor-in-chief of Al-Arab News Channel, Mr. Khashoggi's journalism regularly featured criticisms of the Saudi government, and in

---

<sup>1</sup> Facts independently related to former Defendant Department of State ("DoS") and its response to Plaintiffs' FOIA requests are not addressed as DoS has been dismissed from this suit, without prejudice to Plaintiffs' ability to seek attorney's fees at a later point in these proceedings.



particular the Saudi Crown Prince Mohammed bin Salman (the “Crown Prince”).

Declaration of Alexandra P. Swain (“Swain Decl.”) Ex. 1.

3. On October 2, 2018, Mr. Khashoggi arrived at the Saudi consulate in Istanbul, Turkey to obtain documentation for his upcoming marriage to his Turkish fiancé, Hatice Cengiz. Swain Decl. Ex. 2.
4. When Mr. Khashoggi failed to emerge from the consulate, his fiancé contacted the Turkish police. Swain Decl. Ex. 3.
5. The Turkish police and a prosecutor initiated an investigation into his disappearance. Swain Decl. Ex. 4.
6. On October 5, 2018, the Crown Prince stated that Mr. Khashoggi had left the Saudi consulate and that the government had nothing to hide. Swain Decl. Ex. 5.
7. On October 10, 2018, the Turkish media released images of a fifteen-member team of Saudi agents allegedly responsible for Mr. Khashoggi’s murder. Swain Decl. Ex. 6.
8. Later, on October 20, 2018, the Saudi government conceded that Mr. Khashoggi was killed in their consulate and that an investigation was underway. Swain Decl. Ex. 7.
9. The following month, in November, the Central Intelligence Agency (“CIA”) concluded that the Crown Prince likely ordered Mr. Khashoggi’s killing. Swain Decl. Ex. 8.
10. Audio transcriptions, later released by Turkish intelligence agencies, revealed that once Mr. Khashoggi was grabbed in the consulate, Mr. Khashoggi struggled and repeatedly pleaded for his life while a team of Saudi agents strangled him. Swain Decl. Ex. 9.
11. Mr. Khashoggi’s body was also mutilated, and the current whereabouts of his remains are unconfirmed. *Id.*

12. On September 26, 2019, the Crown Prince reportedly claimed “all the responsibility” for the killing of Khashoggi, while still denying that he had prior knowledge of the plan.  
Swain Decl. Ex. 10.

## **II. The Duty to Warn**

13. The Intelligence Community, pursuant to Intelligence Community Directive 191 (“Directive 191”), has a duty to warn individuals or groups about threats of intentional killing, serious bodily injury, and kidnapping. Swain Decl. Ex. 11.
14. Directive 191 equally applies to both U.S. persons and non-U.S. persons and requires intelligence community elements to document and maintain records in relation to actions taken pursuant to the duty to warn. *Id.*

## **III. Public Response to Jamal Khashoggi’s Murder**

15. Mr. Khashoggi’s disappearance and the facts surrounding his murder have prompted interest from U.S. officials, foreign governments, and international human rights groups.
16. For example, a week after Mr. Khashoggi’s death, the Senate Foreign Relations Committee issued a letter to the President pursuant to the Global Magnitsky Human Rights Accountability Act (the “Global Magnitsky Act”)<sup>2</sup> which required the President to make a determination on the imposition of sanctions pursuant to the Global Magnitsky Act with respect to any foreign person responsible for violations related to Mr. Khashoggi. Swain Decl. Ex. 12.

---

<sup>2</sup> The Global Magnitsky Act requires the President to determine whether a foreign person is responsible for an extrajudicial killing, torture, or other gross violation of internationally recognized human rights against an individual exercising freedom of expression.

17. On October 22, 2018, over fifty congressional representatives sent a letter to Director of National Intelligence Daniel Coats inquiring about what actions were taken by the U.S. intelligence agency relating to Directive 191 and Mr. Khashoggi. The following week, another group of senators sent a letter to Director of National Intelligence Daniel Coats, dated October 30, 2018, addressing Directive 191 and Mr. Khashoggi's murder. Swain Decl. Ex. 13.
18. On December 13, 2018, the Senate unanimously passed a resolution that held the Crown Prince personally responsible for the death of Mr. Khashoggi. In the same session, the Senate also invoked the War Powers Act, and voted to end U.S. military assistance to Saudi Arabia over Mr. Khashoggi's killing. Swain Decl. Ex. 14.
19. In December 2018, CIA director Gina Haspel briefed Senate committees on the matter, resulting in senators making public statements about the killing. Swain Decl. Ex. 15.
20. In the year since Mr. Khashoggi's death, Congress has urged for a public investigation, introducing legislation requiring a public report on the killing of Mr. Khashoggi, Swain Decl. Ex. 16, and the Saudi Arabia Diplomatic Review Act of 2019 ("SADRA"), a bill to mandate an Executive Branch review of America's relationship with the Saudi government. Swain Decl. Ex. 17.
21. In a June 23, 2019 interview, President Donald Trump stated that Mr. Khashoggi's murder had already been "heavily investigated." Swain Decl. Ex. 18. When asked about whether the U.S. arms deals with Saudi Arabia allowed him to "overlook some of [Saudi Arabia's] bad behavior," he said that: "the Middle East ... is a hostile place" and Saudi Arabia continues to buy "massive amounts, \$150 billion worth of military equipment ...

So Saudi Arabia is a big buyer of America product. That means something to me. It's a big producer of jobs." *Id.*

**IV. Acknowledgment of Responsive Records**

22. The CIA and the Office of Director of National Intelligence ("ODNI") have both, in a separate litigation proceeding, acknowledged the existence of "records relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA's findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible," Swain Decl. Ex. 19. Swain Decl. Ex. 20.

**V. Plaintiffs' Narrow FOIA Requests and Defendants' Responses**

23. On October 19 2018, then-plaintiff, the Knight Institute of Columbia University ("the Knight Institute"), sent the following FOIA requests to the CIA, Federal Bureau of Investigation ("FBI"), National Security Agency ("NSA"), and ODNI (collectively "Defendants") seeking records related to the Government's duty to warn and any records the Defendants may have in relation to the duty to warn as it relates to Mr. Khashoggi:

Request 1: Procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191.

Request 2: Records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him.

Request 3: Records concerning any issue arising among IC elements regarding a determination to warn Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

Request 4 (for ODNI only): Records relating to any dispute referred to the ODNI regarding a determination to warn Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him.

First Amended Complaint ("FAC"), Dkt. No. 17, ¶¶ 15, 17; Dkt. No. 17-1.

24. On November 20, 2018, after the Defendants failed to respond to the Knight Institute's FOIA requests within the statutorily mandated time period, the Knight Institute initiated the instant lawsuit to compel the Defendants to produce responsive documents. Dkt. No. 1
25. Also on November 20, 2018, Plaintiff CPJ submitted substantively identical FOIA requests to the same agencies. FAC, Dkt. No. 17-2
26. On January 17, 2019, the Knight Institute filed its First Amended Complaint, adding CPJ as a plaintiff. FAC, Dkt. No. 17.
27. The Defendants processed the Plaintiffs' FOIA requests and responded as follows<sup>3</sup>:

**A. ODNI**

28. On February 14, 2019, ODNI informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located responsive records, all of which had originated with other Defendant agencies. Decl. of Patricia Gaviria ("Gaviria Decl.") ¶ 12. ODNI informed the Knight Institute and CPJ that these records had been referred to the respective other agencies for processing and production, because all responsive records originated with other Defendant agencies. *Id.*
29. ODNI also informed the Plaintiffs that, pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2, 3, or 4. *Id.* ODNI explained that the fact of the existence or nonexistence of such records "is itself currently and properly classified, and could reveal intelligence sources and methods

---

<sup>3</sup> None of the Defendants issued Glomar responses to FOIA Request 1, so these responses are not addressed in detail.

information that is protected from disclosure pursuant to Section 102A(i)(1) of the National Security Act of 1947[.]” *Id.*

**B. NSA**

30. On March 11, 2019, the NSA informed the Plaintiffs that it had completed a search as to Request 1, and had located two responsive records, totaling 21 pages, which it simultaneously produced. Decl. of Linda M. Kiyosaki (“Kiyosaki Decl.”) ¶ 13. The NSA claimed that, under FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2 or 3. *Id.* The NSA stated that the fact of the existence or nonexistence of such records “is a currently and properly classified matter,” and that “the existence or non-existence of the information” is protected from disclosure by 18 U.S.C. § 798, 50 U.S.C. §§ 3024(i), 3605. *Id.*

**C. CIA**

31. On March 15, 2019, the CIA informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located responsive records. Decl. of Antoinette B. Shiner (“Shiner Decl.”) ¶ 13 & fn. 3. For Request 1, the CIA produced three records with redactions, totaling 19 pages, and withheld in full two additional records. *Id.* The CIA claimed the redactions were pursuant to FOIA Exemption 1 and 3, and that it withheld two documents in full under FOIA Exemptions 1, 3, 5, and 6. *Id.* Additionally, CIA informed the Plaintiffs that, for Requests 2 or 3, it claimed FOIA Exemptions 1 and 3, and thus could neither confirm nor deny the existence of such records. *Id.*
32. The CIA also claimed that, pursuant to FOIA Exemptions 1 and 3, it could neither confirm nor deny the existence of records responsive to Requests 2 or 3. Shiner Decl. ¶ 13. The CIA explained that the fact of the existence or nonexistence of such records “is

itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1).” *Id.*

**D. FBI**

33. On March 29, 2019, the FBI informed the Plaintiffs that it had conducted and completed a search as to Request 1, and had located eight responsive records, totaling thirty-three pages, which it simultaneously produced, in part. With respect to Requests 2 or 3, the FBI informed the Plaintiffs it could neither confirm nor deny the existence of such records. The Defendant claimed that “the mere acknowledgement of such records[’] existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1).” Decl. of David M. Hardy (“Hardy Decl.”) Defs.’ Ex. C, at 2.
34. On May 14, 2019, the FBI released a single additional page pursuant to its March 29, 2019 production. *Id.* at Defs.’ Ex. D.

**VI. Issues for Resolution by the Court**

35. In a Joint Status Report filed on June 28, 2019, the parties proposed a schedule for further proceedings, including a proposal that Plaintiffs identify all issues and challenges by July 12, 2019. Dkt. No. 28.
36. On July 1, 2019, the Court adopted this proposal. July 1, 2019 Minute Order.

37. On July 12, 2019, Plaintiff CPJ informed the Defendants that it would challenge the Glomar responses for the FBI, CIA, ODNI, and the NSA. Defs.' Ex. 1. CPJ also requested that the CIA provide a Vaughn Index and expressed its intention to challenge the CIA's redactions with respect to the three documents that it provided, the remaining documents that it withheld in response to item 1 in the FOIA request, and the remaining documents it withheld in coordination with the Department of State. *Id.*
38. On July 18, 2019 then-Plaintiff Knight Institute voluntarily dismissed its claims against all Defendants, without prejudice to its ability to seek an award of attorney's fees and other litigation costs at a later point in these proceedings. Dkt. No. 29; *see also* July 19, 2019 Minute Order (ordering the stipulation of dismissal).
39. On July 25, 2019, Plaintiff CPJ dismissed all claims against then Defendant DoS, also without prejudice to seek attorney's fees and costs from DoS at a later point in the litigation. Dkt. No. 30; *see also* July 30, 2019 Minute Order (ordering DoS' dismissal).

[Remainder of the page intentionally left blank.]



40. In accordance with the July 1, 2019 Order, on August 28, 2019, Defendants filed a Motion for Summary Judgment along with public affidavits. Dkt No. 34. Additionally, Defendant CIA filed the requested Vaughn Index. *Id.*

Dated: New York, NY  
September 26, 2019

Respectfully submitted,

/s/ Timothy K. Beeken

Timothy K. Beeken (NY0083)

Jeremy Feigelson (admitted *pro hac vice*)

Alexandra P. Swain (admitted *pro hac vice*)

DEBEVOISE & PLIMPTON LLP

919 Third Avenue

New York, NY 10022

(212) 909-6000

tkbeeken@debevoise.com

jfeigelson@debevoise.com

apswain@debevoise.com

*Counsel for Plaintiff Committee to Protect  
Journalists*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

KNIGHT FIRST AMENDMENT  
INSTITUTE AT COLUMBIA  
UNIVERSITY,  
COMMITTEE TO PROTECT  
JOURNALISTS,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,  
*et al.*,

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

**DECLARATION OF ALEXANDRA P. SWAIN**

I, Alexandra P. Swain, declare as follows:

1. I am admitted to this Court *pro hac vice* and am associated with the law firm of Debevoise & Plimpton LLP, counsel for Plaintiff Committee to Protect Journalists.
2. I make this declaration based on personal knowledge, and on the record of this litigation, in support of Plaintiff's Statement of Material Facts.
3. Attached as **Exhibit 1** is a news article titled "Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic" dated Oct. 10, 2018 published in *Bloomberg News*.
4. Attached as **Exhibit 2** is a news article titled "Jamal Khashoggi was Worried About Consulate Visit, Says Fiancé" dated Oct. 26, 2018 published in *The Guardian*.

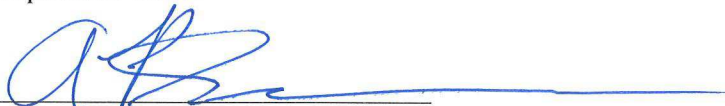
5. Attached as **Exhibit 3** is a news article titled “Turkey Concludes Saudi Journalist Jamal Khashoggi Killed by ‘Murder’ Team, Sources Say” dated Oct. 6, 2018 published in *The Washington Post*.
6. Attached as **Exhibit 4** is a news article titled “Turkey Searches Saudi-Owned Mansion for Evidence in Khashoggi Case” dated Nov. 26, 2018 published in *The New York Times*.
7. Attached as **Exhibit 5** is a news article titled “Khashoggi’s Death Is Explained by the Saudis in Five Acts (and Counting)” dated Oct. 25, 2018 published in *The New York Times*.
8. Attached as **Exhibit 6** is a news article titled “Jamal Khashoggi: Turkish Media Says Video Shows Disappearance Plot” dated Oct. 10, 2018 published by *BBC News*.
9. Attached as **Exhibit 7** is a news article titled “Jamal Khashoggi Case: Saudi Arabia Says Journalist Killed in Fight” dated Oct. 20, 2018 published by *BBC News*.
10. Attached as **Exhibit 8** is a news article titled “CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi” dated Dec. 1, 2018 published in *The Wall Street Journal*.
11. Attached as **Exhibit 9** is a news article titled “Saudi Hit Squad’s Gruesome Conversations During Khashoggi’s Murder Revealed” dated Sep. 9, 2019 published in *Daily Sabah*.

12. Attached as **Exhibit 10** is a news article titled “On Khashoggi Killing and Yemen, Saudis Cannot Avoid Fresh Scrutiny” dated Sept. 26, 2019 published by *The New York Times*.
13. Attached as **Exhibit 11** is a policy document from the Office of the Director of National Intelligence titled Community Directive 191 or “Duty to Warn.”
14. Attached as **Exhibit 12** is a press release titled “Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi” dated Oct. 10, 2018 published by the Senate Committee on Foreign Relations.
15. Attached as **Exhibit 13** is a letter from Senator Richard Blumenthal to Daniel Coates, Director of National Intelligence dated Oct. 30, 2018 published by the Office of US Senator Richard Blumenthal.
16. Attached as **Exhibit 14** is a news article titled “Senate Votes to End Aid for Yemen Fight Over Khashoggi Killing and Saudis’ War Aims” dated Dec. 13, 2018 published in *The New York Times*.
17. Attached as **Exhibit 15** is a news article titled “Lindsey Graham after CIA Briefing on Jamal Khashoggi Murder: ‘There’s a Smoking Saw,’” dated Dec. 4, 2018 published by *CBS News*.
18. Attached as **Exhibit 16** is a press release titled “Senators Coons, Wyden, Heinrich, Reed, Harris Reintroduce Bill Requiring Public Report on Khashoggi

Murder by Saudi Arabia” dated Feb. 26, 2019 published by the Office of US Senator Chris Coons.

19. Attached as **Exhibit 17** is a press release titled “Rubio Joins Risch, Shaheen, Coons on New Bill to Review U.S.-Saudi Relations” dated Jul. 10, 2019 published by the Office of US Senator Marco Rubio.
20. Attached as **Exhibit 18** is a news article titled “President Trump's Full, Unedited Interview with Meet the Press NBC” dated Jun. 23, 2019 published by *NBC News*.
21. Attached as **Exhibit 19** is the judicial opinion, *Open Soc’y Justice Initiative v. CIA*, No. 1:19-cv-00234-PAE, (S.D.N.Y. Jan 9, 2019).
22. Attached as **Exhibit 20** is the joint status letter dated Sep. 24, 2019 from *Open Soc’y Justice Initiative v. CIA*, No. 1:19-cv-00234-PAE, (S.D.N.Y. Jan. 9, 2019).

I declare under penalty of perjury that the foregoing is true and correct. Executed at New York, New York on this 26 day of September 2019.

By: 

Alexandra P. Swain

# **EXHIBIT 1**

# The Washington Post

*Democracy Dies in Darkness*

## Who Is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic

By **Donna Abu-Nasr | Bloomberg**

Oct. 10, 2018 at 9:00 p.m. EDT

Jamal Khashoggi, one of Saudi Arabia's most prominent journalists, hasn't been seen or heard from since he walked into the Saudi consulate in Istanbul on Oct. 2. He has been living in self-imposed exile in Virginia after leaving Saudi Arabia last year. Turkish officials have said he was killed inside the consulate, a claim the Saudi government has vehemently denied.

### 1. Why is Khashoggi so prominent?

Khashoggi, 59, has been a leading critic of Saudi Arabia's current leadership, sharing his views via platforms including opinion columns in the Washington Post that began a year ago and were translated into Arabic. His journalism career has included stints in Afghanistan, where he met and followed the rise of al-Qaeda chief Osama bin Laden in the 1980s. He was deputy editor-in-chief of the Saudi newspaper Arab News at the time of the Sept. 11, 2001, attacks on the U.S., which made him a valuable source for foreign journalists seeking to understand what drove some Muslims into such actions. In the 2000s, he was twice fired from his post as editor-in-chief of the Saudi Al-Watan daily newspaper, which under his leadership ran stories, editorials and cartoons critical of extremists and the way in which the country enforced its religious values. (Saudi newspapers are privately owned but government-guided, and the government approves and can fire top leadership).

## 2. Why is he so well-known outside Saudi Arabia?

In part because, in between his Al-Watan stints, he was an adviser to the Saudi ambassador to London, Prince Turki Al-Faisal, a former long-serving intelligence chief. Then, in 2005, when the prince was appointed the Saudi envoy to the U.S., Khashoggi joined him as a media aide. Most recently Khashoggi worked as a columnist and commentator before leaving the kingdom for exile in the U.S. in June 2017.

## 3. Why did he go into exile?

He told friends and reporters that the space for freedom of speech under Crown Prince Mohammed bin Salman was shrinking and he feared for his safety. In an appearance on Al Jazeera TV's "Upfront" that aired in March, he said he'd left the kingdom "because I don't want to be arrested." On the worsening environment for journalists since Prince Mohammed took over, he said, "I got fired from my job twice because I was pushing for reform in Saudi Arabia. It wasn't that easy but people were not being put in jails. There was a breathing space."



#### 4. What has he written?

Khashoggi doesn't see himself as a dissident but as a critic worried about the direction his country is going under its 33-year-old crown prince. In his first Washington Post column on Sept. 18, 2017, he wrote about his decision to leave Saudi Arabia: "I have left my home, my family and my job, and I am raising my voice. To do otherwise would betray those who languish in prison. I can speak when so many cannot. I want you to know that Saudi Arabia has not always been as it is now. We Saudis deserve better." In February, Khashoggi wrote that Prince Mohammed maybe "should learn from the British royal house that has earned true stature, respect and success by trying a little humility himself. If MBS can listen to his critics and acknowledge that they, too, love their country, he can actually enhance his power." In the last column before his disappearance, he urged Prince Mohammed to end the war he started on Yemen more than three and a half years ago: "The longer this cruel war lasts in Yemen, the more permanent the damage will be. The people of Yemen will be busy fighting poverty, cholera and water scarcity and rebuilding their country. The crown prince must bring an end to the violence and restore the dignity of the birthplace of Islam."

#### 5. Why would he enter a Saudi consulate in the first place?

To finalize paperwork for his wedding to Hatice Cengiz, a 36-year-old Turkish doctorate student. He had recently bought an apartment in Istanbul so the couple, once married, could divide their time between Turkey and the U.S.

## 6. What has the Saudi government said about Khashoggi?

Saudi authorities have refrained from saying anything critical about Khashoggi since his disappearance. Prince Mohammed said in a Bloomberg interview in Riyadh last week that Khashoggi is “a Saudi citizen and we are very keen to know what happened to him.” His brother, Prince Khalid bin Salman, who’s the kingdom’s ambassador to Washington, called Khashoggi a “friend” and praised him for dedicating “a great portion of his life to serve his country.”

To contact the reporter on this story: Donna Abu-Nasr in Beirut at [dabunasr@bloomberg.net](mailto:dabunasr@bloomberg.net)

To contact the editors responsible for this story: Alaa Shahine at [asalha@bloomberg.net](mailto:asalha@bloomberg.net), Laurence Arnold, Mark Williams

©2018 Bloomberg L.P.







# **EXHIBIT 2**



This article is more than **10 months old**

## Jamal Khashoggi was worried about consulate visit, says fiancée

**Hatice Cengiz says she has been in 'darkness I cannot express' since journalist entered Saudi consulate**

**Bethan McKernan** *in Istanbul*

Fri 26 Oct 2018 10.22 EDT

The fiancée of the killed journalist Jamal Khashoggi has said he was worried about visiting the Saudi consulate in Istanbul for his fateful appointment, but told her he did not think the authorities would dare to interrogate or arrest him in a foreign country.

“His local network in Turkey was very good as you know, his political network as well,” Hatice Cengiz told the Turkish broadcaster Habertürk in an interview on Friday. “He thought Turkey is a safe country and if he would be held or interrogated, this issue would be swiftly solved.”

The Washington Post columnist, who left Saudi Arabia for the US last year after growing fearful for his safety in his home country, was killed shortly after arriving on 2 October to pick up paperwork needed for the couple’s upcoming marriage.

**Jamal Khashoggi Was Worried about Consulate Visit, Says Fiancee | World News | The Guardian**  
Cengiz, who waited outside until about 1am on the day Khashoggi disappeared, said he had been treated well during an initial visit to the consulate the previous week.

Riyadh's varied and changing explanations for what happened to the writer have been met with international outrage, sparking the biggest diplomatic crisis for the kingdom since the 9/11 terrorist attacks and throwing an unwelcome spotlight on the powerful crown prince, Mohammed bin Salman.

Cengiz, a Turkish academic who became engaged to Khashoggi four months ago, said she has "found myself in a darkness I cannot express," since her fiance was killed. She had asked US secretary of state Mike Pompeo, who recently called her about the case, whether he had any news that would make her happy "but he said he didn't".

She has not received a condolence call from Saudi officials, Cengiz added.

Istanbul police said Cengiz had been placed under 24-hour police protection this week, without elaborating on the reasons why.

Riyadh said for the first time on Thursday that the evidence in the criminal investigation pointed to a "premeditated" killing of the dissident journalist.

Previously, Saudi authorities had said that Khashoggi died during a fight with Saudi officials carrying out a rogue extradition operation, and that his body was rolled up in a rug and disposed of by an unidentified third party. His remains have still not been found.

Turkish investigators, however, have alleged that Khashoggi was tortured before his death and his body dismembered with a bone saw by a 15-man hit team sent to kill him.

The Turkish president, Recep Tayyip Erdoğan, has used the case to exert pressure on his Saudi rival Prince Mohammed, whom many believe must at a minimum have been aware of the operation, which involved several members of his personal guard and other senior officials.

On Friday, Erdoğan made fresh demands for Saudi Arabia to disclose the location of Khashoggi's body and identify who ordered his killing - a sign that Ankara is willing to keep up the pressure on the beleaguered kingdom.

Eighteen men arrested in Saudi Arabia "must know" who killed the journalist and where his remains were taken, Erdoğan said in a parliamentary address, adding that the person who "gave the orders" for the alleged murder must be brought to justice and the suspects extradited for trial in Istanbul.

Riyadh's changing accounts of what happened have been "comic", Erdoğan said, calling them "childish statements ... not compatible with the seriousness of a nation state".

"Who gave that order? If you want to eliminate the suspicion [about you], the key question is these 18 people," Erdoğan said. "You know how to make people talk," he added, in a reference to Prince Mohammed.

"But if you cannot make them talk, then hand them over to us. This incident happened in Istanbul. Let us put them on trial."

Erdoğan also urged the Saudis to identify the "local collaborator" whom they say disposed of Khashoggi's remains.



His pointed remarks come after he spoke to the heir to the Saudi throne on Wednesday about cooperating in the evolving diplomatic crisis.

The same day, Turkish foreign minister Mevlüt Çavuşoğlu spoke on the phone with Pompeo, his US counterpart, although Ankara did not comment on the content of the call.

Police in Istanbul are now focussing their search for the journalist's remains on a well in the garden of the nearby consul general's residence and woodland areas outside the city.

Saudi officials have delayed Turkish investigators several times, including blocking police from investigating the well on the Saudi consul general's property.

There are several avenues of investigation that have yet to be explored, Erdoğan told members of his AK party in Friday's address.

Riyadh is due to send the Saudi public prosecutor to Istanbul on Sunday to assist in the investigation.

## Since you're here...

... we have a small favour to ask. More people are reading and supporting The Guardian's independent, investigative journalism than ever before. And unlike many news organisations, we have chosen an approach that allows us to keep our journalism accessible to all, regardless of where they live or what they can afford. But we need your ongoing support to keep working as we do.

The Guardian will engage with the most critical issues of our time - from the escalating climate catastrophe to widespread inequality to the influence of big tech on our lives. At a time when factual information is a necessity, we believe that each of us, around the world, deserves access to accurate reporting with integrity at its heart.

Our editorial independence means we set our own agenda and voice our own opinions. Guardian journalism is free from commercial and political bias and not influenced by billionaire owners or shareholders. This means we can give a voice to those less heard, explore where others turn away, and rigorously challenge those in power.

We need your support to keep delivering quality journalism that's open and independent. Every reader contribution, big or small, is so valuable.

Support The Guardian



## Topics

- Jamal Khashoggi
- Turkey
- Saudi Arabia
- Journalist safety
- Middle East and North Africa
- news

# **EXHIBIT 3**

## Turkey concludes Saudi journalist Jamal Khashoggi killed by 'murder' team, sources say

 [washingtonpost.com/world/middle\\_east/turkey-concludes-saudi-journalist-khashoggi-killed-by-murder-team-](https://www.washingtonpost.com/world/middle_east/turkey-concludes-saudi-journalist-khashoggi-killed-by-murder-team-)

By Kareem Fahim [close](#) Kareem Fahim Istanbul bureau chief covering the Middle East [Email](#) [Email Bio](#) [Bio](#) [Follow](#)  
[Follow](#)

ISTANBUL — Turkey has concluded that Jamal Khashoggi, a prominent journalist from Saudi Arabia, was killed in the Saudi Consulate in Istanbul last week by a Saudi team sent “specifically for the murder,” two people with knowledge of the probe said Saturday.

Turkish investigators believe a 15-member team “came from Saudi Arabia. It was a preplanned murder,” said one of the people. Both spoke on the condition of anonymity to discuss the ongoing investigation.

They offered no specific evidence to back up the account. Earlier Saturday, however, Turkey’s Anadolu news agency said the Istanbul public prosecutor’s office had opened a probe into Khashoggi’s disappearance. Turkish authorities have said that Khashoggi never left the consulate.

Saudi Arabia had vehemently denied that Khashoggi, who contributed to The Washington Post’s Global Opinions section, was detained after he entered the mission.

In an interview with Bloomberg News last week, Crown Prince Mohammed bin Salman said Khashoggi had left the consulate shortly after he arrived Tuesday. Saudi officials have yet to provide any evidence for that assertion.

The Saudi consul-general in Istanbul allowed reporters from the Reuters news agency to tour the consulate Saturday, to show that Khashoggi was not inside.

“I would like to confirm that . . . Jamal is not at the consulate nor in the Kingdom of Saudi Arabia, and the consulate and the embassy are working to search for him,” the consul-general, Mohammed al-Otaibi, was quoted as saying.

Later Saturday, the Saudi Press Agency [released a statement](#) saying that an unidentified official at the Saudi Consulate in Istanbul dismissed the reports that Khashoggi had been killed in the consulate.

“The official strongly denounced these baseless allegations, and expressed doubt that they came from Turkish officials that are informed of the investigation or are authorized to comment on the issue,” the statement says, in part. It goes on to say that a “security delegation of Saudi investigators” arrived in Istanbul on Saturday, and that they were there to assist in investigating Khashoggi’s disappearance.

The United States is aware of The Post report but cannot confirm it, and does not know where Khashoggi is, a senior U.S. official said Saturday. The official spoke on the condition of anonymity because the official was not authorized to discuss the case on the record.

U.S. officials did not immediately comment on the Turkish conclusions.

The conflicting accounts appeared certain to deepen a rift between Saudi Arabia and Turkey, both regional powers that have competed for influence in the region.

The killing, if confirmed, would mark a startling escalation of Saudi Arabia's effort to silence dissent. Under direction from the crown prince, Saudi authorities have carried out hundreds of arrests under the banner of national security, rounding up clerics, business executives and even women's rights advocates.

"If the reports of Jamal's murder are true, it is a monstrous and unfathomable act," Fred Hiatt, the director of The Post's editorial page, said in a statement. "Jamal was — or, as we hope, is — a committed, courageous journalist. He writes out of a sense of love for his country and deep faith in human dignity and freedom. He is respected in his country, in the Middle East and throughout the world. We have been enormously proud to publish his writings."

Khashoggi may have been considered especially dangerous by the Saudi leadership, analysts said. His criticisms of the royal family and its vast powers were delivered from his self-imposed exile in the United States and could not be dismissed as the complaints of a longtime dissident.

Rather, he has long been a pillar of the Saudi establishment who was close to its ruling circles for decades, had worked as an editor at Saudi news outlets and had been an adviser to a former Saudi intelligence chief.

Khashoggi first visited the consulate on Sept. 28 to obtain a document related to his upcoming wedding, according to his fiancée and friends.

He returned to the consulate Tuesday, at about 1:30 p.m., concerned that he might not be allowed to leave, according to his fiancée, Hatice Cengiz.

Khashoggi left his phone with her, along with instructions that she should call a member of Turkey's governing party if he did not emerge. After waiting more than four hours, Cengiz called the police, she said.

Within a day, Turkish officials were saying they had no evidence that Khashoggi had ever left the consulate while Saudi officials were insisting that the journalist had left fairly quickly.

The episode was made more confounding by the thicket of security cameras around the consulate, monitoring its entrances and perched on the walls of villas nearby. But neither government has released any video.

In Turkey, Khashoggi's disappearance, and the allegation that his government was responsible, has sparked fears among the many political dissidents from Arab countries who have settled in the country over the past few years and previously felt secure, according to a Saudi dissident living in Istanbul.

"It's a new era," he said.

Anne Gearan contributed to this report.

# **EXHIBIT 4**

**The New York Times**

## **Turkey Searches Saudi-Owned Mansion for Evidence in Khashoggi Case**

By **Carlotta Gall**

Nov. 26, 2018

ISTANBUL — The Turkish police searched a Saudi-owned mansion south of Istanbul on Monday as part of the investigation into the murder of the Saudi dissident Jamal Khashoggi, whose remains have not been found.

Irfan Fidan, the chief prosecutor of Istanbul and the leader of the Khashoggi investigation, ordered the search of the mansion, a sprawling building with a columned central portico, set amid trees in the village of Samanlı, about 60 miles south of Istanbul. The area, on the Marmara coast, is a popular tourist spot known for its thermal springs.

Police officers searched the area with drones, and forensics officers, a fire brigade and sniffer dogs were at the scene on Monday, Turkish news outlets reported. The newspaper Hurriyet said that the mansion belonged to a Saudi businessman, and that it had been unoccupied for the past month. A second house, adjacent to the mansion, was also being searched, Hurriyet reported.

Mr. Fidan's office issued a statement Monday afternoon saying that the search was conducted because one of the Saudi suspects in the Khashoggi case had contacted the occupant of the mansion the day before Mr. Khashoggi was killed, and the conversation may have been about disposing of his body.

Mr. Khashoggi, who wrote columns for The Washington Post, was killed after entering the Saudi Consulate in Istanbul on Oct. 2. Turkish officials say that a team of 15 Saudi officials arrived in Istanbul earlier that day, killed Mr. Khashoggi, dismembered and removed his body, and left the country hours later.

The killing of Mr. Khashoggi, 59, has heightened tensions between Turkey and Saudi Arabia, and tarnished the reputation of the Saudi government and its crown prince, Mohammed bin Salman, the day-to-day ruler of the kingdom.

Turkish officials, speaking on the condition of anonymity, and Western intelligence analysts have said that given the complexity and political sensitivity of the operation, the killing was almost certainly carried out with the consent of the prince.

Turkey's government has maintained pressure on the Saudis with a steady string of leaks about the case, but it has refrained from making any public statements about Prince Mohammed's possible involvement.

Turkish investigators had previously looked into other properties in Yalova Province, which includes the mansion that was searched on Monday, after a vehicle belonging to the Saudi Consulate was tracked in the area around the time of the murder. The authorities said they were investigating a Saudi-owned property in the region but released no other details.

Turkish news outlets have reported that the counterterrorism police had also raided a smaller house in Yalova that was occupied by an Arab family in mid-October, but the trail appeared to have gone cold.

The Saudi authorities have detained 18 people in connection with the case, brought criminal charges against 11 of them, threatened five with execution, and pledged to cooperate with the Turkish investigation.

But Turkish officials have complained that the Saudis failed to answer questions about where and how Mr. Khashoggi's remains had been disposed of.

The Saudi prosecutor, Saud al-Mujeb, who visited Istanbul at the end of October, said that after Mr. Khashoggi was killed inside the consulate, his body was handed to a "local collaborator" for disposal. Saudi officials have not revealed the identity of the local collaborator, despite repeated Turkish requests, leading officials to doubt the information.

The Turkish defense minister, Hulusi Akar, said last week that the Saudi hit team might have carried Mr. Khashoggi's dismembered body in suitcases back to Saudi Arabia, using diplomatic immunity to avoid baggage searches. Other Turkish officials have suggested that his body was dumped somewhere in Turkey or dissolved in acid.

The mansion searched on Monday was occupied by Mohammed Ahmed A. Alfaozan, according to the Turkish prosecutor, Mr. Fidan. In his

statement, Mr. Fidan said that one of the Saudi group involved in the killing, Mansour Othman M. Abahussain, had contacted Mr. Alfaozan on Oct. 1, the day before the murder.

“It is considered that this contact was about destroying/hiding the body of the journalist Jamal Khashoggi, who was killed and dismembered,” the statement read.

Mr. Abahussain, 46, is among the 18 men officials arrested in Saudi Arabia, 17 of whom the United States Treasury Department has imposed sanctions on in connection with Mr. Khashoggi’s murder.

A version of this article appears in print on Nov. 27, 2018, Section A, Page 10 of the New York edition with the headline: Turks Search Mansion For Khashoggi Evidence

As a subscriber, you make it possible for us to tell stories that matter.

Now share a year of The Times with someone.



Subscribers can purchase gifts at a 50% discount.

[Give The Times](#)



# **EXHIBIT 5**

## ***Khashoggi's Death Is Explained by the Saudis in Five Acts (and Counting)***

By Benjamin Mueller

Oct. 25, 2018

He was somewhere on the streets of Istanbul, until he wasn't. He was dead in a fistfight, until he wasn't.

From the moment the dissident journalist Jamal Khashoggi disappeared after walking into the Saudi consulate in Istanbul this month, Saudi officials have offered a dizzying variety of public accounts about his fate. Here's how the Saudi government has changed its story.

### **Oct. 3: Mr. Khashoggi left the consulate, and we have no idea where he is.**

That was the contention of the Saudi crown prince, Mohammed bin Salman, in an interview with Bloomberg reporters, the day after Mr. Khashoggi walked into the Saudi consulate in Istanbul for a marriage document and vanished.

"My understanding is he entered and he got out after a few minutes or one hour," Prince Mohammed said, later adding, "We have nothing to hide."

Saudi officials went so far as to give Reuters journalists a tour of the consulate, opening up cupboards, filing cabinets and panels over air conditioning units to prove he wasn't there. They professed to be worriedly searching for him.

### **Oct. 15: The supposed hit squad was actually a group of tourists.**

After Turkish officials put out word through news media outlets that a 15-person team of Saudis had killed Mr. Khashoggi, a Saudi-owned satellite news channel offered up an innocent explanation.

You have 2 free articles remaining.  
Subscribe to The Times

They were only tourists, the news channel, Al Arabiya, said, and had been falsely accused of involvement in the dissident journalist's disappearance.

### **Also on Oct. 15: 'Rogue killers' lashed out during an interrogation gone wrong.**

With international furor over Mr. Khashoggi's fate growing, the Saudis started to float the narrative that Mr. Khashoggi was in fact dead, as much of the world suspected, but at the hands of "rogue killers."

That account was initially backed up by President Trump, following a phone call with King Salman of Saudi Arabia: "It sounded to me like maybe these could have been rogue killers — who knows," the president said.

A person familiar with the Saudi government's plans then said that a Saudi intelligence official who was a friend of the crown prince ordered the interrogation, and that Prince Mohammed had approved it, but that the intelligence official went too far.

### **Oct. 20: Mr. Khashoggi was strangled during a fistfight.**

Mr. Khashoggi got into a tussle in the Saudi Consulate when he tried to escape from men trying to force him to return to his home country, Saudi officials said on Oct. 20.

Saudi Arabia arrested the 15 men sent to confront Mr. Khashoggi, and dismissed a close aide to the crown prince and Maj. Gen. Ahmed al-Assiri, the deputy director of Saudi intelligence, who the government said organized the operation.

A Saudi official said the goal had been to return dissidents living abroad, but the order had been misinterpreted as it made its way down the chain of command. A confrontation erupted when Mr. Khashoggi saw his captors, the official said: The men stopped him from fleeing, punches were thrown, Mr. Khashoggi screamed and one of the men put him in a chokehold, strangling him to death.

### **Oct. 25: The killing may have been 'premeditated.'**

Saudi Arabia's public prosecutor said on Thursday that Turkey had given Saudi officials new information in the course of a joint Saudi-Turkish investigation.

But the prosecutor said the investigation was continuing, making it unclear whether Saudi Arabia itself had concluded that the killing was premeditated.

The new shift in the Saudi account coincided with a visit to Turkey by Gina Haspel, the director of the C.I.A., who was expected to gain access to an audio recording and other evidence that Turkey says proves Mr. Khashoggi was assassinated on orders from the upper levels of the Saudi royal family.

[READ 51 COMMENTS](#)

# **EXHIBIT 6**

## Jamal Khashoggi: Turkish media says video shows disappearance plot

bbc.com/news/world-europe-45809470



Image copyright Reuters

Turkish media outlets have published CCTV footage which they say shows evidence of a plot linked to missing Saudi journalist Jamal Khashoggi.

It shows men said to be Saudi intelligence officers entering and leaving Turkey via Istanbul airport.

Mr Khashoggi, a US resident and critic of the Saudi monarchy, entered the Saudi consulate in Istanbul on 2 October and has not been seen since.

Turkish authorities say Mr Khashoggi was killed. Saudi Arabia denies this.

On Wednesday US President Donald Trump said he wanted to "get to the bottom" of the case, adding: "We cannot let this happen to reporters, to anybody."

He said the situation was "serious" and wished to invite Mr Khashoggi's fiancée, Hatice Cengiz, to the White House.

### What else does the video show?

Broadcast by Turkey's TRT World channel and apparently garnered from security cameras, the footage shows vehicles driving up to the consulate, including black vans thought to be central to inquiries.

Groups of Saudi men are seen entering Turkey via Istanbul airport, checking in at hotels and later leaving the country.

Turkish investigators are looking into two Saudi Gulfstream jets that landed at the airport on 2 October. The video shows aircraft waiting on the tarmac.

Mr Khashoggi was visiting the consulate to finalise his divorce so he could marry Ms Cengiz.

He is seen on the video entering the consulate. His fiancée waits outside.



Image caption Diplomatic vehicles were seen entering the consulate and driving to the Saudi consul's residence shortly after Mr Khashoggi's arrival

Turkey's Sabah newspaper reports that it has identified 15 members of an intelligence team it says was involved in the Saudi's disappearance. Among them was a forensics expert, it says.

The BBC's Mark Lowen says one of the men was once posted to London.

Police are reported to be examining 150 security cameras as part of their investigation.

Some local media have also been reporting that Mr Khashoggi may have been abducted rather than killed.

Turkey says it will conduct a search of the Istanbul consulate, while Saudi Arabia's foreign ministry said the country was "open to co-operation" and a search of the building could go ahead.



Media playback is unsupported on your device

Media caption CCTV footage shows missing Saudi journalist Jamal Khashoggi entering the Saudi consulate in Istanbul.

Ankara is demanding that Saudi Arabia prove Mr Khashoggi left the building, while not providing definitive evidence to support the claim he was killed inside.

## Who is Jamal Khashoggi?

---

A critic of Crown Prince Mohammed bin Salman, Mr Khashoggi was living in self-imposed exile in the US and writing opinion pieces for the Washington Post before his disappearance.

A former editor of the al-Watan newspaper and a short-lived Saudi TV news channel, he was for years seen as close to the Saudi royal family. He served as an adviser to senior Saudi officials.





Media playback is unsupported on your device

Media captionJamal Khashoggi: Saudi Arabia needs reform, but one-man rule is "bad" for the kingdom

But after several of his friends were arrested, his column was cancelled by the al-Hayat newspaper and he was allegedly warned to stop tweeting, Mr Khashoggi left Saudi Arabia for the US.

## What has the international reaction been?

---

The UK's foreign secretary has told Saudi Arabia that Britain expects urgent answers over the disappearance of Mr Khashoggi.

In a phone call to Saudi Foreign Minister Adel al-Jubeir, Jeremy Hunt warned that "friendships depend on shared values".

US Secretary of State Mike Pompeo called on Saudi Arabia to "support a thorough investigation" of his disappearance and "to be transparent about the results".

UN experts have demanded a "prompt independent and international investigation" into his disappearance.

Last week, Saudi Crown Prince Mohammed told Bloomberg News that his government was "very keen to know what happened to him", and that Mr Khashoggi had left "after a few minutes or one hour".

Crown Prince Mohammed's brother and the Saudi ambassador to the US, Prince Khaled bin Salman al-Saud, has insisted all the reports about his disappearance or death "are completely false and baseless".

Campaign group Reporters without Borders has called for an independent international investigation into Mr Khashoggi's disappearance.

The group says more than 15 journalists and bloggers have been arrested in Saudi Arabia since September 2017.

## How has Khashoggi's fiancée reacted?

---

Hatice Cengiz has appealed to the US for help in an emotional article in the Washington Post.

"I implore President Trump and First Lady Melania Trump to help shed light on Jamal's disappearance," she wrote.

"We were in the middle of making wedding plans, life plans," when he vanished, she said.



Image copyright AFP

Image caption Hatice Cengiz waited outside the consulate for her fiancé

"Jamal is a valuable person, an exemplary thinker and a courageous man who has been fighting for his principles. I don't know how I can keep living if he was abducted or killed in Turkey."

# **EXHIBIT 7**

## Jamal Khashoggi case: Saudi Arabia says journalist killed in fight

 [bbc.com/news/world-middle-east-45923217](https://www.bbc.com/news/world-middle-east-45923217)



Image copyright AFP/Getty

Image caption This is the first time Saudi Arabia has admitted the death of Jamal Khashoggi

Journalist Jamal Khashoggi was killed in a fight in the Saudi consulate in Istanbul, the country's state TV reports, quoting an initial inquiry.

Deputy intelligence chief Ahmad al-Assiri and Saud al-Qahtani, senior aide to Crown Prince Mohammed Bin Salman, were sacked over the affair, it says.

US President Donald Trump said what had happened was "unacceptable" but added that Saudi Arabia was a "great ally".

This is the first time the kingdom has admitted Mr Khashoggi is dead.

The acknowledgement follows two weeks of denials that Saudi Arabia had any involvement in the disappearance of the prominent Saudi critic when he entered the consulate in Istanbul on 2 October to seek paperwork for his forthcoming marriage.

The Saudi kingdom had come under increased pressure to explain Mr Khashoggi's disappearance after Turkish officials said he had been deliberately killed inside the consulate, and his body dismembered.

Image copyright AFP

Image caption Turkish forensic investigators have already searched the Saudi consulate and consul's residence



On Friday, Turkish police widened their search from the consulate grounds to a nearby forest where unnamed officials believe his body may have been disposed of.

Observers are questioning whether Riyadh's Western allies will find the Saudis' account of a "botched rendition" convincing - and whether it will persuade them not to take punitive action against Saudi Arabia.

The UK Foreign Office said it was considering its next steps after hearing the report.

---

## Only a first step

### **Analysis by BBC Security Correspondent Frank Gardner**

The Saudi leadership will now be hoping that its belated admission that Khashoggi did die, after all, inside its consulate - coupled with a handful of sackings and arrests - will be enough to draw a line under this affair. It will not.

This is only a first step towards publicising the truth of what really happened. Given the days of indignant denials by the Saudi leadership it's doubtful we would have even got this far without sustained international pressure.

There can only be one of two possible alternatives here: either - as many suspect - the powerful Crown Prince Mohammed Bin Salman was to blame or he had lost control of his inner circle, something most observers find hard to believe.

MBS, as he is known, has a huge following amongst young patriotic Saudis who see him as a visionary reformer. If that support were now to ebb away then the crown prince could find himself dangerously isolated at court.

---

## What is Saudi Arabia's version of events?

A statement from Saudi Arabia's public prosecutor says a fight broke out between Mr Khashoggi, who had fallen out of favour with the Saudi government, and people who met him in the consulate - ending with his death.

Investigations are still under way, it says, and 18 Saudi nationals have been arrested. The Saudi authorities have yet to give evidence to support this version of events.

Unnamed officials speaking to Reuters news agency and the New York Times say the Saudis did not know the whereabouts of the body after it was handed to a "local collaborator" to dispose of.

## Who was sacked?

Saud al-Qahtani is a prominent member of the Saudi Royal Court and adviser to Prince Mohammed bin Salman.

Image copyright Twitter/@suadq1978  
Image caption Saud al-Qahtani has over a million followers on Twitter

Major-General Ahmed al-Assiri has acted as the top spokesman for the kingdom about the war in Yemen.

He spoke to the BBC in 2017 about the conflict, defending Saudi Arabia's actions.



Media playback is unsupported on your device

Media caption Nawal Al-Maghafi speaks to Major-General Ahmed al-Assiri

King Salman has also reportedly ordered the formation of a ministerial committee, headed by Crown Prince Mohammed, to restructure the intelligence services.

Saudi Arabia says it acted on information provided by Turkish authorities as part of its inquiry, investigating a number of suspects.

## How have Saudi's Western allies reacted?

---

US President Donald Trump said the arrests were an important "first step", and praised the kingdom for acting quickly. He said the official explanation was "credible", despite many US lawmakers expressing disbelief over the Saudi account.

He stressed the importance of Saudi Arabia as a counterbalance to Iran in the Middle East, and pushed back against the need for sanctions against the country in light of the new information, talking about the effect of such a move on the US economy.

Earlier this week President Trump had warned of "very severe" consequences if Saudi Arabia was proved to have killed the journalist.

A number of US lawmakers, including a Republican highly critical of the Saudis, Senator Lindsey Graham, said they were sceptical about the report on the journalist's death.

- Is this the end of Saudi prince's honeymoon?
- Why Saudi Arabia matters to the West

The UK Foreign Office described it as "a terrible act" and said the people behind the killing "must be held to account".

Turkey has vowed to reveal all of the details of the killing, according to a spokesman for the ruling Justice and Development party quoted by Anadolu news agency.

Meanwhile, Australia is the latest country to announce it is withdrawing from an investment summit in Saudi Arabia later this month - joining a growing boycott that includes the US, UK, Dutch and French finance ministers over the Khashoggi killing.

Dutch Prime Minister Mark Rutte has called for a "thorough investigation" to make sure "all relevant facts will be clear as soon as possible".

Mr Khashoggi's fiancée, Hatice Cengiz, questioned in a tweet what had happened to his body, saying: "The heart grieves, the eye tears, and with your separation we are saddened, my dear Jamal."

## Why does Turkey say he was murdered?

---

Turkish officials believe Mr Khashoggi was killed by a team of Saudi agents inside the consulate, and his body then removed - and they say they have video and audio evidence to back this up.

Saudi Arabia has denied this, and initially insisted Mr Khashoggi had freely left the embassy.



Media playback is unsupported on your device

Media caption CCTV footage shows missing Saudi journalist Jamal Khashoggi entering the Saudi consulate in Istanbul

Turkish newspapers with close links to the government have published gruesome details of the alleged audio, including what they describe as the sounds of screams and Mr Khashoggi being interrogated and tortured.

Turkish media said earlier this week they had identified a 15-member team of suspected Saudi agents who flew into and out of Istanbul on the day of the disappearance.

---

## Jamal Khashoggi disappearance: The key events

---

### **2 October**

- 03:28: A private jet carrying suspected Saudi agents arrives at Istanbul airport. A second joins it late afternoon
- 12:13: Several diplomatic vehicles are filmed arriving at the consulate, allegedly carrying some of the Saudi agents
- 13:14: Mr Khashoggi enters the building, where he is due to pick up paperwork ahead of his marriage
- 15:08: Vehicles leave the consulate and are filmed arriving at the nearby Saudi



consul's residence

- 21:00: Both jets leave Turkey by 21:00

### **3 October**

Turkish government announces Mr Khashoggi is missing, thought to be in the consulate

### **4 October**

Saudi Arabia says he left the embassy

### **7 October**

Turkish officials tell the BBC they believe Mr Khashoggi was killed at the consulate. This is later strongly denied by Saudi Arabia

### **13 October**

Turkish officials tell BBC Arabic they have audio and video evidence of the killing. The existence of such tapes had previously been reported by local media

### **15 and 17-18 October**

Forensic teams carry out searches of consulate

### **20 October**

- Saudi state TV reports an initial investigation shows Jamal Khashoggi died in the consulate
- Two Saudi senior officials are dismissed and King Salman announces the formation of a ministerial committee to restructure the intelligence services

# **EXHIBIT 8**

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

<https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>

## MIDDLE EAST

# CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi

Conclusion that Prince Mohammed bin Salman 'probably ordered' killing relies in part on 11 messages he sent to adviser who oversaw hit squad around time it killed journalist

*By Warren P. Strobel*

Updated Dec. 1, 2018 1:33 am ET

WASHINGTON—Saudi Crown Prince Mohammed bin Salman sent at least 11 messages to his closest adviser, who oversaw the team that killed journalist Jamal Khashoggi, in the hours before and after the journalist's death in October, according to a highly classified CIA assessment.

The Saudi leader also in August 2017 had told associates that if his efforts to persuade Mr. Khashoggi to return to Saudi Arabia weren't successful, "we could possibly lure him outside Saudi Arabia and make arrangements," according to the assessment, a communication that it states "seems to foreshadow the Saudi operation launched against Khashoggi."

Mr. Khashoggi, a critic of the kingdom's leadership who lived in Virginia and wrote columns for the Washington Post, was killed by Saudi operatives on Oct. 2 shortly after entering the Saudi consulate in Istanbul, where he sought papers needed to marry his Turkish fiancée.

Excerpts of the Central Intelligence Agency's assessment, which cites electronic intercepts and other clandestine information, were reviewed by The Wall Street Journal.

The CIA last month concluded that Prince Mohammed had likely ordered Mr. Khashoggi's killing, and President Trump and leaders in Congress were briefed on intelligence gathered by the spy agency. Mr. Trump afterward questioned the CIA's conclusion about the prince, saying "maybe he did; and maybe he didn't."

The previously unreported excerpts reviewed by the Journal state that the CIA has "medium-to-high confidence" that Prince Mohammed "personally targeted" Khashoggi and "probably ordered his death." It added: "To be clear, we lack direct reporting of the Crown Prince issuing a kill order."

The electronic messages sent by Prince Mohammed were to Saud al-Qahtani, according to the CIA. Mr. Qahtani supervised the 15-man team that killed Mr. Khashoggi and, during the same period, was also in direct communication with the team's leader in Istanbul, the assessment





Saudi journalist Jamal Khashoggi, seen here in London on Sept. 29, days before he was killed at the Saudi consulate in Istanbul.  
PHOTO: MIDDLE EAST MONITOR/REUTERS

After this article's initial publication online, a Saudi official, responding to an earlier request for comment to the Saudi Embassy in Washington, said, "HRH the Crown Prince communicates regularly with various senior officials within the Royal Court on different matters. At no time did HRH correspond with any Saudi officials in any government entity on harming Jamal Khashoggi, a Saudi citizen. We continue to categorically reject any accusations based on speculations."

A CIA spokesman declined to comment on the report. A White House official said Friday the White House doesn't comment on intelligence matters. Mr. Qahtani didn't respond to a request for comment.

Mr. Trump last week said the CIA only had "feelings" about Prince Mohammed's involvement, a statement that irked current and former U.S. intelligence officials. U.S. intelligence assessments are rarely black-and-white, often relying on fragments of information gathered clandestinely.

The highly classified CIA assessment says that the Saudi team sent to kill Mr. Khashoggi was assembled from Prince Mohammed's top security units in the Royal Guard and in an organization run by Mr. Qahtani, the Center for Studies and Media Affairs at the Royal Court, the Saudi royal court's media department.

"We assess it is highly unlikely this team of operators...carried out the operation without Muhammed bin Salman's authorization," it says.

The document says that Mr. Qahtani "explicitly requested the Crown Prince's permission when he pursued other sensitive operations in 2015, which reflects the Crown Prince's command and control expectations."

Mr. Qahtani was fired by King Salman, the crown prince's father, in the aftermath of the murder. But Mr. Qahtani informally continued some of his former functions as royal-court adviser, such

as issuing directives to local journalists and brokering meetings for the crown prince, according to people familiar with the matter.

A U.S. official said that the U.S. government has recently developed information that under Mr. Qahtani, personnel from the Center for Studies and Media Affairs have for two years engaged in the kidnapping—sometimes overseas—and detention and harsh interrogation of Saudis whom the monarchy perceives as a threat. The interrogations have led to repeated physical harm to the detainees, the official said.

The CIA assessment said that since 2015 Prince Salman “has ordered Qahtani and CSMARC to target his opponents domestically and abroad, sometimes violently.”

Five employees of the center were involved in the Khashoggi operation, the assessment says. All five were also involved in abusive treatment of prominent Saudis detained at Riyadh’s Ritz-Carlton hotel in the fall of 2017 as part of what the Saudi government described as an anticorruption drive, it says.

*—Margherita Stancati in Beirut contributed to this article.*

Write to Warren P. Strobel at [Warren.Strobel@wsj.com](mailto:Warren.Strobel@wsj.com)

*Appeared in the December 1, 2018, print edition as ‘CIA Intercepted Saudi Prince’s Messages.’*

Copyright © 2019 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

# **EXHIBIT 9**

## Saudi hit squad's gruesome conversations during Khashoggi's murder revealed

---

**DS** [dailysabah.com/investigations/2019/09/09/saudi-hit-squads-gruesome-conversations-during-khashoggis-](https://dailysabah.com/investigations/2019/09/09/saudi-hit-squads-gruesome-conversations-during-khashoggis-)

Audio recordings of the horrifying conversations between the 15-man Saudi hit squad and their victim, journalist Jamal Khashoggi, has been revealed to the public for the first time by the Turkish daily Sabah.

The conversations recorded prior to and during the Oct. 2, 2018 murder of the dissident journalist at the kingdom's Istanbul consulate were obtained by Turkey's National Intelligence Organization (MIT) right after the gruesome incident, and were shared with related Turkish authorities carrying out an investigation into the incident, as well as with international officials and institutions.

One of the recordings of the conversations between Maher Abdulaziz Mutreb, the number two man of the hit squad, and Dr. Salah Muhammed Al-Tubaigy, the head of Forensic Evidence at the Saudi General Security Department who was in charge of dismembering Khashoggi's body, are stamped 1:02 p.m., just 12 minutes before Khashoggi arrived at the consulate building to complete marriage procedures.





***Mutreb is seen at the entrance of the Saudi Consulate General located in Istanbul's Beşiktaş district.***

The conversation between the two, who are among the five suspects facing death penalty in Saudi Arabia over the murder, is as follows:

**Mutreb:** Is it possible to put the body in a bag?

**Al-Tubaigy:** No. Too heavy, very tall too. Actually, I've always worked on cadavers. I know how to cut very well. I have never worked on a warm body though, but I'll also manage that easily. I normally put on my earphones and listen to music when I cut cadavers. In the meantime, I sip on my coffee and smoke. After I dismember it, you will wrap the parts into plastic bags, put them in suitcases and take them out (of the building).

Al-Tubaigy is also heard saying: "My superior at the Forensic Evidence does not know what I'm doing. There is no one to protect me," in efforts to ask for protection in the vertical hierarchy going right up to Crown Prince Mohammed bin Salman for the responsibility of dismembering Khashoggi's body.



***The photo on the left shows al-Tubaigy waiting at a passport control desk in Istanbul's Atatürk Airport upon arrival.***

At the end of the conversation, Mutreb asks whether the "animal to be sacrificed" has arrived. At 1:14 p.m., an unidentified member of the hit squad says "[he] is here."

#### **Khashoggi enters the Saudi consulate**

According to the released recordings, Khashoggi is greeted by a familiar face or someone he knows, gauging from his reaction. He is told that the Consul General Mohammad al-Otaibi is also present in the building. First, he is politely invited into the consul's office on the second floor. When he starts to get suspicious, he is pulled by the arm. He then says; "Let me go, what do you think you're doing?"

As soon as Khashoggi enters the room, Mutreb says: "Please sit. We have to take you back [to Riyadh]. There is an order from Interpol. Interpol demanded you be returned. We are here to take you." To which Khashoggi responds: "There are no lawsuits against me. My fiancée is waiting outside for me."

During these conversations, another unidentified hit squad member, probably portraying the "bad cop" during the interrogation, repeatedly tells Khashoggi to "cut it short."

At 1:22 p.m. Mutreb asks Khashoggi whether he has any mobile phones on him. Khashoggi responds with "I have two mobile phones." Mutreb asks "which brand" and Khashoggi says "iPhone."

Following these conversations in the last 10 minutes leading up to Khashoggi's death, the dialogue goes:

**Mutreb:** Leave a message for your son.

**Khashoggi:** What should I tell my son?

**Mutreb:** You will write a message, let's rehearse; show it to us.

**Khashoggi:** What should I say, 'see you soon'?

**Unidentified hit squad member:** Cut it short.

**Mutreb:** You will write something like 'I'm in Istanbul. Don't worry if you cannot reach me.'

**Khashoggi:** I shouldn't say kidnapped.

**Unidentified hit squad member:** Take your jacket off.

**Khashoggi:** How can such a thing take place at a consulate? I'm not writing anything.

**Unidentified hit squad member:** Cut it short.

**Khashoggi:** I'm not writing anything.

**Mutreb:** Write it, Mr. Jamal. Hurry up. Help us so we can help you, because in the end we will take you back to Saudi Arabia and if you don't help us you know what will happen eventually.

**Khashoggi:** There is a towel here. Will you have me drugged?

**Al-Tubaigy:** We will put you to sleep.

After he was drugged, Khashoggi says "do not keep my mouth closed" before losing his consciousness.

"I have asthma. Do not do it, you will suffocate me." These were Khashoggi's last words.

His killers had already put on a plastic bag over his head, and he would eventually be suffocated to death. Scuffling and struggling then dominate the recordings, with occasional questions and directives from the hit squad heard in between.

"Is he asleep?" "He's raising his head," "keep pushing," "push it well."

Before Khashoggi gives his final breath, scuffling and suffocation sounds continue for a while. Then the postmortem phase begins, which includes sounds of dismembering Khashoggi's body.

At exactly 1:39 p.m., the sound of an autopsy saw is heard. This savage procedure lasts half an hour.

According to the book "Diplomatic Atrocity: The dark secrets of the Khashoggi murder," penned by Sabah writers Abdurrahman Şimşek, Nazif Karaman and Ferhat Ünlü, Khashoggi's body was dismembered by al-Tubaigy and taken out of the building in five suitcases. The whereabouts of Khashoggi's body remains unknown.

Khashoggi was killed and dismembered by a group of Saudi operatives in the country's consulate in Istanbul on Oct. 2, 2018. Initially denying and later downplaying the incident as an accidental killing in a fistfight, Riyadh finally admitted almost three weeks after the disappearance that Khashoggi was murdered in a premeditated fashion but denied any involvement of the royal family.

The incident was blamed on lower-level officials, including five who are now facing the death penalty over their involvement. A Saudi public prosecutor said in late March that they would seek the death penalty for five suspects among the 21 involved in the case. Ankara has said the statement is not satisfactory and demanded genuine cooperation from Riyadh.

Khashoggi's body has not been recovered and the kingdom has remained silent on its whereabouts. The U.N. human rights expert who conducted an independent probe into the murder of Khashoggi, Agnes Callamard, said in a report last month that the state of Saudi Arabia was responsible for the murder. The report also found "credible evidence" that linked Saudi Crown Prince Mohammed bin Salman to the killing of Khashoggi. The rapporteur noted she had received no cooperation from Riyadh and minimal help from the U.S.

### **Records of premeditated murder revealed**

The recordings, which took place before the murder between Sept. 28 and Oct. 2, 2018, reveal in detail the plans and preparations made between the Saudi Consulate in Istanbul and the Riyadh administration.

On Sept. 28, when Khashoggi came to the Saudi Consulate for papers to marry his fiancée Hatice Cengiz, Ahmed Abdullah al-Muzaini, who worked as Saudi Arabia's intelligence station chief at the kingdom's consulate in Istanbul, informed Riyadh with an emergency code that Khashoggi had arrived at the consulate. Khashoggi's return to the consulate on Oct. 2 was also informed to Riyadh.

On the same day at 7:08 p.m., Saudi Consul Otaibi held a phone call with an official from the office of Saud al-Qahtani, a close aide of Crown Prince Mohammed.

During the conversation, the murder of Khashoggi was called "a private matter" and "a top-secret mission." The official told the Saudi consul that "the head of state security called me. They have a mission. They want one of your officials from your delegation to deal with a private matter. They want someone from your protocol... for a private, top-secret mission. He can even get permission if necessary."

These statements are proof that the murder of Khashoggi was not done without the consent of the Saudi crown prince.

At 8 p.m., Muzaini received a phone call from Saudi Consul Otaibi, who told him that "there will be a special training course in Riyadh."

"I got a call from Riyadh. They asked me to find an officer who previously worked in the protocol. But, this is top secret... there will be training... almost for five days. This is top secret. I want a reliable, nationalist intelligence officer."

During the rest of the conversation, the two discussed flight alternatives from Istanbul to Riyadh. Muzaini asked if the training would begin the day before or not, to which the Saudi consul replied to him saying, "Yes, they say it will."

One day before the murder, on Oct. 1, 2018 at 9:48 p.m., a conversation between two unidentified Saudi officials went as follows: "A commission from Saudi Arabia will come tomorrow, there is something they will do at the consulate in my office," one said.

The other asked if "it" will happen on the first floor to which he got a reply saying, "No, right next to my office. It will last for two to three days, and they have no personnel in charge of the office above."

"Ok, I will be at the consulate at 8 a.m.," the other said. "The name of the man who will come to the consulate is Mr. Maha, [a nickname] and they will pass through permission from the head of the commission."

# **EXHIBIT 10**

## The New York Times

# On Khashoggi Killing and Yemen, Saudis Cannot Avoid Fresh Scrutiny

By Ben Hubbard and Nick Cumming-Bruce

Sept. 26, 2019 Updated 3:12 p.m. ET

GENEVA — An attempt by Saudi Arabia to halt an investigation into human rights abuses in Yemen went down to defeat on Thursday, as news broke that the kingdom's crown prince said in an upcoming documentary that he bears "all the responsibility" for the killing of the writer Jamal Khashoggi, but denied prior knowledge of the plot.

The twin developments showed that despite backing from the United States under President Trump and Saudi attempts to build international support in an escalating conflict with Iran, the kingdom's human rights record — and, in particular, the conduct of its de facto ruler, Crown Prince Mohammed bin Salman — remains under harsh scrutiny on multiple fronts.

A group of experts, assigned by the United Nations Human Rights Council, has documented atrocities committed by both sides in Yemen's civil war, and in particular the shattering impact on civilians of airstrikes and other abuses by the Saudi-led coalition fighting the Houthi rebels. The investigators, barred from entering Yemen, have interviewed hundreds of victims and witnesses, and examined an array of other evidence.

Saudi Arabia sought to cut short the investigation, but on Thursday the nations on the Human Rights Council, meeting in Geneva, voted 22 to 12 to reject the Saudi effort, with 13 other countries not voting.

That setback came after the release of a preview of a Frontline documentary that addresses the 2018 killing and dismemberment of Mr. Khashoggi at a time when Saudi Arabia hopes memories of the case, and the outrage it provoked, are fading.

Mr. Khashoggi, a prominent Saudi writer who had criticized Prince Mohammed in opinion articles in The Washington Post, was killed inside the Saudi consulate in Istanbul nearly a year ago, shocking the world and damaging the reputation of the crown prince and his efforts to diversify the Saudi economy away from oil.

It is unclear whether the comments by Prince Mohammed, 34, made in December, will alter the widespread belief that he authorized the assassination of Mr. Khashoggi. A C.I.A. assessment found that the crown prince, a son of the Saudi king, had likely ordered the killing — a conclusion shared by many officials of the United States and other countries.

The crown prince, who would like to be seen in the West as a liberalizer and modernizer, is also the architect of the four-and-a-half year war effort in Yemen by Saudi Arabia and the United Arab Emirates that has contributed to creating what the United Nations has called the world's worstman-made humanitarian crisis.

Saudi officials have denied that Prince Mohammed had any prior knowledge of the operation against Mr. Khashoggi.

"It happened under my watch," Prince Mohammed told Martin Smith, a reporter for Frontline, according to a trailer released on Tuesday for a documentary to be broadcast on Oct. 1. "I get all the responsibility. Because it happened under my watch."

Turkish and Saudi officials have described a complex operation that led to the killing of Mr. Khashoggi, who had fled waves of arrests of clerics and activists in Saudi Arabia as Prince Mohammed consolidated his power, to settle near Washington.

On Oct. 2 last year, Mr. Khashoggi entered the Saudi consulate in Istanbul for an appointment to obtain a document he needed to marry his Turkish fiancée. He was met by 15 Saudi agents who had flown in hours earlier on government jets. According to Turkish officials, one was a specialist in autopsies, who brought a bone saw.

They killed and dismembered him, and disposed of his body, which has yet to be found.

Turkish officials and a United Nations investigator who examined the killing have accused the Saudis of an elaborate cover-up involving a body double and teams of technical experts who cleansed the crime scene before the Turks were given access.

When asked how such an operation could take place without his knowledge, the prince said he could not stay abreast of every act in his country or government.

"We have 20 million people," he said, according to the trailer. "We have 3 million government employees."

He also said that Saudi agents could have used government jets without his knowledge, adding, "I have officials, ministers to follow things and

they're responsible, they have the authority to do that."

The conversation took place near the Saudi capital, Riyadh, in December, two months after Mr. Khashoggi's killing. The trailer for the documentary, "The Crown Prince of Saudi Arabia," does not contain video or audio recordings of the prince. The quotes are recounted by Mr. Smith.

His interview was one of just a handful of times Prince Mohammed has spoken publicly about Mr. Khashoggi's killing.

The Saudis have put 11 suspects in the killing on trial and prosecutors are seeking the death penalty against five of them. But the court proceedings have been shrouded in secrecy. The Saudis have not identified any of the suspects by name, and diplomats who have attended court sessions have been sworn to silence.

Absent among the suspects is Saud al-Qahtani, a powerful aide to Prince Mohammed who United States officials say oversaw the operation. Mr. al-Qahtani was removed from his position as an adviser to the royal court, but his status and whereabouts remain unclear.

In a report on the killing released in June, Agnes Callamard, the special rapporteur on extrajudicial executions for the United Nations human rights agency, said the Saudi trial had been "clouded in secrecy and lacking in due process."

The experts investigating Yemen have identified people they linked to international crimes there. It is not clear whether Prince Mohammed's name is on that list.

At the Human Rights Council on Thursday, Saudi Arabia's ambassador, Abdulaziz Alwasil, accused international experts on Yemen of seeking to legitimize the Houthis and denounced their findings as unfounded and "full of lies."

With the backing of some other Arab states, the Saudis had lobbied hard to promote a different approach: a resolution that acknowledged human rights violations by all parties in Yemen and, instead of an independent investigation, aid for an inquiry by a human rights commission set up by the Saudi-backed government of Yemen. Mr. Trump withdrew the United States from the council last year.

The Saudi effort to end the investigation failed.

"It's a diplomatic reality-check for Saudi Arabia," said Marc Limon, a former diplomat who heads the Universal Rights Group, a research center. "It shows Saudi Arabia is not as powerful and influential as it would like to think it is."

Member nations of the council have also pressed recently for a closer look at the use of killing, torture and detention to silence dissent among Saudis, including in the Khashoggi case.

Nick Cumming-Bruce reported from Geneva, and Ben Hubbard from Beirut, Lebanon.

As a subscriber, you make it possible for us to tell stories that matter.

Now share a year of The Times with someone.



Subscribers can purchase gifts at a 50% discount.

Give The Times



# **EXHIBIT 11**

UNCLASSIFIED// [REDACTED]

## (U) Duty to Warn

---

**A. (U) AUTHORITY:** The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; and other applicable provisions of law.

**B. (U) PURPOSE**

1. (U) This Directive establishes in policy a consistent, coordinated approach for how the Intelligence Community (IC) will provide warning regarding threats to specific individuals or groups of intentional killing, serious bodily injury, and kidnapping.

2. (U) This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States (U.S.), its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**C. (U) APPLICABILITY**

1. (U) This Directive applies to the IC as defined by the National Security Act of 1947, as amended; and to such elements of any other department or agency as may be designated an element of the IC by the President, or jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned.

2. (U) This Directive, for IC elements located within departments, is intended to complement, to the greatest extent possible, departmental policies, including policies that address threats that apply both to official and non-official U.S. citizens and nationals. Any perceived inconsistencies between this Directive and departmental policies shall be resolved in consultations between the Office of the DNI (ODNI) and the department.

**D. (U) DEFINITIONS**

1. (U) ***Duty to Warn*** means a requirement to warn U.S. and non-U.S. persons of impending threats of intentional killing, serious bodily injury, or kidnapping.

2. (U) ***Intentional Killing*** means the deliberate killing of a specific individual or group of individuals.

3. (U) ***Serious Bodily Injury*** means an injury which creates a substantial risk of death or which causes serious, permanent disfigurement or impairment.

4. (U) ***Kidnapping*** means the intentional taking of an individual or group through force or threat of force.



INTELLIGENCE  
COMMUNITY  
DIRECTIVE

191

21 July 2015

UNCLASSIFIED//[REDACTED]**E. (U) POLICY**

1. (U) An IC element that collects or acquires credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person or group of people (hereafter referred to as intended victim) shall have a duty to warn the intended victim or those responsible for protecting the intended victim, as appropriate. This includes threats where the target is an institution, place of business, structure, or location. The term *intended victim* includes both U.S. persons, as defined in EO 12333, Section 3.5(k), and non-U.S. persons.

**F. (U) IMPLEMENTATION**

1. (U) IC elements shall establish internal procedures for making duty to warn determinations based on information they acquire, and for delivering threat information in a timely manner while protecting sources and methods.

2. (U) IC elements shall designate senior officers responsible for reviewing threat information initially determined to meet duty to warn requirements to affirm whether the information is credible and specific, so as to permit a meaningful warning. IC elements shall also designate senior officers responsible for making waiver determinations based on criteria identified in this Directive. The senior officers designated for affirming that duty to warn information is sufficient for a meaningful warning and for making waiver determinations should not be the same individual.

3. (U) Each IC element's duty to warn procedures shall include a provision whereby the duty to warn may be waived. An IC element's internal procedures shall include all justifications appropriate for the IC element. The following are examples of appropriate justifications that should be included in an element's procedures:

a. (U) The intended victim, or those responsible for ensuring the intended victim's safety, is already aware of the specific threat;

b. (U) The intended victim is at risk only as a result of the intended victim's participation in an insurgency, insurrection, or other armed conflict;

c. (U) There is a reasonable basis for believing that the intended victim is a terrorist, a direct supporter of terrorists, an assassin, a drug trafficker, or involved in violent crimes;

d. (U) Any attempt to warn the intended victim would unduly endanger U.S. government personnel, sources, methods, intelligence operations, or defense operations;

e. (U//[REDACTED]) The information resulting in the duty to warn determination was acquired from a foreign government with whom the U.S. has formal agreements or liaison relationships, and any attempt to warn the intended victim would unduly endanger the personnel, sources, methods, intelligence operations, or defense operations of that foreign government; or

f. (U) There is no reasonable way to warn the intended victim.

4. (U) Issues concerning whether threat information meets the duty to warn threshold should be resolved in favor of informing the intended victim if none of the justifications in Section F.3 are present.

UNCLASSIFIED//[REDACTED]

UNCLASSIFIED// [REDACTED]

5. (U) Upon determination by an IC element that a duty to warn exists and will not be waived that IC element shall generate statements documenting the threat information and the basis for the duty to warn determination, and include an unclassified tear line, where possible, for use in delivering the threat information to the intended victim.

6. (U) Tearlines for delivery to the intended victim should be devoid of information that identifies sources and methods involved in acquiring the information, and consistent with IC Directive 209, *Tearline Production and Dissemination*.

7. (U) Communication of threat information to the intended victim may be delivered in person, or through other verifiable means of communication.

8. (U// [REDACTED]) Communication of threat information to the intended victim may be delivered anonymously if that is the only method available to ensure protection of U.S. government personnel, sources, methods, intelligence operations, or defense operations.

9. (U) If the intended victim is located in the U.S. and its territories, IC elements shall consult with the Federal Bureau of Investigation (FBI) to determine how best to communicate threat information to the intended victim.

10. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11. (U) When an IC element identifies a duty to warn in information originated by another IC element, the IC element shall notify the originating IC element, which will make a determination if a duty to warn exists and, if so, shall provide the warning and take other appropriate action in compliance with this policy. The originating element also shall inform the notifying element of its determination and the course of action taken.

12. (U// [REDACTED]) When a threat is so imminent as to render consultation or notification infeasible, an IC element may deliver threat information to an intended victim in an expeditious manner without prior consultation or notification. Notification of the delivery of the threat information shall be made to the FBI or the CIA, as appropriate, and to the originating IC element expeditiously and no later than five days after informing the intended victim.

13. (U) IC elements shall document and maintain records on the following duty to warn actions:

- a. (U) The method, means, and substance of any warning given by the IC element;
- b. (U) Senior officer reviews of threat information and determinations;
- c. (U) Justifications not to warn an intended victim based on waiver criteria identified in this Directive;
- d. (U// [REDACTED]) Coordination with the FBI, or CIA, consistent with Sections F.9 and F.10, to determine how best to pass threat information to the intended victim;
- e. (U) Decisions to inform the intended victim in light of exigent circumstances that preclude prior consultation;

UNCLASSIFIED// [REDACTED]

UNCLASSIFIED//[REDACTED]

f. (U) Communication of threat information to another IC element or U.S. government agency for delivery to the intended victim; and

g. (U) Notification to the originating IC element of how and when threat information was delivered to the intended victim.

14. (U) IC elements that receive threat information from another IC element or a U.S. government agency outside the IC for the purpose of delivering the information to an intended victim shall document the steps taken to deliver the threat information to the intended victim and notify the originating IC element or U.S. government agency of the steps taken.

#### **G. (U) DISPUTE RESOLUTION**

1. (U) If an issue arises among IC elements regarding a determination to warn an intended victim or waive the duty to warn requirement, or regarding the method for communicating the threat information to the intended victim, resolution of the issue shall occur at the lowest practical and authorized level.

2. (U) If an issue in dispute has been elevated to the heads of the involved IC elements and attempts at resolution remain at an impasse, the heads of the IC elements shall notify the DNI. The DNI will facilitate resolution of issues that have been referred.

3. (U) Dispute resolution shall occur in a manner that does not unnecessarily delay the timely notification of threat information to the intended victim.

#### **H. (U) ROLES AND RESPONSIBILITIES**

1. (U) The DNI will oversee and facilitate resolution of disputes referred by heads of IC elements.

2. (U) The heads of IC elements shall:

a. (U) Establish an internal duty to warn process consistent with this Directive;

b. (U) Maintain records on duty to warn determinations, including decisions to waive the requirement and any actions taken to warn the intended victim; and

c. (U) Provide information to the DNI, upon request, regarding duty to warn procedures and actions.

3. (U) IC employees who identify credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping of an individual or group shall immediately report this information to their IC element for a determination by the element whether to warn the intended victim.

**I. (U) EFFECTIVE DATE:** This Directive becomes effective on the date of signature.

//SIGNED//

James R. Clapper

Director of National Intelligence

21 July 2015

Date

# **EXHIBIT 12**

OCTOBER 10, 2018

## CORKER, MENENDEZ, GRAHAM, LEAHY LETTER TRIGGERS GLOBAL MAGNITSKY INVESTIGATION INTO DISAPPEARANCE OF JAMAL KHASHOGGI

WASHINGTON - In a letter to President Donald J. Trump, U.S. Senators Bob Corker (R-Tenn.) and Bob Menendez (D-N.J.), chairman and ranking member of the Senate Foreign Relations Committee, and Lindsey Graham (R-S.C.) and Patrick Leahy (D-Vt.), chairman and ranking member of the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs, today triggered an investigation and Global Magnitsky sanctions determination regarding the disappearance of Jamal Khashoggi, a Saudi journalist and columnist for The Washington Post. Khashoggi has not been heard from since he entered a Saudi consulate in Istanbul last Tuesday afternoon. The letter was also signed by Senators Marco Rubio (R-Fla.), Ben Cardin (D-Md.), John Barrasso (R-Wyo.), Chris Murphy (D-Conn.), Jeff Flake (R-Ariz.), Tim Kaine (D-Va.), Cory Gardner (R-Colo.), Ed Markey (D-Mass.), Johnny Isakson (R-Ga.), Jeff Merkley (D-Ore.), Todd Young (R-Ind.), Jeanne Shaheen (D-N.H.), Rob Portman (R-Ohio), Cory Booker (D-N.J.), Ron Johnson (R-Wis.), Chris Coons (D-Del.), Jim Risch (R-Idaho), and Tom Udall (D-N.M).

*Text of the letter is included below.*

Dear Mr. President:

The Global Magnitsky Human Rights Accountability Act requires the President, upon receipt of a request from the Chairman and Ranking Member of the Senate Committee on Foreign Relations, to determine whether a foreign person is responsible for an extrajudicial killing, torture, or other gross violation of internationally recognized human rights against an individual exercising freedom of expression, and report to the Committee within 120 days with a determination and a decision on the imposition of sanctions on that foreign person or persons.

The recent disappearance of Saudi journalist and Washington Post columnist Jamal Khashoggi suggests that he could be a victim of a gross violation of internationally recognized human rights, which includes "torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person." Therefore, we request that you make a determination on the imposition of sanctions pursuant to the Global Magnitsky Human Rights Accountability Act with respect to any foreign person responsible for such a violation related to Mr. Khashoggi. Our expectation is that in making your determination you will consider any relevant information, including with respect to the highest ranking officials in the Government of Saudi Arabia.

## **BACKGROUND**

Under the Global Magnitsky Human Rights Accountability Act, the president, upon receipt of a letter from the chairman and ranking member of the Senate Foreign Relations Committee, must make a determination and is authorized to impose sanctions with respect to a foreign person responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights violations against individuals who seek to obtain, exercise, defend, or promote human rights and freedoms, including freedom of expression.



###

# **EXHIBIT 13**

**United States Senate**  
WASHINGTON, DC 20510

October 30, 2018

The Honorable Daniel Coats  
Director of National Intelligence  
1500 Tysons McLean Drive  
McLean, Virginia 22102

Dear Director Coats:

The disturbing disappearance of journalist Jamal Khashoggi from the Saudi consulate in Istanbul and his subsequent murder have sparked global outrage. The perpetrators must be publicly-identified and held accountable, particularly in light of varied Saudi attempts to attribute Mr. Khashoggi's death to a failed interrogation, rogue agents, and a fist-fight. These developments instill further urgency in gaining an accurate account of the events preceding the murder as members of Congress, business community leaders, and other global actors reevaluate alliances and relationships with Saudi Arabia. As investigations continue, Congress must understand the circumstances of Mr. Khashoggi's disappearance. In order to fulfill our oversight obligation, we request a classified briefing regarding the implementation of the duty to warn determinations articulated in Intelligence Community Directive 191 (21 July 2015) and its specific application to the Jamal Khashoggi case.

Press accounts claim that the Intelligence Community was aware that Saudi Arabia had plans to abduct Mr. Khashoggi in retaliation for his criticism of the government. Specifically, the *Washington Post* stated: "U.S. intelligence intercepted communications of Saudi officials discussing a plan to capture him."<sup>1</sup> Under Directive 191, the Intelligence Community has a duty to warn individuals or groups about threats of intentional killing, serious bodily injury, and kidnapping. The Directive is a clear message to the American people that the U.S. government takes targeted threats seriously and prioritizes the protection of individuals as a matter of national security. Consequently, questions regarding whether Mr. Khashoggi was notified of known threats to his life have raised serious concerns.

As Director of National Intelligence, you are responsible for oversight of the Directive and mediating any disputes regarding its implementation. The Intelligence Community must clearly account for any known threats levied against Mr. Khashoggi and whether the Directive was triggered appropriately and followed accordingly. We ask that you make available the following information:

---

<sup>1</sup> Loveday Morris, Souad Mekhennet, and Kareem Fahim, "Saudis are said to have lain in wait for Jamal Khashoggi," *Washington Post* (Istanbul, Turkey), October 9, 2018, [https://www.washingtonpost.com/world/saudis-lay-in-wait-for-jamal-khashoggi-and-left-turkey-quickly-sources-say/2018/10/09/0e283e2e-cbc5-11e8-ad0a-0e01efba3cc1\\_story.html?utm\\_term=.74060ce013df](https://www.washingtonpost.com/world/saudis-lay-in-wait-for-jamal-khashoggi-and-left-turkey-quickly-sources-say/2018/10/09/0e283e2e-cbc5-11e8-ad0a-0e01efba3cc1_story.html?utm_term=.74060ce013df).

- 1.) Briefing on Threats to Jamal Khashoggi: It is critical that Congress understand whether the Intelligence Community had advance knowledge of a Saudi threat to U.S. resident Jamal Khashoggi. We request clarification of whether the Intelligence Community identified such a threat prior to Khashoggi's disappearance and the nature of this threat. If a threat was identified, please provide any documentation or information regarding the triggering and implementation of Directive 191. Additional information regarding any communication of threat information to Jamal Khashoggi—including the method, means, and substance—and the timeliness of this communication must also be disclosed. If the duty to warn was waived, an appropriate justification—as articulated in Directive 191—must be provided.
- 2.) Procedures and Policies Regarding Implementation of Directive 191: While the directive requirements are explicit, the case of Mr. Khashoggi has raised concerns regarding its application. These concerns center on whether the definition of “kidnapping” includes situations in which governments of individuals acting under the color of law may engage in human rights abuses. We request documentation—including determinations and waivers—regarding Directive definitions, procedures, as well as information related to the training provided to employees, who are responsible for the threat assessments that inform the duty to warn determinations of the Directive.
- 3.) Information Regarding Invocation of Directive 191: We request background data regarding the number and instances of threat assessments that have triggered duty to warn obligations since the promulgation of Directive 191 on July 21, 2015; the instances in which the duty to warn was waived; and the justifications invoked for such waivers.
- 4.) Intelligence Analysis on Saudi Arabia: We request an update intelligence assessment on Saudi Arabia including political dynamics within the royal and suppression of dissent both domestically and internationally.

While we understand that responses to these questions will contain both classified and unclassified information, we ask that you publicly provide all unclassified information in addition to a classified briefing or classified addendum. Given the time-sensitive nature of this matter and its relevance to ongoing investigations, we request your immediate attention to this request and appreciate your prompt cooperation.

Sincerely,




---

RICHARD BLUMENTHAL  
United States Senate



---

RICHARD J. DURBIN  
United States Senate



---

CHRIS VAN HOLLEN  
United States Senate



---

BRIAN SCHATZ  
United States Senate



---

BERNARD SANDERS  
United States Senate



---

PATRICK LEAHY  
United States Senate



---

AMY KLOBUCHAR  
United States Senate



---

EDWARD J. MARKEY  
United States Senate

# **EXHIBIT 14**

## ***Senate Votes to End Aid for Yemen Fight Over Khashoggi Killing and Saudis' War Aims***

By Julie Hirschfeld Davis and Eric Schmitt

Dec. 13, 2018

WASHINGTON — The Senate voted on Thursday to end American military assistance for Saudi Arabia's war in Yemen in the strongest show of bipartisan defiance against President Trump's defense of the kingdom over the killing of a dissident journalist.

The 56-to-41 vote was a rare move by the Senate to limit presidential war powers and sent a potent message of disapproval for a nearly four-year conflict that has killed thousands of civilians and brought famine to Yemen. Moments later, senators unanimously approved a separate resolution to hold Crown Prince Mohammed bin Salman of Saudi Arabia personally responsible for the death of the journalist, Jamal Khashoggi.

Together, the votes were an extraordinary break with Mr. Trump, who has refused to condemn the prince and dismissed United States intelligence agencies' conclusions that the heir to the Saudi throne directed the grisly killing.

While the House will not take up the measure by the end of the year, the day's votes signal that Congress will take on Mr. Trump's support of Saudi Arabia when Democrats take control of the House next month.

The action indicated a growing sense of urgency among lawmakers in both parties to punish Saudi Arabia for Mr. Khashoggi's death, and to question a tradition of Washington averting its gaze from the kingdom's human rights abuses in the interest of preserving a strategically important relationship.

"What the Khashoggi event did, I think, was to focus on the fact that we have been led into this civil war in Yemen, half a world away, into a conflict in which few Americans that I know can articulate what American national security interest is at stake," said Senator Mike Lee, Republican of Utah. "And we've done so, following the lead of the kingdom of Saudi Arabia."

The resolution was written by Mr. Lee and Senator Bernie Sanders, independent of Vermont. It was an unusual invocation of the War Powers Act, a 1973 law by which Congress sought at the end of the Vietnam War to reassert its constitutional role in deciding when the United States would go to war.

Mr. Sanders called it the first time Congress had used the law to make clear "that the constitutional responsibility for making war rests with the United States Congress, not the White House."

"Today, we tell the despotic regime in Saudi Arabia that we will not be part of their military adventurism," he said.

Seven Republican senators joined Democrats to pass the resolution: Mr. Lee, Susan Collins of Maine, Steve Daines of Montana, Jeff Flake of Arizona, Jerry Moran of Kansas, Rand Paul of Kentucky and Todd Young of Indiana.

*[Read about how American-made bombs kill civilians in Yemen.]*

With both votes, senators diverged sharply from Mr. Trump, who has maintained steadfast support for Saudi Arabia and Prince Mohammed, even though the C.I.A. has concluded that he ordered the assassination of Mr. Khashoggi inside its consulate in Istanbul in October.

"Maybe he did and maybe he didn't!" Mr. Trump wrote of whether the crown prince had knowledge of the killing in an extraordinary statement that the president released last month, in which he argued that punishing Saudi Arabia for Mr. Khashoggi's death would risk billions of dollars of American arms sales to the kingdom.



Secretary of State Mike Pompeo on Thursday after a closed briefing at which he defended the United States' relationship with Saudi Arabia to members of the House.  
Erin Schaff for The New York Times

Senator Bob Corker, the Tennessee Republican who heads the Foreign Relations Committee and sponsored the measure condemning the crown prince, said on Thursday that it was vital that the Senate “is speaking with one voice” to hold him accountable.

“Unanimously, the United States Senate has said that Crown Prince Mohammed bin Salman is responsible for the murder of Jamal Khashoggi,” Mr. Corker said. “That is a strong statement. I think it speaks to the values that we hold dear.”

Senators in both parties described the twin measures as a direct response to the refusal by Mr. Trump and his administration to hold Saudi Arabia to account for Mr. Khashoggi's death — and a way to counter the president's assertion that the money to be made from arms sales to the kingdom was enough to justify turning a blind eye to such a deed.

“We cannot sweep under the rug the callous disregard for human life and flagrant violations of international norms the Saudis are showing,” said Senator Robert Menendez of New Jersey, the senior Democrat on the Foreign Relations Committee.

“A few more weapons purchases cannot buy our silence — it should not buy our silence,” Mr. Menendez said. “And if the president will not, Congress must act.”

The votes came only hours after Defense Secretary Jim Mattis and Secretary of State Mike Pompeo implored members of the House of Representatives during a closed-door briefing to continue the military advising, logistics support and intelligence that have for years been shared with Saudi Arabia.

Some lawmakers emerged from the House meeting frustrated that Mr. Pompeo and Mr. Mattis had defended the United States' relationship with the kingdom, which the White House needs to counter growing Iranian influence in the Middle East.

Representative David Cicilline, Democrat of Rhode Island, said the two top administration officials had warned against jeopardizing the Saudi partnership — given what they described as a continuing, open investigation into whether Prince Mohammed had, in fact, ordered the killing of Mr. Khashoggi, a Washington Post columnist who had lived in the United States.

“The briefing was a colossal waste of time,” Mr. Cicilline told reporters afterward.

Some senior Republicans offered the administration officials more support.

Representative Steve Scalise of Louisiana, the No. 3 Republican in the House, said Mr. Pompeo and Mr. Mattis had explained details of the investigation into Mr. Khashoggi's death, as well as complexities of the relationship with Saudi Arabia.

“There needs to be action,” Mr. Scalise said, without elaborating. “We need to hold everyone accountable.”

Mr. Mattis and Mr. Pompeo gave a similar briefing to the Senate late last month. But it broke down as Republican and Democratic senators grew irritated with the administration's defense of Prince Mohammed. By contrast, after Gina Haspel, the C.I.A. director, briefed senators last week on the case, they emerged saying they were even more convinced of Prince Mohammed's role.

The measure limiting war powers in Yemen has been under consideration for months, but senators sharpened its language two weeks ago with a procedural vote that signaled their deep frustration over the Trump administration's refusal to blame Prince Mohammed for Mr. Khashoggi's killing.



“The relationship with the crown prince is so toxic, so tainted, so flawed that I can’t ever see myself doing business with Saudi Arabia in the future unless there is change there,” Senator Lindsey Graham, Republican of South Carolina, told reporters on Wednesday as debate on the measure began.

But Mr. Graham and other senators sought to separate the importance of maintaining a close alliance and partnership with Saudi Arabia from punishing Prince Mohammed.

Before the killing and dismemberment of Mr. Khashoggi, most Republicans had supported the military alliance between the United States and Saudi Arabia.

But in the Saudi-led campaign in Yemen, to which the Pentagon has supplied bombs and intelligence, Saudi airstrikes targeting Houthi rebels have also killed thousands of people at weddings, at funerals and on school buses.

In late October, Mr. Mattis and Mr. Pompeo had called for a cease-fire in Yemen, and on Thursday, talks that were brokered by the United Nations in Sweden appeared to reach an agreement to ease the hostilities.

The agreement calls for an exchange of up to 15,000 prisoners, the creation of a humanitarian corridor into the city of Taiz and, importantly, the withdrawal of troops from Hudaydah. That city, on the Red Sea, is a key entry point to Yemen for essential products like food and medicine.

Peace talks are expected to continue in January in an effort to resolve what has become a humanitarian crisis in one of the poorest nations on Earth.

“The agreements today mean a lot, not only for the Yemeni people but for humanity if this can be a starting point for peace and for ending the humanitarian crisis in Yemen,” António Guterres, the United Nations secretary general, said at the close of the talks on Thursday.

Mr. Menendez and Mr. Graham said on Wednesday that they and other senators would introduce legislation early next year to impose even broader penalties against Saudi Arabia, including suspending weapons sales and cementing a ban on American refueling of Saudi coalition aircraft in Yemen.

While Thursday’s moves were largely a symbolic, if stinging, slap at the Trump administration, they previewed what could be a far more consequential debate after Democrats take over the House in 2019.

“If Paul Ryan thinks on his way out the door his last public service gift to humanity is covering up for Saudi Arabia, great, he can make that his legacy,” said Senator Tim Kaine, Democrat of Virginia, referring to the procedural gambit by Mr. Ryan, the House speaker, this week to prevent the war powers measure from coming up for a swift a vote.

“But we’re going to be around next year,” Mr. Kaine said, “and we’ll figure out ways that there can be consequences for this.”

**Correction:** Dec. 13, 2018

*An earlier version of this article misspelled the surname of the United Nations secretary-general. He is António Guterres, not Guterrez.*

Eileen Sullivan, Gardiner Harris and Charlie Savage contributed reporting.

A version of this article appears in print on Dec. 14, 2018, Section A, Page 1 of the New York edition with the headline: With Two Votes, Senators Signal Anger at Saudis

[READ 526 COMMENTS](#)

# **EXHIBIT 15**

This web browser is not fully supported on CBSN and CBSNews.com. For optimal experience and full features, please upgrade to a modern browser. For help, [click here](#)

[Hillary Clinton On Trump](#) | [Whistleblower Complaint](#) | [Intel Chief Testifies](#) | [Medical Price Roulette](#)



## Lindsey Graham after CIA briefing on Jamal Khashoggi murder: "There's a smoking saw"

BY OLIVIA GAZIS, BO ERICKSON, CAMILO MONTOYA-GALVEZ  
DECEMBER 4, 2018 / 12:19 PM / CBS NEWS

@import

"data:text/css;base64,LyogdGhpcyBmaWxIGlzlIG9ubHkgbmlVIZGVkIHdoaWxlIFVWUC5qcyBkb2VzI

**WASHINGTON** -- After CIA director Gina Haspel briefed a handful of senators Tuesday about U.S. intelligence related to the murder of dissident writer Jamal Khashoggi, lawmakers said they were even more confident that Saudi Crown Prince Mohammed bin Salman was directly

involved in the brutal assassination. "There's not a smoking gun – there's a smoking saw," Republican Sen. Lindsey Graham told reporters after the classified meeting.

"I went into the briefing believing it was virtually impossible for an operation like this to be carried out without the crown prince's knowledge," Graham added. "I left the briefing with high confidence that my initial assessment of the situation was correct."

Sen. Bob Corker, an outspoken Republican critic of President Trump and his response to Khashoggi's killing, stressed, "If the crown prince went in front of a jury, he would be convicted in 30 minutes." Asked by a reporter if it would be a murder conviction, Corker replied "yes."

## **Trending News**

- [4 top takeaways from whistleblower complaint and DNI's testimony](#)
- [Whistleblower says White House tried to "lock down" Ukraine records](#)
- [Call summary shows Trump prodded Ukraine to probe Biden](#)
- [Read the unclassified whistleblower complaint against Trump](#)

Mr. [Trump has repeatedly defended the Saudi government](#) in the wake of the Khashoggi killing in October. In November, the president said that bin Salman may have had no knowledge of the killing, and in any event [the U.S. relationship with Saudi Arabia should not be jeopardized](#)

"All evidence leads back to the crown prince" Republican Sen. Richard <sup>LIVE</sup> Shelby told reporters as he left the briefing Tuesday. Two senators present told CBS News that Haspel did not share with lawmakers the audio tapes from the day Khashoggi was killed and reportedly dismembered inside the Saudi consulate in Istanbul, Turkey. Secretary of Defense James Mattis has said the U.S. does not have any such tapes in its possession.

The CIA chief briefed the leaders of committees and subcommittees with interests in national security – including the Senate Intelligence, Foreign Relations and Appropriations Committees. Senate Majority Leader Mitch McConnell and Minority leader Chuck Schumer were also present. In a statement issued after the briefing, Schumer called on Haspel to brief the entire Senate "without delay."

Republican Sen. Rand Paul said that he couldn't even have asked for an invitation to the briefing because he only found out about it from the

media. "Intelligence is only given to a few people within our system," Paul said Tuesday. "That's more like an oligarchy." Democratic Sen. Tim Kaine, who was also not in the meeting, said the White House was "frightened to let senators have access to this intelligence briefing."

Haspel's absence at a closed-door briefing on Saudi Arabia last week rankled key lawmakers. Soon after that briefing, led by Secretary of State Mike Pompeo and Mattis, senators voted overwhelmingly to advance a resolution to cut American military assistance to Saudi Arabia in its war in Yemen.

Both Mattis and Pompeo stressed after their briefing last week that U.S. intelligence did not suggest there was a direct connection between the crown prince and the order to kill Khashoggi.

"There is no direct reporting connecting with the crown prince to order the murder of Jamal Khashoggi," Pompeo said to reporters last Tuesday.

"I have seen all the intelligence we have," Mattis said on Saturday at the Reagan National Defense Forum in Simi Valley, California. "Right now we do not have a smoking gun."

Corker called the difference between Haspel's briefing on Tuesday and the one led by Pompeo and Mattis last week "darkness and sunshine."

Although he denounced the Trump administration for sending the heir to the Saudi throne a "message" that "you can go around killing

journalists," the retiring Tennessee senator questioned the effectiveness of a resolution sponsored by independent Sen. Bernie Sanders designed to end American military aid to the Saudi-led coalition waging a bloody war in Yemen.

"The Yemen resolution gets into a war powers situation. The administration can easily turn the light back on and say we are not involved in hostilities," he said.

Senate leaders are currently debating among themselves how to proceed with the resolution and if any amendments should be added. If allowed, amendments could water-down the resolution to the point where it is mostly symbolic.

One of the Democratic backers of the resolution, Democratic Sen. Chris Murphy, told reporters on Tuesday a decision on the process could extend into next week.

Khashoggi's murder in October has opened a rift between the Trump administration and some of its most consistent supporters in Congress – including Graham, who threatened last week to withhold key votes until he received a briefing from Haspel.

The CIA has assessed that bin Salman, known as MBS, ordered Khashoggi's killing, based mainly on an understanding of how the kingdom operates and the proximity of several members of the team involved to the prince, officials told CBS News. But the Saudis have

denied he was involved in the assassination and instead blamed former deputy intelligence chief Ahmed al-Asiri, who they said last month was the highest-ranking official to authorize the attack.

In November, the Trump administration announced sanctions against 17 Saudi nationals for their alleged involvement in Khashoggi's murder. Saoud al-Qahtani, a close aide to the crown prince, was designated as a sanctions target, but neither the crown prince nor Asiri were on the list.

*Sarah Horbacewicz contributed to this report.*



*First published on December 4, 2018 / 12:19 PM*

*© 2018 CBS Interactive Inc. All Rights Reserved.*

## **Mick Jagger's Life in 40 Rare Photos**

ESQUIRE

PAID

## **If You Can Qualify for Any Credit Card, These Are the Top 6**

NERDWALLET

PAID

## **What happens to all 2019 unsold cars and SUVs?**

AGEFUL

PAID

## **15 Cheapest Countries for Retirement (Some of Which May Surprise You)**

THINKADVISOR

PAID

## **Most Charming Small Towns in the USA**

FAR & WIDE

PAID

## **Get A Travel CPAP Without A Trip to the Doctor**

EASY BREATHE

PAID

## World

**Schwarzenegger offers to lend Greta Thunberg electric car ...  
Trump to cut number of refugees allowed in U.S. to lowest  
ever ...**

2H AGO

3H AGO

**Airman saves child on flight to get award for heroism ...**

3H AGO

**Who is the Mexican cartel boss El Mencho? ...**

3H AGO

**Princess Beatrice announces engagement ...**

3H AGO

[More in World >](#)

## U.S.

**Suspicious package prompts evacuation at Sanders' office ...  
Hospital freezer failure destroys cancer patients' stem  
cells ...**

23M AGO  
30M AGO

**GM will cover striking workers' health care after all ...**

2H AGO

**Schwarzenegger offers to lend Greta Thunberg electric  
car ...**

2H AGO

**Beyond Meat shares jump as McDonald's tests plant  
burgers ...**

2H AGO

[More in U.S. >](#)

## Politics

**Suspicious package prompts evacuation at Sanders' office ...**  
**Meghan McCain on if she would vote Democrat in 2020 ...**  
23M AGO  
2H AGO

**Trump to cut number of refugees allowed in U.S. to lowest ever ...**  
3H AGO

**4 top takeaways from whistleblower complaint and DNI's testimony ...**  
3H AGO

**Whistleblower complaint details alleged White House cover-up ...**  
2H AGO



More in Politics

---

## Entertainment

**Meghan McCain on if she would vote Democrat in 2020 ...  
J-Lo and Shakira to headline Super Bowl halftime show ...**

2H AGO  
5H AGO

**Patricia Heaton on starring in new CBS comedy: "It's my  
turn" ...**

7H AGO

**Preview: Olivia Newton-John opens up about her breast  
cancer battle ...**

8H AGO

**Book excerpt: Olivia Newton-John's "Don't Stop Believin'"**

...

8H AGO

[More in Entertainment ›](#)

---

## Technology

**DoorDash data breach exposes nearly 5 million accounts ...  
Hackers said to hit 300,000 Dunkin' customers ...**

3H AGO  
3H AGO

**Peloton's IPO prospects: How much is just spin? ...**

3H AGO

**Samuel L. Jackson's voice is coming to Amazon Alexa ...**

UPDATED 28M AGO

**FTC sues Match.com over fake "love interest" messages ...**

SEP 25

More in Technology ›

---

## Science

**This man could ease Japan's coal addiction, but it's "gotta be sexy" ...  
Prince Harry warns of environmental "emergency" as he  
visits Botswana ...**

11H AGO  
12H AGO

**Study debunks preconceived notion about cats ...**

SEP 25

**U.N. report warns of dire consequences of accelerating  
climate change ...**

SEP 25

**Japanese cargo ship launches to space station ...**

SEP 24

[More in Science ›](#)

---

## Health

### **Hospital freezer failure destroys cancer patients' stem cells ... Vaping-related illnesses jump to 805 nationwide ...**

30M AGO  
5H AGO

### **What's known – and unknown – about Juul, vaping and illness ...**

13H AGO

### **Woman says she almost lost hand to flesh-eating bacteria**

...

22H AGO

### **Man hit with \$650,000 in medical bills finally gets relief ...**

SEP 25



More in Health >

---

## MoneyWatch

**GM will cover striking workers' health care after all**  
**DoorDash data breach exposes nearly 5 million accounts**

2H AGO

...

3H AGO

**McKinsey & Co. to open its own store in Mall of America ...**

4H AGO

**Hackers said to hit 300,000 Dunkin' customers ...**

3H AGO

**White-collar crime prosecutions drop to 33-year low ...**

4H AGO

More in MoneyWatch ›

---

## Crime

### **Suspicious package prompts evacuation at Sanders' office ...** **Who is the Mexican cartel boss El Mencho? ...**

23M AGO  
3H AGO

### **Who is El Mencho?**

2H AGO ▶ 03:01

### **Radio host accused of fabricating anti-gay slur ...**

4H AGO

### **White-collar crime prosecutions drop to 33-year low ...**

4H AGO

[More in Crime >](#)

---

## Space

**Soyuz rocket launches crew with UAE guest cosmonaut ...**  
**Second-ever interstellar object found in our solar system ...**  
**named ...**

SEP 24

**Japanese cargo ship launches to space station ...**

SEP 24

**Brad Pitt asks NASA astronaut: Who was better – me or Clooney? ...**

SEP 16

**Friday the 13th to get full Harvest Moon**

SEP 13

[More in Space >](#)

## Latest Galleries



### **The 50 most expensive colleges in America, ranked ...** **New on Netflix, Hulu and Amazon**

5H AGO ■ 50 PHOTOS  
SEP 24 ■ 41 PHOTOS



### **Emmy Awards 2019: The hottest red carpet arrivals ...**

SEP 22 ■ 72 PHOTOS



### **Scenes from Riot Fest music festival**

SEP 18 ■ 50 PHOTOS



### **U.S.-Mexico border wall: What it really looks like ...**

SEP 17 ■ 45 PHOTOS



[More in Latest Galleries >](#)

---

## Popular



**Daily Trail Markers: Sanders on impeachment...**  
**Sneak peek: The Case Against Brooke Skylar Richardson ...**  
UPDATED 6M AGO ▶ 07:50  
7H AGO ▶ 03:00



**Whistleblower singles out Giuliani and Barr ...**  
UPDATED 19M AGO ▶ 04:58



**Drinking culture & American kids**  
SEP 5 ▶ 23:34



**Former French President Jacques Chirac dies ...**  
UPDATED 3M AGO ▶ 01:33



[More in Popular >](#)

---



Copyright © 2019 CBS Interactive Inc. All rights reserved.

[Privacy Policy](#)  
[Ad Choice](#)  
[Terms of Use](#)  
[Mobile User Agreement](#)  
[About](#)  
[Advertise](#)  
[Closed Captioning](#)  
[CBS News Store](#)  
[Site Map](#)  
[Contact Us](#)  
[Help](#)

# **EXHIBIT 16**

[News / Press Releases](#)

## Senators Coons, Wyden, Heinrich, Reed, Harris Reintroduce Bill Requiring Public Report on Khashoggi Murder by Saudi Arabia

FEBRUARY 26, 2019

*Following Conflicting Statements by Trump and Silence from IC Leaders, Bill Requires Public Assessment of Killing of Washington Post Columnist*

WASHINGTON – U.S. Senators Chris Coons (D-Del.), Ron Wyden (D-Ore.), Martin Heinrich (D-N.M.), Jack Reed (D-R.I.), and Kamala Harris, (D-Calif.), introduced legislation today requiring a public report on the killing of Washington Post journalist Jamal Khashoggi. The bill comes in response to the Trump administration's repeated refusal to release a public assessment about Khashoggi's murder at the hands of Saudi officials.

"The Saudi government brazenly murdered a Washington Post journalist, and this administration refuses to even tell the American people who is responsible for giving the order," said Senator Wyden. "This bill says the Trump administration can't get away with burying the facts about Jamal Khashoggi."

"The Trump administration has been unwilling to acknowledge the abduction, torture, and killing of Jamal Khashoggi for what it was: a state-sponsored, cold blooded murder within a diplomatic consulate," said Senator Heinrich. "The American people deserve nothing less than the truth and transparency about the Saudi government's involvement in this shameful act. That starts with ensuring the public hears directly from the intelligence community identifying who carried out or ordered Mr. Khashoggi's death."

"The brutal murder of U.S. resident and Washington Post columnist Jamal Khashoggi and the brazen cover up by the Saudi government cannot be tolerated. The American people deserve to know the truth about what happened. We are once again calling for an unclassified and public assessment of who ordered his killing and why," said Senator Reed, the Ranking Member of the Armed Services Committee and an ex officio member of the Intelligence Committee. "I urge the Trump administration to share what it knows about this heinous crime and hold all perpetrators accountable."

"As a nation founded on freedom of speech and freedom of the press, the United States cannot turn a blind eye to egregious violations of those principles around the world," said Senator Coons. "The American people deserve to know the facts about the brutal murder of Washington Post journalist and U.S. resident Jamal Khashoggi, and Congress should act to hold those responsible accountable."

"The murder of Jamal Khashoggi was a tragedy and represented an attack on journalists everywhere," said Senator Harris. "Unfortunately, the White House has not provided clear answers about what happened or who in the Saudi government might bear responsibility for the attack. We must always defend the rights of a free and independent press both at home and abroad, which is why I'm standing with my colleagues to demand a public report on this incident."

[The full bill text is available here.](#)

###

PRINT

EMAIL

SHARE

TWEET

Tags: [Foreign Relations](#)

[◀ PREVIOUS ARTICLE](#)[NEXT ARTICLE ▶](#)



# **EXHIBIT 17**

## Rubio Joins Risch, Shaheen, Coons on New Bill to Review U.S.-Saudi Relations

---

 [rubio.senate.gov/public/index.cfm/press-releases](https://rubio.senate.gov/public/index.cfm/press-releases)

**Washington, D.C.** — U.S. Senator Marco Rubio (R-FL) joined Foreign Relations Committee Chairman Jim Risch (R-ID) and Senators Jeanne Shaheen (D-NH) and Chris Coons (D-DE) today in introducing the *Saudi Arabia Diplomatic Review Act of 2019* (SADRA), a new bill to mandate an Executive Branch review of America's relationship with the Saudi government. Although the U.S. and Saudi Arabia have a history of shared strategic interests, the kingdom's blatant disregard for human rights and international norms under Crown Prince Mohammed Bin Salman has strained the bilateral partnership and threatens to undermine long-term U.S. interests in the region.

"It's long overdue for the U.S. to conduct a thorough review of our relationship with Saudi Arabia under Crown Prince Mohammed Bin Salman," **Rubio said**. "From the brutal murder of journalist Jamal Khashoggi to the jailing and alleged torture of women's rights activists and to other abuses domestically and abroad, the Saudi government's human rights abuses and violations of international norms continue to raise alarms and run counter to America's long-term interest for stability in the region. I am proud to join my colleagues in introducing legislation to evaluate the strategic partnership between the U.S. and Saudi Arabia, and hold those Saudi officials implicated in human rights abuses accountable."

"All of us in Congress agree that we need to see a change in Saudi conduct going forward," **Risch said**. "The kingdom's concerning conduct is not new, and it reached a turning point in the aftermath of Jamal Khashoggi's murder, which was a horrendous act for which we all seek justice. This legislation is meant to address the tensions between our two nations, reevaluate our bilateral relationship, and change Saudi conduct moving forward. I am glad to have bipartisan support for this effort which would have a very real impact at a time when emotions continue to run high and there are many ideas, but few plans."

"As concern grows over Saudi Arabia's human rights abuses and alarming neglect of international norms, Congress must take additional steps to encourage the administration to reevaluate the relationship between our two nations," **Shaheen said**. "The United States cannot ignore the Kingdom's actions, and this bill sends a clear, bipartisan message to Saudi Arabia's leadership. I appreciate the efforts of all my colleagues in the Senate who are working on various ways to address Saudi Arabia's behavior. This bipartisan legislation is a means toward forcing accountability and I hope it will come before the Senate floor for consideration."

Case 1:18-cv-02706-TM Document 35-2 Filed 09/26/19 Page 4 of 4  
"I am pleased to see the bipartisan effort to recalibrate our relationship with Saudi Arabia," **Coons said.** "The United States and the Kingdom have worked together to advance our shared interests in the Middle East since the 1930s. But in light of recent challenges to the relationship and concerning Saudi actions, it is important that the Congress and the administration work together to reassess our partnership. I look forward to working on this legislation in the Foreign Relations Committee and advancing the bill to the Senate floor."

This legislation addresses growing concerns that recent Saudi conduct threatens to harm U.S. interests in the Middle East. The bill calls for a comprehensive and strategic review of U.S.-Saudi relations and implements a visa restriction in order to affect changes in conduct. The legislation revokes or denies visas issued to members of the Saudi royal family serving in the equivalent of executive schedule or senior executive service positions, including spouses or children. Additionally, the *Saudi Arabia Diplomatic Review Act* addresses the ongoing war in Yemen, protection of civilians, and the flow of humanitarian aid.

# **EXHIBIT 18**

# President Trump's full, unedited interview with Meet the Press

 [nbcnews.com/politics/meet-the-press/president-trump-s-full-unedited-interview-meet-press-n1020731](https://www.nbcnews.com/politics/meet-the-press/president-trump-s-full-unedited-interview-meet-press-n1020731)

## Breaking News Emails

Get breaking news alerts and special reports. The news and stories that matter, delivered weekday mornings.

CHUCK TODD:

Mr. President, welcome back to Meet the Press.

PRESIDENT DONALD TRUMP:

Thank you.

CHUCK TODD:

Let me start right in, what happened last night?

PRESIDENT DONALD TRUMP:

Well, you had a situation that was very bad because the night before, they shot down an unmanned drone. And the unmanned is a very big factor. The fact that there was not a person on it, a U.S. person on it, or anybody. And that had an impact on me. I said, "Well, you know, we got a little problem." And I think they did that on purpose because they understand that they will be hit very hard if that were a plane with a person in it. And I think they knew that there was nobody there. So we had a very, you know, modest but pretty, pretty heavy attack schedule.

CHUCK TODD:

And this is a pre-plan that you had, something that if they did something, you had something --

PRESIDENT DONALD TRUMP:

Yeah, we had it --

CHUCK TODD:

-- these were sort of ready-made plans --

PRESIDENT DONALD TRUMP:

Sure, we have many of them --

CHUCK TODD:

-- to use if necessary, right?

PRESIDENT DONALD TRUMP:

Oh, I have so many targets you wouldn't believe.

CHUCK TODD:

Right.

PRESIDENT DONALD TRUMP:

We have targets all over.

CHUCK TODD:

So did you green light something? Or had you said --

PRESIDENT DONALD TRUMP:

Nothing's --

CHUCK TODD:

"If we do it, I'll do this." What was, what was the order you gave?

PRESIDENT DONALD TRUMP:

Nothing is green lighted until the very end because --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

-- things change, right?

CHUCK TODD:

So you never gave a final order?

PRESIDENT DONALD TRUMP:

No, no, no, no. But we had something ready to go, subject to my approval. And they came in. And they came in about a half an hour before, they said, "So we're about ready to go." I said, "I want a better definition --"

CHUCK TODD:

Planes in the air? Were planes in the air?

PRESIDENT DONALD TRUMP:

No, no. "We're about ready to go." No, but they would have been pretty soon. And things would have happened to a point where you wouldn't turn back or couldn't turn back. So they came and they said, "Sir, we're ready to go. We'd like a decision." I said, "I want to know something before you go. How many people will be killed, in this case Iranians?" I said, "How many people are going to be killed?" "Sir, I'd like get back to you on that," great people these generals. They said, came back, said, "Sir, approximately 150." And I thought about it for a second and I said, "You know what? They shot down an unmanned drone, plane, whatever you want to call it. And here we are sitting with 150 dead people that would have taken place probably within a half an hour after I said go ahead." And I didn't like it. I didn't think it was, I didn't think it was proportionate. Now that doesn't mean --

CHUCK TODD:

So what should the response be right now?

PRESIDENT DONALD TRUMP:

I think the response should be -- Well, first of all, as you know, we've done very massive sanctions. We're increasing the sanctions now. But the response is always going to be very strong. I built up a lot of capital. I've had a lot of people that aren't Trump fans saying, "I can't believe." You know, a lot of them said, "We're going to be in World War III the first week." Didn't work out that way. We're doing great in North Korea. We're doing great in a lot of different places. We knocked out the caliphate in Syria. We knocked out 100%. Remember I was going to leave it?

CHUCK TODD:

It's not 100%. Not everybody says it's 100%, even --

PRESIDENT DONALD TRUMP:

No, no, no, the caliphate.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

No, the caliphate, which is the land.

CHUCK TODD:

The land.

PRESIDENT DONALD TRUMP:

The area --

CHUCK TODD:

Fair enough.

PRESIDENT DONALD TRUMP:

-- is 100%. You never knock these people out.

CHUCK TODD:

No, you won't.

PRESIDENT DONALD TRUMP:

These people are stone cold crazy. And they walk into a store and they'll be wired up for bombs and they'll blow -- it's a horrible thing. So I never say that. I don't want to do what other presidents have done or other people have done saying, "We won," because you don't win so conclusively. I would love to have the day where we can win. You know, I remember when I was young I'd go on airplane and I'd walk up, I'd buy a ticket, I'd go on a plane. Nobody thought about bombs and nobody thought about security. You'd walk in, you'd give the ticket to the person at the gate and you'd walk into a plane. Today it's like, a big deal. So what happened is I said, "I'm not going to do it. I'll save it. If they do something else, it'll be double."

CHUCK TODD:

You think they were trying to provoke you?

PRESIDENT DONALD TRUMP:

No, I don't think so. And I think it was very important that they, to them, don't forget, their



economy --

CHUCK TODD:

They don't -- they, they --you don't think they intended to get you to respond militarily?

PRESIDENT DONALD TRUMP:

No, their economy is shattered. Shattered.

CHUCK TODD:

So what's the message you think they're sending?

PRESIDENT DONALD TRUMP:

Their inflation is through the roof. They've never had, the highest in the world right now. Worse than any place. They're, they're living not well.

CHUCK TODD:

So put yourself in their shoes, what do you think the message they're trying to send you with this, with this drone?

PRESIDENT DONALD TRUMP:

I think they want to negotiate. And I think they want to make a deal. And my deal is nuclear. Look, they're not going to have a nuclear weapon. This isn't about the straits. Do you know that China gets 91% of its oil from the straits? We don't even need the straits. We have, we are now, because of -- since I came in, we're the number one energy producer in the world. Okay? Actually by far. And if I get the pipelines approved through the environmental process, which I will in Texas, we'll go up by another 25%. But we're way ahead of Russia, we're way ahead of Saudi Arabia. And I think that they want to negotiate. I don't think they like the position they're in. Their economy is, is absolutely broken.

CHUCK TODD:

So you sent a letter to the Ayatollah via Prime Minister Abe. And the Ayatollah seemed to say, "I'm not talking to you."

PRESIDENT DONALD TRUMP:

I didn't send a letter, no.

CHUCK TODD:

What was the --

PRESIDENT DONALD TRUMP:

I didn't, I didn't send a letter. No, no --

CHUCK TODD:

Was it a verbal message? What did Prime Minister Abe carry on your behalf?

PRESIDENT DONALD TRUMP:

Prime Minister Abe's a great guy. He's a friend of mine. And he obviously is close to them. I think he was their, their largest buyer of oil from before.

CHUCK TODD:

But did he, did he deliver a message from you to them?

PRESIDENT DONALD TRUMP:

No. He wanted to do something.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

According to Prime Minister Abe, they went to him, it's according to the prime minister, and they said, "What do we do with Trump? Can we make a deal? Is there something that can be done?" That's what Prime Minister Abe told me. I said, "Do you mind if I say that if I have to?" And he said, "Not particularly." So they came to Prime Minister Abe. He then called me. I said, "Send the following message: you can't have nuclear weapons. And other than that, we can sit down and make a deal. But you cannot have nuclear --"

CHUCK TODD:

No other --

PRESIDENT DONALD TRUMP:

"-- weapons."

CHUCK TODD:

-- conditions other than that?

PRESIDENT DONALD TRUMP:

You cannot have nuclear weapons. And they would have had them with President Obama. He gave them \$150 billion --

CHUCK TODD:

What is your deal?

PRESIDENT DONALD TRUMP:

Remember this.

CHUCK TODD:

I understand. But what is your deal --

PRESIDENT DONALD TRUMP:

But, Chuck, you have to remember this.

CHUCK TODD:

-- going to look like with them?

PRESIDENT DONALD TRUMP:

Let me explain something. Number one, you have to look at the sites. Some of the most important sites we weren't even allowed to look at or inspect, okay? Number two, the term was not long enough.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

There's like a short number of years left. After a very small number of years, he's talking about a country, after a very small number of years, they have a free pass to nuclear weapons. You can't do that. So I want to be able to inspect all sites. They cannot have ballistic missiles, which under the agreement, isn't even covered. And as you know, that agreement wasn't even approved by Congress. A lot of people don't know that. That was an agreement that he couldn't get through Congress. He was not authorized, really, to do that deal.

CHUCK TODD:

Congress did give him some authorization to do that. It gave him the power to cut the deal.

PRESIDENT DONALD TRUMP:

It wasn't ratified by Congress.

CHUCK TODD:

It wasn't a, it wasn't a treaty.

PRESIDENT DONALD TRUMP:

It was very, very short of what it should have been. You know that.

CHUCK TODD:

Don't you think though -- does it at all tell -- what does it tell you that the Iranians haven't violated the agreement yet? That they are trying hard not to violate this agreement?

PRESIDENT DONALD TRUMP:

Well, you see, I think they have violated the agreement because I think in the areas that we're not allowed to inspect they're doing things. And I think they have been for years.

CHUCK TODD:

Europeans don't think they're violating the agreement.

PRESIDENT DONALD TRUMP:

Well, I don't care about the Europeans. The Europeans are going out and making a lot of money. The Europeans are fine. But they're going out and making a lot of money. They're selling, in France, they're selling cars to Iran. They're doing other things. And let me tell you, we're very good to Europe. We take care of them. NATO, we spend a tremendous amount, a disproportionate amount. On trade, the European Union's taken, really, they have really taken advantage of us for a long time. Just to finish, we have great relationships with Europe. I don't mind Europe getting in the middle. Europe wants to make a deal too. Europe would love to see a deal be made.

CHUCK TODD:

Are these going to be separate deals?

PRESIDENT DONALD TRUMP:

By the way, Europe --

CHUCK TODD:

Do you want to do a separate deal with Iran? Or do you want to get everybody involved in the same deal? Get the Russians, get the Chinese?

PRESIDENT DONALD TRUMP:

I don't care which, what kind of a deal. It can be separate or it could be total.

CHUCK TODD:

But it's one-on-one talks, you and the Ayatollah?

PRESIDENT DONALD TRUMP:

All it is -- all it is --

CHUCK TODD:

Is it one-on-one talks, you and the Ayatollah, or you and the President?

PRESIDENT DONALD TRUMP:

It doesn't matter to me. Here's what I want, anything that gets you to the result. They cannot have a nuclear weapon. It's not about the straits. You know, a lot of people covered it incorrectly. They're never mentioned. They cannot have a nuclear weapon. They'd use it. And they're not going to have a nuclear weapon.

CHUCK TODD:

Did you send a message --

PRESIDENT DONALD TRUMP:

And it's not about the oil.

CHUCK TODD:

-- last night? You know, Reuters is reporting that you sent a message to the Iranians saying, "I don't want war. I want to talk."

PRESIDENT DONALD TRUMP:

Wrong. It's wrong. I did not send that message. I did not send that message. I don't know who --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

I don't know who would have said that.

CHUCK TODD:

Send a message right now to the Ayatollah.

PRESIDENT DONALD TRUMP:

I mean it's fake news.

CHUCK TODD:

Then send a message right now to the Ayatollah.

PRESIDENT DONALD TRUMP:

Wouldn't be much different than that message.

CHUCK TODD:

Which is?

PRESIDENT DONALD TRUMP:

I'm not looking for war and if there is, it'll be obliteration like you've never seen before. But I'm not looking to do that. But you can't have a nuclear weapon. You want to talk? Good. Otherwise you can have a bad economy for the next --

CHUCK TODD:

No pre-conditions?

PRESIDENT DONALD TRUMP:

-- three years. Not as far as I'm concerned. No pre-conditions.

CHUCK TODD:

And you'll talk anywhere?

PRESIDENT DONALD TRUMP:

Here it is. Look, you can't have nuclear weapons. And if you want to talk about it, good. Otherwise you can live in a shattered economy for a long time to come.

CHUCK TODD:

If you, are you, do you feel like you were being pushed into military action against Iran by any of your advisors?

PRESIDENT DONALD TRUMP:

I have two groups of people. I have doves and I have hawks.

CHUCK TODD:

Yeah, you have some serious hawks.

PRESIDENT DONALD TRUMP:

I have some hawks. Yeah, John Bolton is absolutely a hawk. If it was up to him he'd take on the whole world at one time, okay? But that doesn't matter because I want both sides. You know, some people said, "Why did you put --" You know, I was against going into Iraq for years and years. And before it ever happened I was against going into Iraq. And some people said, "Oh I don't know." I was totally against and I was a private citizen. It never made sense to me. I was against going into the Middle East. Chuck, we've spent \$7 trillion in the Middle East right now.

CHUCK TODD:

Why is this our problem? This is a proxy war. Iran and Saudi Arabia are in a fight to the death out there.

PRESIDENT DONALD TRUMP:

Yeah. You're right. You're right. And that's another thing I've done --

CHUCK TODD:

Candidate Trump, candidate Trump for years would have said, "Not our fight." Why are you involved?

PRESIDENT DONALD TRUMP:

Because of nuclear weapons. It has nothing to do with oil.

CHUCK TODD:

So the minute you get them to do nuclear weapons, you want out of the Middle East?

PRESIDENT DONALD TRUMP:

That's all I care. I don't care about -- Well, we're going to protect Israel. But I have nothing to do, absolutely nothing -- and we're going to protect Saudi Arabia. Look, Saudi Arabia is buying \$400 billion worth of things for us. That's a very good thing.

CHUCK TODD:

You used to say we don't get anything in return --

PRESIDENT DONALD TRUMP:

We are now.

CHUCK TODD:

-- for protecting Saudi Arabia.

PRESIDENT DONALD TRUMP:

You know that this --

CHUCK TODD:

You feel like they're now paying for --

PRESIDENT DONALD TRUMP:

-- this morning --

CHUCK TODD:

-- the American protection?

PRESIDENT DONALD TRUMP:

-- I spoke to the Crown Prince, this morning. And we had a great conversation. I said, "This is a very expensive operation. You and the other nations that we're protecting have to pay."

CHUCK TODD:

Did you talk --

PRESIDENT DONALD TRUMP:



And he said, "Yes."

CHUCK TODD:

Did you talk to him about the U.N. report about Jamal Khashoggi?

PRESIDENT DONALD TRUMP:

I did not because it really didn't come up in that discussion. I called about one reason.

CHUCK TODD:

I understand.

PRESIDENT DONALD TRUMP:

I called about one -- I didn't call about that. I called about one reason. There's a very expensive operation. Unlike President Obama and unlike everybody else, I'll say others too, not just President Obama. You've got to pay for it. We cannot, we, we just don't want to go in and, and protect the Middle East and protect Saudi Arabia and everyone else and not get reimbursed.

CHUCK TODD:

So this is why you're overruling Congress and, and letting all these weapon sales happen in Saudi Arabia?

PRESIDENT DONALD TRUMP:

Economic development and that. But economic development.

CHUCK TODD:

Never mind the humanitarian disaster --

PRESIDENT DONALD TRUMP:

A million jobs.

CHUCK TODD:

-- that's taking place in Yemen?

PRESIDENT DONALD TRUMP:

A million jobs -- No it's going to end. It's going to end. By the way, who's causing it though? If you look at it, Iran goes into Yemen. They start firing rockets at Saudi Arabia. Saudi Arabia has to protect themselves, Chuck. But it's, it's a million jobs and probably more. They buy massive amounts, \$150 billion worth of military equipment that, by the way, we use. We use that military equipment. And unlike other countries that don't have money and we have to subsidize everything. So Saudi Arabia is a big buyer of America product. That means something to me. It's a big producer of jobs.

CHUCK TODD:

It makes you overlook some of their bad behavior?

PRESIDENT DONALD TRUMP:

No.

CHUCK TODD:

I mean --

PRESIDENT DONALD TRUMP:

I don't like anybody's bad behavior.

CHUCK TODD:

Are you going to -- The United Nations said they'd like the United States to order the FBI to investigate Jamal Khashoggi's death and possibly MBS' --

PRESIDENT DONALD TRUMP:

Well, I think it's, I think it's --

CHUCK TODD:

-- involvement in it. Will you allow the FBI to do that?

PRESIDENT DONALD TRUMP:

I think it's been heavily investigated.

CHUCK TODD:

By who?

PRESIDENT DONALD TRUMP:

By everybody. I mean --

CHUCK TODD:

By the FBI?

PRESIDENT DONALD TRUMP:

I've seen so many different reports.

CHUCK TODD:

What about the FBI?

PRESIDENT DONALD TRUMP:

Here's where I am, you ready?

CHUCK TODD:

Uh-huh.

PRESIDENT DONALD TRUMP:

Iran's killed many, many people a day. Other countries in the Middle East, this is a hostile place. This is a vicious, hostile place. If you're going to look at Saudi Arabia, look at Iran, look at other countries, I won't mention names, and take a look at what's happening. And then you go outside of the Middle East, and you take a look at what's happening with countries. Okay? And I only say they spend \$400 to \$450 billion over a period of time --

CHUCK TODD:

So --

PRESIDENT DONALD TRUMP:

-- all money, all jobs, buying equipment --

CHUCK TODD:

That's the price. As long as they keep buying --

PRESIDENT DONALD TRUMP:

No, no.

CHUCK TODD:

-- you'll overlook some of this behavior.

PRESIDENT DONALD TRUMP:

But I'm not like a fool that says, "We don't want to do business with them." And by the way, if they don't do business with us, you know what they do? They'll do business with the Russians or with the Chinese. They will buy -- We make the best equipment in the world, but they will buy great equipment from Russia and from China. Chuck --

CHUCK TODD:

Yeah. Alright.

PRESIDENT DONALD TRUMP:

Take their money. Take their money, Chuck.

CHUCK TODD:

What would a candidate Trump have said about a president who, on his watch, had Iran shooting down a drone, a Venezuelan dictator thumbing his nose at you, Obamacare still on the books and no results yet on the border? The border getting tough --

PRESIDENT DONALD TRUMP:

Well, let's, let's take a look. Let's take a look --

CHUCK TODD:

I just say -- what would candidate Trump have said about that?

PRESIDENT DONALD TRUMP:

Okay, let's take a look. The border's doing great. Mexico's been fantastic. They've been trying to get a deal with Mexico for 45 years, right? So for 45 years, they couldn't get a deal. I got one in one day. I said, "We're going to put tariffs on and we're going to either have a deal or not. We agreed in one day." Mexico just moved 6,000 people to their southern border. 6,000 troops to their southern border. The border's working out well. And the wall is being built. I mean, a lot of people don't like to talk about it. We're building the wall. We will have 400 miles of wall built by the end of next year and that's hard because the Democrats don't want to approve it. We just beat them in a big lawsuit, as you know, in Washington, in D.C. We just beat them in a very big lawsuit.

CHUCK TODD:

But does it frustrate you that your border numbers are worse than Obama's?

PRESIDENT DONALD TRUMP:

No, because the people are coming up because our economy is so good. They're pouring up because the economy is so good. Obama had a lousy economy. It was a dead economy.

CHUCK TODD:

Can I ask you about that?

PRESIDENT DONALD TRUMP:

Our, our economy is good.

CHUCK TODD:

Let me show you this chart. Do you see that chart?

PRESIDENT DONALD TRUMP:

Yeah.

CHUCK TODD:

It's the unemployment rate from the peak of the recession.

PRESIDENT DONALD TRUMP:

Right.

CHUCK TODD:

Your economy is great. I'm not saying it's not great. But this recovery started and in the 28 months that you've been president and the last 28 months of Obama's presidency, he averaged more new jobs than your first 28 --

PRESIDENT DONALD TRUMP:

That's because he started off with a, with such a bad base. I mean, he hit --

CHUCK TODD:

Ok. But it is -- is it not a continuation?

PRESIDENT DONALD TRUMP:

Yeah, but Chuck, you have to understand, nobody was working. The whole place was a disaster. And I don't-- I'd never take that away.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

But it's very easy --

CHUCK TODD:

Alright.

PRESIDENT DONALD TRUMP:

-- because when that turned around they pumped a tremendous amount of money into the economy. He also had a Federal Reserve person who kept the interest rates low. I don't. I don't have that privilege.

CHUCK TODD:

Sounds like you do now. Do you feel like you have --

PRESIDENT DONALD TRUMP:

No, no, no.

CHUCK TODD:

-- do you feel you have sent --

PRESIDENT DONALD TRUMP:

He raised them far too fast.

CHUCK TODD:

-- the threat --

PRESIDENT DONALD TRUMP:

He raised them far too fast.

CHUCK TODD:

-- your threat to demote him, do you think that's had an impact?

PRESIDENT DONALD TRUMP:

I didn't ever threaten to demote him.

CHUCK TODD:

There's been some talk that you might demote him to the number two slot.

PRESIDENT DONALD TRUMP:

Well, I, I, I'd be able to do that if I wanted but I haven't suggested that. I mean --

CHUCK TODD:

That's not a threat --

PRESIDENT DONALD TRUMP:

No, it's not --

CHUCK TODD:

-- that's just a reminder that you can?

PRESIDENT DONALD TRUMP:

No, no, I have the right to do that. But I haven't said that. What he's done is \$50 billion a month in quantitative tightening. That's ridiculous. What he's done is he raised interest rates too fast.

CHUCK TODD:

Do you worry it's going to hurt --

PRESIDENT DONALD TRUMP:

I've been proven right.

CHUCK TODD:

-- your reelection?

PRESIDENT DONALD TRUMP:

I think the economy's so strong we're going to bull through it. But I'm not happy with his actions. No, I don't think he's done a good job. I think this, if he didn't raise rates Obama had very low rates. So Obama was playing with funny money. I wasn't. I'm playing with the real stuff.

CHUCK TODD:

Let me ask you this.

PRESIDENT DONALD TRUMP:

Wait, wait. Obama had somebody that kept the rates very low. I had somebody that raised the rates very rapidly. Too much. He made a mistake. That's been proven. And yet my economy is phenomenal. We have now the best economy, maybe in the history of our country. One -- just to finish off, when I took over, this country, the economy was ready to collapse. You take a look at the numbers. It was ready to collapse. And if I didn't win --

CHUCK TODD:

I just showed you the numbers. It was not ready to collapse.

PRESIDENT DONALD TRUMP:

No no, no, that's -- You showed me unemployment numbers.

CHUCK TODD:

That was unemployment. It was not ready --

PRESIDENT DONALD TRUMP:

Excuse me.

CHUCK TODD:

-- to collapse.

PRESIDENT DONALD TRUMP:

Excuse me. Take a look at your GDP, take a look at your jobs, take a look at your optimism.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

Take a look at all of the charts. When I took over from election day on, I mean, you show me one chart which, where I did --

CHUCK TODD:



It was the unemployment rate.

PRESIDENT DONALD TRUMP:

-- well in that too, but I'm not --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

-- talking about that. Take a look at some of the optimism charts and everything else. It went from 57 to 92. Nobody's ever seen anything that --

CHUCK TODD:

You're right. You're right.

PRESIDENT DONALD TRUMP:

-- right after I won.

CHUCK TODD:

The optimism, you're right.

PRESIDENT DONALD TRUMP:

Well, optimism is a big part of success in business. Okay.

CHUCK TODD:

You were always hard on Obama. You thought he wasn't enough of a cheerleader.

PRESIDENT DONALD TRUMP:

He was not a cheerleader.

CHUCK TODD:

If you could have one do over as president, what would it be?

PRESIDENT DONALD TRUMP:

Well, it would be personnel.

CHUCK TODD:

Who is it?

PRESIDENT DONALD TRUMP:

I would say if I had one do over, it would be, I would not have appointed Jeff Sessions to be attorney general. That would be my one --

CHUCK TODD:

That's your, in your mind, that's your worst mistake?

PRESIDENT DONALD TRUMP:

Yeah, that was the biggest mistake.

CHUCK TODD:

Is Bill Barr your Roy Cohn?

PRESIDENT DONALD TRUMP:

He should've never -- I think he's a very talented, very--

CHUCK TODD:

But do you know what I mean by that? You've always said --

PRESIDENT DONALD TRUMP:

No, no, look --

CHUCK TODD:

"Where's my Roy Cohn?" Is he your Roy Cohn?

PRESIDENT DONALD TRUMP:

You have to understand, Roy Cohn, but I had many, many lawyers. I mean, a lot of lawyers. Roy was one of them. He was a tough guy. Bill Barr is a -- First of all, Bill Barr --

CHUCK TODD:

Is he cut from the same cloth, do you think?

PRESIDENT DONALD TRUMP:

Bill Barr is a very, he's equally tough. He's a fine man. He's a fine man. The job he's done is incredible. He's brought sanity back. I think he's real -- I don't think, I know, he's respected. You know, he loves the Department of Justice. He saw what was happening. He has done a spectacular job. Now he's in the process of doing something and I stay away from it. I really, I stay away from it. But I think he feels that what's happened in this country was a very bad thing and very bad for our country.

CHUCK TODD:

I want to ask what's going down with the, these, the children in these migrant camps. The stories are horrible, Mr. President. You have children without their parents. You have kids taking care of kids.

PRESIDENT DONALD TRUMP:

Yeah.

CHUCK TODD:

You've, you've read these reports. I know people are coming to you. I know you think this is the Democrats' problem.

PRESIDENT DONALD TRUMP:

Well, it --

CHUCK TODD:

Forget it.

PRESIDENT DONALD TRUMP:

It was --

CHUCK TODD:

Why aren't you doing something?

PRESIDENT DONALD TRUMP:

Are you ready?

CHUCK TODD:

They're in terrible shape down there, Mr. President. Down in Homestead, Florida, that's where I grew up, it's, the conditions are terrible.

PRESIDENT DONALD TRUMP:

I agree. And it's been --

CHUCK TODD:

Do something.

PRESIDENT DONALD TRUMP:

-- that way for a long time.

CHUCK TODD:

Do something.

PRESIDENT DONALD TRUMP:

And President Obama built the cages. Remember when they said that I built them? And then it was 1914 --

CHUCK TODD:

Do two wrongs --

PRESIDENT DONALD TRUMP:

Excuse me.

CHUCK TODD:

-- make a right?

PRESIDENT DONALD TRUMP:

It was 2014. Chuck, just listen for one second.

CHUCK TODD:

Ok. Alright.

PRESIDENT DONALD TRUMP:

Separation, President Obama, I took over separation. I'm the one that put it together. What's happened though are the cartels and all of these bad people, they're using the kids. They're, they're, it's almost like slavery.

CHUCK TODD:

But let's not punish the kids more.

PRESIDENT DONALD TRUMP:

No this has been happening --

CHUCK TODD:

Aren't you -- the kids are getting punished more.

PRESIDENT DONALD TRUMP:

You're right. And this has been happening long before I got there. What we've done is we've created, we've, we've ended separation. You know, under President Obama you had separation. I was the one that ended it. Now I said one thing, when I ended it I said, "Here's what's going to happen. More families are going to come up." And that's what's happened. But they're really coming up for the economics. But once you ended the separation. But I ended separation. I inherited separation from President Obama. President Obama built, they call them jail cells. They were built --

CHUCK TODD:

Let's talk about what's happening now.

PRESIDENT DONALD TRUMP:

-- by the Obama --

CHUCK TODD:

Your administration, and--

PRESIDENT DONALD TRUMP:

I'm just telling you --

CHUCK TODD:

--you're not doing the recreation. You're not even schooling these kids anymore. You've gotten rid of all that stuff.

PRESIDENT DONALD TRUMP:

We're doing a fantastic job under the circumstances. The Democrats aren't even approving giving us money. Where is the money? You know what? The Democrats are holding up the

humanitarian aid.

CHUCK TODD:

It looks like these kids are being used as, as some sort of -- is it hostages? They're being held --

PRESIDENT DONALD TRUMP:

Well, they are being used.

CHUCK TODD:

-- hostage.

PRESIDENT DONALD TRUMP:

They are being used by very bad people on the other side where they actually get --

CHUCK TODD:

But now they're politically being used.

PRESIDENT DONALD TRUMP:

--paid, where money is being made using them because our laws are so bad. Because if you have a child, you have an advantage. You know that better than anybody. And what should happen, Chuck --

CHUCK TODD:

But why let the political debate hurt these children?

PRESIDENT DONALD TRUMP:

Chuck, we could --

CHUCK TODD:

They could be impacted for years.

PRESIDENT DONALD TRUMP:

If the Democrats would change the asylum laws and the loopholes, which they refuse to do because they think it's good politics, everything would be solved immediately. But they refuse to do it. They refuse to do it.

CHUCK TODD:

Let me ask you this.

PRESIDENT DONALD TRUMP:

You know what? If they change those, I say, I used to say 45 minutes. It's 15 minutes. If they changed asylum and if they changed loopholes everything on the border would be perfect.

CHUCK TODD:

Let me ask you this, why do you think Nancy Pelosi has held off her impeachment caucus?

PRESIDENT DONALD TRUMP:

Because I think she feels that I will win much easier. I mean, I've been told that by many people.

CHUCK TODD:

Do you think impeachment's good politics for you?

PRESIDENT DONALD TRUMP:

I think I win the election easier. But, you know, I'm not sure that I like having it. Look, I did nothing wrong. I was spied on. What they did to me was illegal. It was illegal on the other side. I did nothing wrong. So impeachment's a very unfair thing because nothing that I did was wrong. And if you look at the Mueller report, there was no collusion. This was all about collusion.

CHUCK TODD:

Nowhere in the Mueller report --

PRESIDENT DONALD TRUMP:

This was about conspiracy.

CHUCK TODD:

By the way, Mr. President, you say no collusion. There is not a single, I've read this Mueller report, both, both parts of it --

PRESIDENT DONALD TRUMP:

Use the word collusion, or use --

CHUCK TODD:

-- there's not one place it says nothing happened.

PRESIDENT DONALD TRUMP:

Use the word collusion. Use the word conspiracy.

CHUCK TODD:

It never says no collusion.

PRESIDENT DONALD TRUMP:

I'll be honest with you, nobody even mentions Russia anymore since the Mueller report. They don't mention it, in all fairness.

CHUCK TODD:

I --

PRESIDENT DONALD TRUMP:

Nobody mentions Russia anymore. And it was about Russia. It was a hoax.

CHUCK TODD:

Let me ask you this --

PRESIDENT DONALD TRUMP:

Wait a minute.

CHUCK TODD:

-- during the campaign --

PRESIDENT DONALD TRUMP:

Wait, wait. We'll give you the time that you need.

CHUCK TODD:

What hoax it was?

PRESIDENT DONALD TRUMP:

It was a hoax. The Russian hoax with me.



CHUCK TODD:

You don't believe it happened?

PRESIDENT DONALD TRUMP:

I had nothing to do --

CHUCK TODD:

You don't believe the Russians interfered --

PRESIDENT DONALD TRUMP:

What they did with --

CHUCK TODD:

-- in our election?

PRESIDENT DONALD TRUMP:

-- respect to the election is different. We're not talking about that. We're talking about --

CHUCK TODD:

The idea that you were conspiring.

PRESIDENT DONALD TRUMP:

-- my campaign working is a hoax.

CHUCK TODD:

Fair enough.

PRESIDENT DONALD TRUMP:

Okay. Good.

CHUCK TODD:

But going back, on WikiLeaks, knowing now that that was stolen foreign material, do you regret using it?

PRESIDENT DONALD TRUMP:

Well, I, I wouldn't have. But this was well-known. I think it was in papers. And, again, I'm going back now a long ways. But --

CHUCK TODD:

It was all rumored to be Russian stolen property.

PRESIDENT DONALD TRUMP:

Wait a minute. But --

CHUCK TODD:

So why'd you use it?

PRESIDENT DONALD TRUMP:

--but how would I even know that? I made a speech. It was in there about WikiLeaks. I'm not a --

CHUCK TODD:

Right, but I'm saying knowing now --

PRESIDENT DONALD TRUMP:

-- WikiLeaks person.

CHUCK TODD:

Knowing that they are a Russian intelligence --

PRESIDENT DONALD TRUMP:

Hey, Chuck.

CHUCK TODD:

-- asset --

PRESIDENT DONALD TRUMP:

Ok.

CHUCK TODD:

-- do you regret it?

PRESIDENT DONALD TRUMP:

Let me tell you-- WikiLeaks, et cetera, that's not my deal in life. You know, in other words, I don't know about WikiLeaks. It was a strange name. But there were stories about something WikiLeaks that they had information. And I say it in a joking manner at a speech. Joking. Everybody laughing. Everybody having a -- And they made it like it was serious. No, I don't want anything bad to happen to our country. Anything bad happens to this country, I will end it and I'll end it fast. I don't want any of that to happen.

CHUCK TODD:

There's one part in the Mueller report, your, your son, Donald Trump Jr., did cooperate and appear before the Senate Intelligence Committee.

PRESIDENT DONALD TRUMP:

Right. That's right.

CHUCK TODD:

In the Mueller report, it says that he did not voluntarily sit for an interview with Mueller's team. And then there's a redaction. A Grand Jury redaction. Did he involuntarily sit?

PRESIDENT DONALD TRUMP:

I don't know. I can only tell you this --

CHUCK TODD:

Is it possible he was --

PRESIDENT DONALD TRUMP:

-- my son --

CHUCK TODD:

-- subpoenaed by the, --

PRESIDENT DONALD TRUMP:

I, I really don't know.

CHUCK TODD:

-- you don't know if he was subpoenaed?

PRESIDENT DONALD TRUMP:

But let me tell you what I do know.

CHUCK TODD:

So did you not read the Mueller report?

PRESIDENT DONALD TRUMP:

Let me tell you, I read much of it.

CHUCK TODD:

The unredacted version or no?

PRESIDENT DONALD TRUMP:

I read -- No I didn't.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

I didn't. But let me just tell you --

CHUCK TODD:

So if he was subpoenaed --

PRESIDENT DONALD TRUMP:

You know what I read? I read the --

CHUCK TODD:

-- if he was subpoenaed you wouldn't know?

PRESIDENT DONALD TRUMP:

-- I read, I read the conclusion.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

Well, he was subpoenaed. Ultimately he was subpoenaed to sit before the Senate Intel --

CHUCK TODD:

But was he --

PRESIDENT DONALD TRUMP:

-- and he did that.

CHUCK TODD:

Was he subpoenaed by Mr. Mueller?

PRESIDENT DONALD TRUMP:

I don't know. But I don't think so.

CHUCK TODD:

If he was subpoenaed was he going to appear before the Grand Jury or was he --

PRESIDENT DONALD TRUMP:

I don't know.

CHUCK TODD:

-- just going to plead the fifth?

PRESIDENT DONALD TRUMP:

I really don't know. But you can certainly ask him. I just --

CHUCK TODD:

But you don't know?

PRESIDENT DONALD TRUMP:

-- don't know. It was, it was -- He sat, my son, he's been treated so unfairly. He sat for many, many hours before these committees. I think, my impression is, that Mueller took all of the information from the committees and he used that information. How much, how much can you talk about something? Remember the phone calls, the three phone calls? It was such a big deal. Three phone calls that were made to a special type number.

CHUCK TODD:

Yeah.

PRESIDENT DONALD TRUMP:

Okay? And everybody said, "Oh, he called his father." That went on for a year. In other words, before this so-called meeting and after the meeting, "He called his father," the biggest story. Headlines all over the place. And then it turned out, and I give Mueller credit because Mueller was the one that found out through I guess the phone companies or whatever. Somebody found out, maybe through the FBI. Big investigation on who the calls were made. If they were made to me, it would have sounded like you, wait a minute, they turned out that it wasn't to me. It was to a real estate person and a NASCAR person. Two great people, have nothing to do with Russia. Have nothing to do. And you know what? People hardly even put the story in. My son was treated unfairly. My son, he spent 20 some odd hours and then he went back again.

CHUCK TODD:

But he never --

PRESIDENT DONALD TRUMP:

He was a very innocent, young man and he was treated very badly.

CHUCK TODD:

You're going to see Vladimir Putin in a week.

PRESIDENT DONALD TRUMP:

Yes. I'm going to see many people.

CHUCK TODD:

Are you going to address him directly about interference in 2020?

PRESIDENT DONALD TRUMP:

I may.

CHUCK TODD:

Are you going to tell him --

PRESIDENT DONALD TRUMP:

I may.

CHUCK TODD:

-- not to do it?

PRESIDENT DONALD TRUMP:

I may if you'd like me to do it, I'll do that.

CHUCK TODD:

Because some -- Well, some people think that your answer --

PRESIDENT DONALD TRUMP:

You know what? Here's what you do --

CHUCK TODD:

-- that your answer last week invited him to do it again.

PRESIDENT DONALD TRUMP:

Oh, that's not true. That's not true.

CHUCK TODD:

Are you going to tell him not to and what are the consequences?

PRESIDENT DONALD TRUMP:

My answer last week was both. I said both. I'd do both. Except they didn't put it on. And when they did put it on people understood. But they didn't put it on because they put a different segment on. So they ask me a question. But when I said, "Yeah, I'd do both," people saw that in the last version of it because the thing played like all weekend and on Friday. So it's just more fake news. Chuck, there's so much fake news. It would be so good if --

CHUCK TODD:

That's why I'm interviewing you one-on-one --

PRESIDENT DONALD TRUMP:

That's fine. That's why I like --

CHUCK TODD:

Let me ask you this.

PRESIDENT DONALD TRUMP:

That's why I like doing --

CHUCK TODD:

Do you think you've been --

PRESIDENT DONALD TRUMP:

But I like live interviews better, you know why? Because you can't cut the answers.

CHUCK TODD:

Guess what? I'm not -- You're going to enjoy the fact that I'm not going to over-edit this interview. That I promise you.

PRESIDENT DONALD TRUMP:

Ok. Good.

PRESIDENT DONALD TRUMP:

Do you think you've been more successful in business or the presidency?

PRESIDENT DONALD TRUMP:

I think, well, I can't be more successful in politics. I mean, I ran once and I'm president, right? So you have to say that's about -- there's nothing-- it's never happened before, right? So I'm one for one and I hope to be two for two. But my business has been a tremendous success. I actually said to the lawyers, "I'd like to show my financial statement. My financial statement's great." I built a great business --

CHUCK TODD:

You could release your tax returns any day you want.

PRESIDENT DONALD TRUMP:

I actually don't believe -- You don't learn from tax returns. And I'm under audit, Chuck. I've been saying it. I'm under audit. But you don't learn from tax returns.

CHUCK TODD:

I was under audit.



PRESIDENT DONALD TRUMP:

But you would learn from a financial --

CHUCK TODD:

I had my tax returns.

PRESIDENT DONALD TRUMP:

-- statement. And I would like to release it. I've built a great company. They like to -- For instance, banks. Banks. I could have borrowed from banks. But I didn't need to because I had money. I did things, in fact, a lot of people over the last couple of years were really surprised. "He paid all cash, he didn't use banks." I think I've been tremendously successful in business. I think I've been tremendously successful in show business with The Apprentice. I mean, I did one show and it was a great hit, as you know, from NBC.

CHUCK TODD:

Yes, sir.

PRESIDENT DONALD TRUMP:

And I guess you have to say I've been really successful at politics.

CHUCK TODD:

The Republican Party has changed in your image. Do you think you caused that change or do you think the party was changing and you were the leader they selected?

PRESIDENT DONALD TRUMP:

I think common sense caused it. You know, I'm about common sense. People say, "Are you conservative?" I guess I'm conservative, but I'm about common sense. I'm about we need borders. We're going to have borders. And we have strong borders. And by the way, Mexico has done a great job. It's slowed down so much. But we have an amazing economy and people want to come up. But it's slowed down so much. But I'm about borders. I'm about great health care. Obamacare is a disaster. I got rid of the individual mandate.

CHUCK TODD:

By the way, why is the economy doing so well if Obamacare is still law of the land? You had said in 2011 --

PRESIDENT DONALD TRUMP:

We are managing --

CHUCK TODD:

-- "Obamacare's going to destroy the economy." Obamacare's still here and --

PRESIDENT DONALD TRUMP:

Because I've managed it great.

CHUCK TODD:

-- the economy's great.

PRESIDENT DONALD TRUMP:

I had a choice. I could have let it implode and killed it or I could have managed it --

CHUCK TODD:

You're still trying to kill it.

PRESIDENT DONALD TRUMP:

No, no.

CHUCK TODD:

Why are you still trying to kill it with the getting rid of preexisting -- If you -- This lawsuit that the Department of Justice joined, it could get rid of --

PRESIDENT DONALD TRUMP:

I am in favor --

CHUCK TODD:

-- coverage of preexisting conditions.

PRESIDENT DONALD TRUMP:

I am in favor of preexisting conditions. I am fighting --

CHUCK TODD:

So get rid -- so drop the lawsuit.

PRESIDENT DONALD TRUMP:

We will --

CHUCK TODD:

So drop your aspect of the lawsuit.

PRESIDENT DONALD TRUMP:

It has nothing to do with it. The lawsuit is one thing. We are going to put in a bill, total preexisting conditions. And the Republicans are in favor of preexisting conditions.

CHUCK TODD:

Mr. President, you had full Republican control and they couldn't pass anything.

PRESIDENT DONALD TRUMP:

Chuck, are you ready?

CHUCK TODD:

What makes you think you're going to get it done this time?

PRESIDENT DONALD TRUMP:

We had a negative vote from John McCain. It was a surprising vote. But I got rid of the worst part of Obamacare which was the individual mandate.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

We will always protect pre-existing conditions. And the reason Obamacare continues is my decision. Wait, I made a big decision.

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

We have a man named Azar, our secretary, he's fantastic man, Alex. A total pro. I could have managed Obamacare so it would have failed or I could have managed it the way we did so it's as good as it can be. Not great, but it's as good -- It's too expensive and the premiums

are too high. I had a decision to make. I could have politically killed Obamacare. I decided not to do it. But still it's not good. We're going to come up with great health care if we win the House, the Senate and the presidency.

CHUCK TODD:

Are you prepared to lose?

PRESIDENT DONALD TRUMP:

No. Probably not. Probably not.

CHUCK TODD:

Very hon -- I mean, you joke --

PRESIDENT DONALD TRUMP:

It would be much better, it would be much better if I said, "Yeah."

CHUCK TODD:

You're, you're --

PRESIDENT DONALD TRUMP:

It would be much easier for me to say, "Oh yes." No I'm probably not too prepared to lose. I don't like losing. I haven't lost very much in my life.

CHUCK TODD:

You didn't like the fact that you lost the popular vote. That bothered you, didn't it?

PRESIDENT DONALD TRUMP:

Well, I think it was a -- I mean, I'll say something that, again, is controversial. There were a lot of votes cast that I don't believe. I look at California.

CHUCK TODD:

Mr. President.

PRESIDENT DONALD TRUMP:

Excuse me.

CHUCK TODD:

But that's a --

PRESIDENT DONALD TRUMP:

Take a look at Judicial Watch, take a look at their settlement where California admitted to a million votes. They admitted to a million votes.

CHUCK TODD:

A million votes of what?

PRESIDENT DONALD TRUMP:

Take a look at judicial --

CHUCK TODD:

What are you talking about?

PRESIDENT DONALD TRUMP:

Judicial Watch made a settlement. There was, there was much --

CHUCK TODD:

About what?

PRESIDENT DONALD TRUMP:

-- there was much illegal voting. But let me tell you about popular vote. Do you have a second?

CHUCK TODD:

Yes, because you were, you were a big fan of it --

PRESIDENT DONALD TRUMP:

There are two --

CHUCK TODD:

-- until you weren't

PRESIDENT DONALD TRUMP:

Well, I like popular vote.

CHUCK TODD:

Yeah.

PRESIDENT DONALD TRUMP:

I think I do better with a popular vote. But I didn't campaign for the popular vote.

CHUCK TODD:

You're right. I --

PRESIDENT DONALD TRUMP:

You didn't see me campaigning in California or New York. If I -- if it was up to the popular vote, I would have been I think even better. I won 306 to 223, which was a lot in the Electoral College. But it's like you're training for the 100-yard dash versus the mile.

CHUCK TODD:

Yep. You're, you're totally right.

PRESIDENT DONALD TRUMP:

It's totally different.

CHUCK TODD:

If it's the popular vote, you campaign differently.--

PRESIDENT DONALD TRUMP:

I went to Wisconsin. --

CHUCK TODD:

-- I don't disagree.

PRESIDENT DONALD TRUMP:

-- She forgot. I went to Michigan. She didn't go to Michigan enough. I won Michigan, Wisconsin, Pennsylvania. I won places that she didn't do a good job. What can I tell you? No, maybe I did a great job. You know, I never get credit for that. They always say she was a lousy candidate. I actually think that Hillary Clinton was a great candidate. She was very smart. She was very tough. She was ruthless and vicious.

CHUCK TODD:

You'd rather run against her again, wouldn't you?

PRESIDENT DONALD TRUMP:

No.

CHUCK TODD:

You only talked about her in your announcement speech.

PRESIDENT DONALD TRUMP:

No.

CHUCK TODD:

You spent a lot of time talking about her.

PRESIDENT DONALD TRUMP:

No. I would actually rather run against Biden.

CHUCK TODD:

Than Hillary.

PRESIDENT DONALD TRUMP:

I think that would be my preference.

CHUCK TODD:

Why?

PRESIDENT DONALD TRUMP:

Sleepy Joe. He's sleepy. She was not sleepy. Let me just tell you something, the Electoral College is tougher for a Republican to win than the popular vote. At least me. I feel that I go to three places. I went to 19 or 21 states. I went to Maine four times because I wanted to get one. And I did get it. And that's the beauty of the Electoral College.

CHUCK TODD:

Right.

PRESIDENT DONALD TRUMP:

You know, I've been a proponent of the other sometimes and I change. But I will tell you, the Electoral College brings you to many of the states in this country.

CHUCK TODD:

You, you have joked about a third term. You've joked about these things.

PRESIDENT DONALD TRUMP:

I only joke.

CHUCK TODD:

Okay.

PRESIDENT DONALD TRUMP:

I joke. And I say "Watch, I will drive Chuck Todd crazy."

CHUCK TODD:

You will, you will accept the re -- Ok. You will --

PRESIDENT DONALD TRUMP:

Yes, there won't be a third term.

CHUCK TODD:

You will accept the results?

PRESIDENT DONALD TRUMP:

100%. Sure.

CHUCK TODD:

And you will accept whatever happens in 2020.

PRESIDENT DONALD TRUMP:

Sure.

CHUCK TODD:

You lose, you'll be like -- you're not going to like it but you walk out.

PRESIDENT DONALD TRUMP:



In fact, I said at a speech recently, I said, "Watch. We'll drive the media crazy. Let's go for a third time and then a fourth." And some of the media said, "He's going to do it."

CHUCK TODD:

Speaking of driving people crazy, when you were asked about Mike Pence in 2024 and you, and you, and you paused a minute about endorsing him as your successor, that got a lot of people going, "Is Mike Pence 100% on your ticket in 2020?"

PRESIDENT DONALD TRUMP:

Well, look, look -- 100%, yes.

CHUCK TODD:

100%?

PRESIDENT DONALD TRUMP:

Oh yeah.

CHUCK TODD:

There is no wiggle room?

PRESIDENT DONALD TRUMP:

He's been, he's been a terrific vice president. He's my friend and --

CHUCK TODD:

Ok.

PRESIDENT DONALD TRUMP:

-- a lot of things. No. Zero. Zero.

CHUCK TODD:

So why'd you hesitate in endorsing him in being, succeeding you?

PRESIDENT DONALD TRUMP:

Because it was a surprise question.

CHUCK TODD:

You hadn't thought about it?

PRESIDENT DONALD TRUMP:

I mean, you know, I'm not even thinking of it. It's so far out. I mean, It's so far out. That would be the only reason. Now what happens in 2024? I don't know that Mike is going to run. I don't know who's running or anything else. I will say this, I think it's a tremendous embarrassment to Joe Biden that Obama has not, that President Obama, I like to say that because it's respect for the office and respect for him.

CHUCK TODD:

Do you speak to any of the former presidents?

PRESIDENT DONALD TRUMP:

Yes.

CHUCK TODD:

Who's the last one you did?

PRESIDENT DONALD TRUMP:

Well, I speak to Bush.

CHUCK TODD:

With President Bush?

PRESIDENT DONALD TRUMP:

I speak to Jimmy Carter.

CHUCK TODD:

You do? What about President Obama?

PRESIDENT DONALD TRUMP:

I have not spoken to him --

CHUCK TODD:

But George W. Bush, you do?

PRESIDENT DONALD TRUMP:

-- pretty much from the beginning.

CHUCK TODD:

And Jimmy Carter?

PRESIDENT DONALD TRUMP:

I have spoken to Bush, I have spoken to Jimmy Carter, yes.

CHUCK TODD:

Do you get --

PRESIDENT DONALD TRUMP:

I like Jimmy Carter. You know, Jimmy Carter's oftentimes come to my defense. I don't necessarily agree with the way he ran things and that's okay. And he understands that and so do I. But he came to my defense on numerous occasions. And he thinks that I was treated the worst of anybody he's ever seen by the press.

CHUCK TODD:

During --

PRESIDENT DONALD TRUMP:

I don't think he's including you.

CHUCK TODD:

Every new season, every new season of The Apprentice, you had something new to roll out. What's your big new idea for your re-election?

PRESIDENT DONALD TRUMP:

I think that the economy has tremendous upward potential despite the fact that we're doing really well. I think when we really unleash some of the things --

CHUCK TODD:

But what's your new idea?

PRESIDENT DONALD TRUMP:

-- that we're going to do --

CHUCK TODD:

What is the new big idea?

PRESIDENT DONALD TRUMP:

I also think that health care is going to be very important for me. I will tell you. If we win the House, the Senate and the presidency I will get tremendous health care because --

CHUCK TODD:

Do you think Democrats --

PRESIDENT DONALD TRUMP:

-- Obamacare is a disaster.

CHUCK TODD:

Do you think Democrats won the House because of health care?

PRESIDENT DONALD TRUMP:

I think they won because of preexisting condition.

CHUCK TODD:

Yeah.

PRESIDENT DONALD TRUMP:

Nothing to do with me. Because if you know almost every race that I campaigned for somebody they won. But I couldn't devote too much time to the House, there's too many people. But if you look at some of the Congressmen that I did go for and went for, they won like in Kentucky, et cetera, et cetera.

CHUCK TODD:

So your one new idea is going to be health care?

PRESIDENT DONALD TRUMP:

Just one thing. Ohio governor, he was behind, great guy.

CHUCK TODD:

He was.

PRESIDENT DONALD TRUMP:

Mike won. Georgia, President Obama was there. Oprah was there. Michelle Obama was there. It was going to be a big celebration. She was the star of the party. I went there for Brian. Brian Kemp. Brian Kemp won. Florida, Ron DeSantis --

CHUCK TODD

He ran as you.

PRESIDENT DONALD TRUMP

He was going to lose. He was low in the polls. I endorsed him. He went up 60 points after I endorsed him. Ron won. And he's been a great governor of Florida. You know, I've always heard that an endorsement is nice to have but it doesn't mean anything. I'm driving people up 30%, 40%, 50%, 60%.

CHUCK TODD:

Well, when you show up, you bring a lot of people.

PRESIDENT DONALD TRUMP:

We bring something very good.

CHUCK TODD:

I'm curious, did you see Jon Stewart's pretty passionate plea on behalf of 9/11 responders in front of Congress?

PRESIDENT DONALD TRUMP:

I was very impressed, yes.

CHUCK TODD:

Are you going to -- He's frustrated with Mitch McConnell. He feels like Mitch McConnell's the guy standing in the way of this bill. You're a New Yorker first. I know that in you. I've got to think Jon Stewart got to you.

PRESIDENT DONALD TRUMP:

Yeah, well --

CHUCK TODD:

Are you going to tell Mitch McConnell to --

PRESIDENT DONALD TRUMP:

I liked what Jon Stewart did. I actually did. And I actually have a meeting on that subject next week. So we'll see what happens.

CHUCK TODD:

So you think you will --

PRESIDENT DONALD TRUMP:

You know it's a very complicated subject for a lot of reasons.

CHUCK TODD:

I understand that it is. But --

PRESIDENT DONALD TRUMP:

But I have a meeting --

CHUCK TODD:

-- do you think that Jon Stewart had a point that Congress hadn't done enough?

PRESIDENT DONALD TRUMP:

I have a meeting with that, on that subject with -- Well, when you say Congress, billions of dollars has been passed.

CHUCK TODD:

I understand that.

PRESIDENT DONALD TRUMP:

Okay, billions.

CHUCK TODD:

Right. But the fund was about to run out.

PRESIDENT DONALD TRUMP:

Memorials have been, have been built.

CHUCK TODD:

That's right.

PRESIDENT DONALD TRUMP:

Tremendous amounts of money. But there are still people that are sick. I have a meeting on it next week.

CHUCK TODD:

All right, Mr. President.

PRESIDENT DONALD TRUMP:

Thank you.

CHUCK TODD:

I appreciate the time.

PRESIDENT DONALD TRUMP:

Thank you very much.

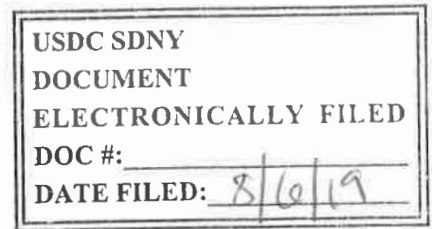
CHUCK TODD:

Thank you, sir.

# **EXHIBIT 19**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



OPEN SOCIETY JUSTICE INITIATIVE,

Plaintiff,

-v-

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants.

19 Civ. 234 (PAE)  
19 Civ. 1329 (PAE)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This case concerns a series of Freedom of Information Act (“FOIA”) requests by the Open Society Justice Initiative (“OSJI”) to a variety of federal agencies that seek information regarding a subject of considerable public importance: the disappearance of Jamal Khashoggi, a U.S. resident, Saudi national, and *Washington Post* columnist who was not seen alive again after entering the Saudi consulate in Istanbul on October 2, 2018. *See* Dkt. 1<sup>1</sup> (“Compl.”) ¶ 9. On May 30, 2019, this Court ordered the U.S. Department of State (the “State Department”) to produce responsive documents at “a processing rate of 5,000 pages per month, beginning June 2019,” finding that that volume “appropriately balances the urgency of this particular request with the State Department’s concerns regarding the burdens of making FOIA productions.” Dkt. 50. On June 5, 2019, the Court ordered the U.S. Department of Defense (“DOD”) to “process 2,500 pages of potentially responsive records and produce any responsive, non-exempt portions by June 30, 2019, and thereafter process 5,000 pages of potentially responsive records per month and produce any responsive, non-exempt portions by the end of each month.” Dkt. 57

---

<sup>1</sup> These consolidated cases include 19 Civ. 234 and 19 Civ. 1329. References to the docket in this Opinion refer to the docket in lead case 19 Civ. 234 unless otherwise specified.

(superseding original Order at Dkt. 54). Before the Court is the motion by the State Department and DOD (together, the “Government”) for reconsideration of these processing rates. The Government requests instead that the Court order processing rates of no more than 3,000 pages per month per agency. For the reasons that follow, the Court denies the motion.

## **I. Procedural History**

On December 4, 2018, OSJI submitted the FOIA requests at issue. *See* Compl. ¶ 25. On January 9, 2019, OSJI filed the Complaint. Dkt. 1. In its Complaint, OSJI alleged that it had submitted FOIA requests to federal agencies including the State Department and DOD seeking disclosure of “all records relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA’s findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible.” *Id.* ¶ 25. OSJI alleged that it had requested expedited processing of these requests, *id.* ¶ 26, but that, as of the filing of the Complaint, it had not received any determination as to those requests, prompting it to file this action, *id.* ¶ 2. On March 18, 2019, defendants answered. Dkt. 24.

On April 19, 2019, the Court held an initial conference. *See* Dkt. 25. Until that point, plaintiffs had not received an update on the status of their FOIA requests. *See* Pl. Mem. at 15. On April 23, 2019, the Court issued a scheduling order that required, *inter alia*, that DOD and the State Department “provide Plaintiff with a proposed processing schedule” by May 30, 2019. Dkt. 30.

On May 13, 2019, the State Department filed a letter requesting a processing rate of 300 pages per month, 19 Civ. 1329 at Dkt. 30 (“State Ltr.”), a supporting declaration from Eric F. Stein, *id.* Dkt. 30-1 (“Stein Decl. I”), and attached exhibits. On May 20, 2019, OSJI filed a letter

in opposition requesting a processing rate of 7,500 pages per month. Dkt. 44. On May 30, 2019, the Court ordered the State Department to process at a rate of 5,000 pages per month. Dkt. 50.

On June 3, 2019, the parties filed a joint status report. Dkt. 51. In it, DOD represented that “on June 13, 2019, DOD will provide Plaintiff with an estimated volume of potentially responsive records (in pages) and proposed production schedule for any non-exempt responsive records.” *Id.* at 2. On June 4, 2019, at a status conference, DOD took the position that the setting of a date for a “proposed production schedule” complied with the Court’s April 23, 2019 Order. Dkt. 59 (“June 4, 2019 Hrg. Tr.”) at 10–13. DOD was not prepared with information at that conference regarding DOD’s FOIA capabilities beyond that it “expressed some concern with the order with respect to [S]tate as to whether [DOD] would be able to comply with that amount . . . .” *Id.* at 16. Although the Court anticipated setting a processing schedule based on the parties’ informed input, DOD was not able to provide any facts at all regarding its processing capabilities. *See id.* at 18 (“THE COURT: . . . If there is something concrete you want to say beyond the agencies are busy, I’m happy to hear it now.”). During the June 4, 2019 conference, the Court, in recognition of the public importance and time-sensitivity of the Khashoggi FOIA request, ordered that each agency process 5,000 pages per month, save that the Court set DOD’s production obligation during the ongoing month of June 2019 at 2,500 pages. *See id.* at 18–19.

On June 13, 2019, the State Department and DOD filed the instant motion for reconsideration, Dkt. 61, a memorandum of law in support, Dkt. 62 (“Gov’t Mem.”), and declarations in support from Eric F. Stein, Dkt. 64 (“Stein Decl. II”), and Mark H. Herrington, Esq., Dkt. 63 (“Herrington Decl.”). On June 27, 2019, OSJI filed a memorandum of law in opposition, Dkt. 72 (“Pl. Mem.”), and the supporting declaration of Catherine Amirfar, Esq., Dkt. 73 (“Amirfar Decl.”), with supporting exhibits. On July 3, 2019, the State Department and

DOD filed a reply memorandum of law, Dkt. 79 (“Gov’t Reply”), with a supporting declaration from Eric F. Stein, Dkt. 80 (“Stein Decl. III”).

## **II. Applicable Legal Standards**

### **A. Motion for Reconsideration**

The standard governing motions for reconsideration “is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked.” *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (citation omitted); *see also* S.D.N.Y. Local Rule 6.3 (requiring the movant to “set[] forth concisely the matters or controlling decisions which counsel believe the court has overlooked”). Such a motion “is neither an occasion for repeating old arguments previously rejected nor an opportunity for making new arguments that could have been previously advanced.” *Assoc. Press v. U.S. Dep’t of Def.*, 395 F. Supp. 2d 17, 19 (S.D.N.Y. 2005); *see also* *Goonan v. Fed. Reserve Bank of N.Y.*, No. 12 Civ. 3859 (JPO), 2013 WL 1386933, at \*2 (S.D.N.Y. Apr. 5, 2013) (“Simply put, courts do not tolerate such efforts to obtain a second bite at the apple.”). Rather, reconsideration is appropriate “only when the [moving party] identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 104 (2d Cir. 2013) (citation omitted).

The Government argues that the less stringent Rule 16(b)(4) “good cause” standard should govern, because “search and processing schedules in FOIA actions fall within the broad range of matters typically governed by pretrial orders issued under Rule 16.” Gov’t Reply at 1. OSJI counters that the Orders at issue “provide equitable relief by directing the Government to

take affirmative action to comply with FOIA's expedited processing provisions," and so should be governed under the standard on a motion for reconsideration. Pl. Mem. at 9.

### **B. FOIA Requests**

FOIA requires that executive agencies, upon proper request, produce records to the public or provide justification why the requested materials are exempt from production. *See* 5 U.S.C. § 552. The statute requires that "[e]ach agency, upon any request for records . . . shall . . . determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of . . . such determination and the reasons therefor . . ." *Id.* § 552(a)(6)(A)(i). Recognizing the difficulties of strict compliance with the 20-day requirement, courts have permitted the processing of FOIA requests on a first-in, first-out basis. *See, e.g., Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976) ("The good faith effort and due diligence of the agency to comply with all lawful demands under the Freedom of Information Act in as short a time as is possible by assigning all requests on a first-in, first-out basis, except those where exceptional need or urgency is shown, is compliance with the Act."); *Bloomberg L.P. v. FDA*, 500 F. Supp. 2d 371, 276 (S.D.N.Y. 2007) ("While a general showing of an agency processing FOIA requests on a first-in, first-out basis, coupled with a multitrack processing system may be consistent with due diligence in some instances, this determination should not be automatic, and fails if extraordinary need is demonstrated.").

Congress has long recognized that "information is often useful only if it is timely" and that, therefore "excessive delay by the agency in its response is often tantamount to denial." H.R. Rep. No. 93-876, at 6271 (1974). In 1996, Congress amended FOIA to provide for "expedited processing" where there is a "compelling need," defined as either (1) involving "an

imminent threat to the life or physical safety of an individual” or (2) in the case of a request made by “a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E). This case falls under the second definition, both because OSJI is an organization primarily engaged in disseminating information, and because there is urgency to inform the public, to the extent that this information is not FOIA-exempt, of official findings regarding the Khashoggi disappearance. *See* Compl. ¶ 26; Gov’t Mem. at 5 (acknowledging that the request qualifies for expedited processing). For expedited processing, “a determination of whether to provide expedited process shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request . . . .” 5 U.S.C. § 552(a)(6)(E)(ii). An agency must process any request to which expedited processing has been granted “as soon as practicable . . . .” *Id.* § 552(a)(5)(E)(iii).

Notwithstanding the statutory deadlines for responding to FOIA requests, as to the timetable for production, FOIA “does not assign any particular time frame to release of the records sought.” *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 275 (D.D.C. 2012).

### **III. Analysis**

#### **A. State Department**

The State Department argues that it is not “practicable,” within the meaning of the FOIA statute, for it to process 5,000 pages per month. Gov’t Mem. at 9. Although it made the same contention in its initial submissions, *see* State Ltr., the State Department represents that its experience to date complying with the 5,000-page-per-month processing rate ordered by the Court, and the resulting impact on its overall FOIA operations, fortify the conclusion that a 5,000-page-per-month review rate is not practicable. It argues that the State Department’s

challenges meeting this Order during the first month it was in effect constitute new facts, or alternatively good cause under Rule 16, so as to justify reconsideration.

The State Department has indeed presented additional relevant data in support of its request for a reduced pace of review. And the Court is prepared to assume *arguendo* that the importance of the issues at hand and the need to assure that the allocation of resources to this FOIA request are reasonable in light of the State Department's limited resources and competing priorities justify reconsideration. Nonetheless, the Court, on *de novo* reconsideration, does not find good cause to revise its considered Order that the State Department process 5,000 pages per month responsive to OSJI's FOIA request.

Salient here, Mr. Stein's first declaration, submitted in support of the State Department's original letter seeking a processing rate of 300 pages per month, outlined substantially the same challenges, in the nature of finite departmental resources, that his second declaration now sets out in more detail. Mr. Stein's initial submission described the State Department's overburdened FOIA resources, Stein Decl. I ¶ 14, and the sharp increase in FOIA requests and FOIA litigation during recent years, *id.* ¶¶ 14–19. Mr. Stein represented that the State Department has largely tasked, as FOIA reviewers, retired Foreign Service Officers who work on a part-time basis. He represented that the State Department therefore could process only approximately 300 pages per month in this matter. *Id.* ¶¶ 19–20. Mr. Stein represented that the State Department, at any given time, has between 60 and 73 reviewers processing records for release, and that it can process between 18,000 and 21,900 pages in total per month. *Id.* ¶ 20. Mr. Stein further represented that the State Department is seeking to fill six vacant positions that would perform FOIA litigation review, and, recognizing the limitations of its model for FOIA review, intends to train and hire more full-time employees to handle FOIA requests. *See id.* ¶¶ 21, 20 n.5. Mr.

Stein's first declaration further represented that the State Department had identified at least 63,000 pages potentially responsive to the instant request, *id.* ¶ 28, and that the 7,500-page per-month processing rate requested by OSJI would require more than 30% of the State Department's available FOIA reviewers, *id.* ¶ 20, drawing resources from other FOIA requests, *id.* ¶ 28. In contrast, Mr. Stein urged, a 300-page per month pace would not give rise to such acute conflicts. *Id.* ¶¶ 29–30.

To be sure, Mr. Stein's second declaration reflects impressive responsiveness on the part of the State Department to the Court's production Order, in that the State Department has significantly fortified the review process anticipated in Mr. Stein's first declaration, largely by, as projected in his first declaration, drawing resources from other FOIA projects. Mr. Stein represents that the State Department, in response to the Court's order, created a "unique project team" to address this FOIA request, "reassigning five full-time employees from their normal roles processing non-litigation FOIA requests." Stein Decl. II ¶¶ 8–9. These five employees, Mr. Stein states, represent 10% of currently-available full-time employees who process non-litigation FOIA requests. *Id.* ¶ 9. This appears to be a substantial expansion of the number of personnel whom Mr. Stein in his first declaration anticipated could be assigned to this request.

At the same time, Mr. Stein represents, the State Department has now identified more than 288,000 pages potentially responsive to OSJI's FOIA request that will ultimately need to be processed. *Id.* ¶ 14. This is a more than four-fold increase in the department's previous estimate of responsive records. If that number holds—*i.e.*, if the universe of responsive records is not pruned in the parties' continuing negotiations as to the materials OSJI seeks—Mr. Stein represents that the 5,000-page-per-month processing rate would therefore "[d]ivert[] more than 10% of the full-time employee resources for more than four years" and "will substantially



impede[] the [State] Department’s ability to process the approximately 98% of FOIA requests that are not in litigation, including over 170 expedited requests.” *Id.* ¶ 18.

The Court was aware when it originally ordered a 5,000-page-per-month processing rate that this directive would require the State Department either to divert resources from other FOIA requests or to mobilize additional resources. The Court’s Order—which fell between the parties’ competing proposals, albeit imposing a numeric target closer to the 7,500-page monthly target urged by OSJI than to the 300-page monthly target urged by the State Department—reflected a thoughtful attempt to balance the competing interests at hand, as FOIA case law requires. “It is the duty of the court to uphold FOIA by striking a proper balance between plaintiffs’ right to receive information on government activity in a timely manner” and government concerns, including agency capabilities and the heightened clearance process for issues of national security. *ACLU v. Dep’t of Defense*, 339 F. Supp. 2d 501, 504 (S.D.N.Y. 2004) (citations omitted); *see also Halpern v. FBI*, 181 F.3d 279, 284 (2d Cir. 1999) (FOIA statute reflects a “preference for the fullest possible agency disclosure of such information consistent with a responsible balancing of competing concerns . . .”). “Congress enacted FOIA to illuminate government activities. The law was intended to provide a means of accountability, to allow Americans to know what their government is doing.” *ACLU*, 339 F. Supp. 2d at 504 (citing *Halpern*, 181 F.3d at 284).

As the Court has recognized at every conference in this case, the instant FOIA request concerns a matter of exceptional public importance and obvious and unusual time-sensitivity. As OSJI has repeatedly emphasized, Khashoggi’s disappearance was front-page news in December 2018, when OSJI lodged its FOIA requests with the State Department and other federal agencies. In the months since, Khashoggi’s disappearance, and the facts or allegations regarding his killing

in Saudi custody, have continued to be a matter of intense interest among the public, legislators, other policymakers, and journalists. See, e.g., *Jamal Khashoggi and Azori Gwanda Remain Atop Latest “10 Most Urgent” List of Press Freedom Cases from One Free Press Coalition*, Forbes (Aug. 1, 2019), <https://www.forbes.com/sites/forbespr/2019/08/01/jamal-khashoggi-and-azory-gwanda-remain-atop-latest-10-most-urgent-list-of-press-freedom-cases-from-one-free-press-coalition/#7eb919041fd2>; Colby Itkowitz & Karoun Demirjian, *Senators Introduce Bipartisan Measure to Punish Saudis for Khashoggi Murder*, Wash. Post (July 31, 2019), [https://www.washingtonpost.com/politics/senators-introduce-bipartisan-measure-to-punish-saudis-for-khashoggi-murder/2019/07/31/9bb5dbdc-b3b1-11e9-951e-de024209545d\\_story.html?noredirect=on&utm\\_term=.31b9a7985b69](https://www.washingtonpost.com/politics/senators-introduce-bipartisan-measure-to-punish-saudis-for-khashoggi-murder/2019/07/31/9bb5dbdc-b3b1-11e9-951e-de024209545d_story.html?noredirect=on&utm_term=.31b9a7985b69); *US Silence on Khashoggi ‘Not an Option’ Says UN Rapporteur*, B.B.C. News (10 July , 2019), <https://www.bbc.com/news/world-middle-east-48932600>. Recently, a United Nations report found the Khashoggi killing likely to have been a crime committed in violation of international law. Referencing this very FOIA request, the report urged a prompt investigation and called for the U.S. Government to “produce as much information as possible to those seeking to hold the perpetrators accountable.” Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Investigation into the Unlawful Death of Mr. Jamal Khashoggi, ¶ 407, U.N. Doc. A/HRC/41/CRP.1, annex (June 19, 2019).

As the record in this case reflects, these request-specific interests have driven the Court’s judgment that a heightened commitment of resources is warranted for this particular FOIA request. The Court has found that there is paramount public importance and urgency to OSJI’s request for records bearing on the information known to the federal agencies regarding Khashoggi’s disappearance. The Court reiterates that assessment here.

The outcome struck by the Court attempted to balance the paramount interest in visibility—in public access to non-exempt records bearing on this consequential topic of urgent public concern—against the State Department’s resource constraints and competing priorities. The Court is respectful of these limitations. The Court does not minimize that compliance with this request will draw more heavily on the State Department’s FOIA resources than most other requests. The Court carefully considered these factors originally. It has carefully reconsidered them anew in response to the motion for reconsideration and the data contained therein.

Important to the Court’s assessments at all times has been the anticipated duration of the State Department’s review. Given the 63,000 pages of responsive material estimated at the time the Court ordered the State Department to process 5,000 pages per month, the Department’s review would have taken more than a year to complete. The State Department now estimates that there are, in fact, 288,000 pages responsive to OSJI’s request. On the pace ordered by the Court, review of this amount of material would take just under five years to review. This fact strongly commends against reducing the review pace ordered by the Court. In contrast, on the pace that the State Department now urges—in which it would review up to 3,000 pages per month, a greater volume than the earlier 300 pages per month it had initially proposed—review would take 96 months, or eight years.

To be sure, the Court is hopeful that as the State Department gains familiarity with the responsive materials, the parties’ good-faith negotiations will prune out categories of records in which OSJI has limited interest and materially reduce the production timetable. *See* Pl. Mem. at 6–8 (listing 29 categories of documents the parties have already agreed to exclude). But the term “practicable” must be read in the context of FOIA’s aims to provide timely information on government activities to the public. A 5,000-page per-month processing rate, which still

contemplates a protracted period of review and production, appropriately balances agency constraints against that aim.

In sum, the information presently before the Court, including the new facts contained in the State Department's submissions in support of reconsideration, reinforces the judgment that a 5,000-page-per-month review pace is merited. The Court finds this processing rate "practicable" within the meaning of FOIA. The Court therefore denies the motion for reconsideration as to the State Department.

### **B. Department of Defense**

DOD's argument for reconsideration is based partially on the Court's ordering of a 5,000-page-per-month processing rate at the June 4, 2019 conference "without notice or an opportunity to submit a factual record." Gov't Mem. at 9. As noted earlier, DOD came to that conference unprepared to offer any facts beyond its status as a busy agency with competing demands on its resources. DOD has now presented relevant data. The Court finds, however, that even reviewed *de novo* with the benefit of additional facts now supplied by DOD, DOD has not shown good cause or "manifest injustice" sufficient to merit modification of the 5,000-page-per-month processing rate.

Like the State Department, DOD's position, articulated in Mr. Herrington's declaration, turns on DOD's limited FOIA processing capabilities. He notes the remarkable fact that the Office of Information Counsel ("OIC"), the DOD department that oversees FOIA requests, *see* Herrington Decl. ¶ 5, "does not possess eDiscovery software," *id.* ¶ 7. As a result, unexpedited by electronic review, the documents responsive to each FOIA request to DOD are subject to "line-by-line review by OIC staff for responsiveness." *Id.* ¶ 9. Further, he represents, OIC currently consists of only 11 full-time attorneys, 14 analysts, 1 paralegal, and 3 administrative

assistants. *Id.* ¶ 5. DOD is involved in discovery in 19 complex civil law suits of national import, and 40 other FOIA litigations involving matters of public concern, which call upon OIC's resources. *Id.* ¶ 6. Since this Court's processing rate Order, Herrington represents, an average of 25% of OIC's analysts have been working on this request on any given day. *Id.* ¶ 20. As of Mr. Herrington's declaration, DOD had identified 22,637 pages of potentially responsive records. DOD therefore projects that it will take several more months to complete its work on this FOIA request. *Id.* ¶ 21.

The Court is sensitive to the many important FOIA requests that DOD receives and that DOD's seemingly antiquated review capacities strain the ability of its personnel to attend manually to these requests. Nonetheless, DOD's decision to thus far deny itself the technologic capacity to speed its review cannot dictate the Court's assessment of the review pace that is "practicable" under FOIA. As the Court observed at the most recent conference in this case, the inquiry must focus on a reasonable agency's technological capability. Dkt. 82 (transcript of July 8, 2019 hearing) at 10–11. Weighing DOD's duties to effect prompt disclosure under FOIA against its legitimate administrative constraints, the Court finds that a 5,000-page-per-month processing rate remains "practicable" for FOIA purposes, even if meeting this demand calls upon DOD to augment, temporarily or permanently, its review resources, human and/or technological.

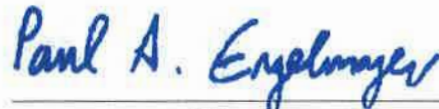
The Court notes, finally, that both the State Department and DOD imply that the Court's initial determination that a 5,000-page-per-month processing rate was merited was premised in part on the fact that OSJI's FOIA request was made in December 2018, but that the two agencies did not report to plaintiffs on the requests until April 2019. *See* Gov't Mem. at 2 (noting Court's observation at June 4, 2019 conference that it took "four months before anyone was paying any attention to the request at either agency"). For avoidance of doubt, in setting the 5,000-page-

per-month processing rate, the Court was not punishing either agency for sluggish compliance. The Court was recognizing that the lack of any document production by either agency during the first half-year after OSJI lodged its request reinforced the need for a meaningful production schedule, consistent with the schedules the Court has set. That assessment remains apt.

**CONCLUSION**

For the reasons reviewed above, the Court denies the motions by the State Department and DOD for reconsideration of the monthly processing rates set by the Court. The Clerk of Court is respectfully directed to deny the motion pending at Dkt. 61.

SO ORDERED.



---

PAUL A. ENGELMAYER  
United States District Judge

Dated: August 6, 2019  
New York, New York

# **EXHIBIT 20**

U.S. Department of Justice



United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

September 24, 2019

**BY ECF**

Honorable Paul A. Engelmayer  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Open Society Justice Initiative v. Central Intelligence Agency, et al.*,  
No. 19 Civ. 234 (PAE) (BCM)  
*Open Society Justice Initiative v. Department of Justice, et al.*,  
No. 19 Civ. 1329 (PAE) (BCM)

Dear Judge Engelmayer:

We write pursuant to the Court's August 13, 2019 order, ECF No. 94, to submit a joint status letter in advance of the conference scheduled for this **Friday, September 27, 2019, at 9:00 a.m.**

**I. Final Agency Responses and Proposed Next Steps**

**NSA and DOJ/OIP.** On June 26, 2019, NSA made its final response to Plaintiff's FOIA request, and released 24 pages in part. To the extent Plaintiff's request seeks intelligence records, NSA issued a Glomar response, because the fact of whether NSA does or does not possess responsive intelligence is itself classified and statutorily protected from disclosure, and thus exempt from public disclosure pursuant to FOIA exemptions 1 and 3. On June 28, 2019, DOJ/OIP made its final response to Plaintiff's FOIA request, and released two pages. Plaintiff has agreed to dismiss DOJ/OIP and NSA from this case. The parties are preparing a stipulation and proposed order of dismissal and plan to submit it to the Orders and Judgments Clerk promptly.

**ODNI and CIA.** On August 5, 2019, CIA and ODNI made their third and final respective responses to Plaintiff's FOIA request. In total, CIA released 707 pages in whole or in part and ODNI released 96 pages in part, as a result of searches of each agency's press office. The remaining record or records have been withheld in full pursuant to FOIA exemptions (b)(1) and (b)(3), and portions are also subject to exemptions (b)(5) and (b)(6).

Plaintiff intends to file a motion for summary judgment regarding CIA and ODNI's response to Plaintiff's FOIA request. The parties believe that the most efficient procedure for resolving the dispute is with cross motions for summary judgment, with the agencies moving first. The parties' positions are summarized below. We respectfully request that the Court employ this Friday's conference as a pre-motion conference on the proposed cross-motions.



Honorable Paul A. Engelmayer  
September 24, 2019

Page 2

Plaintiff's Position: CIA and ODNI have acknowledged that they possess responsive records, and have not invoked a *Glomar* response. FOIA therefore requires the agencies to justify their withholdings and demonstrate the adequacy of their search through sufficiently specific *Vaughn* indices and declarations. *See Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994) (stating the Government has the burden on summary judgment to show that it conducted a search that was adequate and that withheld documents fit into a FOIA exemption).

ODNI and CIA's Position: Neither CIA nor ODNI can provide additional information to Plaintiff about the number or type(s) of document(s) withheld because to do so would itself reveal a classified fact and information relating to intelligence sources or methods protected by FOIA exemptions 1 and 3. While not the norm, “[a]n agency may withhold information on the number of responsive documents and a description of their contents if those facts are protected from disclosure by a FOIA exemption.” *New York Times Co. v. U.S. Dep't of Justice*, 756 F.3d 100, 122 (2d Cir.), *opinion amended on denial of reh'g*, 758 F.3d 436 (2d Cir. 2014), *supplemented*, 762 F.3d 233 (2d Cir. 2014); *see also Hayden v. Nat'l Sec. Agency/Cent. Sec. Serv.*, 608 F.2d 1381, 1384 (D.C. Cir. 1979) (“When the itemization and justification are themselves sensitive, however, to place them on public record could damage security in precisely the way that [an exemption] is intended to prevent.”).

Proposed schedule: The parties have agreed upon the following proposed briefing schedule for the Court's consideration: CIA and ODNI will move for summary judgment on or before December 5, 2019; Plaintiff will cross-move for summary judgment and oppose the agencies' motion on or before January 16, 2020; CIA and ODNI will file a reply in further support of their motion and oppose Plaintiff's cross-motion on or before February 6, 2020; and Plaintiff file its reply in further support of its cross-motion on or before February 27, 2020. CIA and ODNI anticipate filing a single brief at each stage, with supporting public declarations, and possible classified declarations for the Court's *ex parte*, *in camera* review. The parties are in agreement that Local Rule 56.1 statements are not necessary here, as “the general rule in this Circuit is that in FOIA actions, agency affidavits alone will support a grant of summary judgment,” and a Local Rule 56.1 statement “would be meaningless.” *Ferguson v. FBI*, 1995 WL 329307, at \*2 (S.D.N.Y. June 1, 1995), *aff'd*, 83 F.3d 41 (2d Cir. 1996); *see also N.Y. Times v. DOJ*, 872 F. Supp. 2d 309, 314 (S.D.N.Y. 2012) (noting Local Civil Rule 56.1 statement not required in FOIA actions in this Circuit). Accordingly, the parties respectfully request that the Court confirm that the parties do not need to submit Local Rule 56.1 statements.

## **II. Status of Ongoing Agency Processing and Related Issues**

**State.** State is continuing to process the approximately 319,000 potentially responsive pages for responsiveness and exemptions, pursuant to the Court's processing order. To date, State has released 726 pages in part or in full in response to Plaintiff's FOIA request. As a further update to the parties' August 26, 2019 letter, ECF No. 98, in which the parties reported on State's efforts to prioritize the processing of Plaintiff's FOIA request, the parties have reached an agreement, as follows: State, upon the conclusion of processing the remaining documents from the SAS and Everest databases will, for six months beginning in October 2019, prioritize the processing of documents collected from 29 agreed-upon custodians of the 51 total custodians for whom State collected emails and attachments. In consideration of this agreement to

Honorable Paul A. Engelmayer  
September 24, 2019

Page 3

prioritize, at the end of March 2020, Plaintiff agrees to engage in good faith discussions to further narrow the search results for Plaintiff's FOIA request. The parties memorialized their full agreement on September 16, 2019 while reserving all rights with respect to Plaintiff's FOIA request. In addition, and as a further follow up to the parties' August 26, 2019 letter, the parties have reached an agreement regarding State applying an additional search phrase: "Khashoggi AND die\* OR dead\*". State will run this additional search phrase on 12 agreed-upon custodians of the 51 total custodians for whom State collected emails and attachments. In consideration of this additional searching and processing, Plaintiff agrees to not challenge the adequacy of State's search on grounds of the "die\*" and "dead\*" search phrase, and that State need not process additional records from the existing search results for ten custodians from State's Office of the Legal Adviser and State's Office of Legislative Affairs from whom State previously collected emails and attachments. The parties finalized their agreement on September 23, 2019.

**DOD.** DOD is continuing to process the approximately 22,000 potentially responsive pages for responsiveness and exemptions, pursuant to the Court's scheduling order. To date, DOD has released 368 pages in part in response to Plaintiff's FOIA request. DOD anticipates completing processing by the end of October 2019.

We thank the Court for its attention to this matter.

Respectfully submitted,

By: /s/ Catherine Amirfar  
Catherine Amirfar  
(camirfar@debevoise.com)  
Matthew Forbes  
(mforbes@debevoise.com)  
Ashika Singh  
(asingh@debevoise.com)  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
Tel.: (212) 909-6000

Amrit Singh  
James A. Goldston  
OPEN SOCIETY JUSTICE INITIATIVE  
224 West 57th Street  
New York, New York 10019  
Tel.: (212) 548-0600  
*Counsel for Plaintiff*

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York

By: /s/ Natasha Teleanu  
NATASHA TELEANU  
PETER ARONOFF  
Assistant United States Attorneys  
Telephone: (212) 637-2697/2528  
Facsimile: (212) 637-2717  
E-mail: peter.aronoff@usdoj.gov  
natasha.teleanu@usdoj.gov

*Counsel for Defendants*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

KNIGHT FIRST AMENDMENT  
INSTITUTE AT COLUMBIA  
UNIVERSITY,

COMMITTEE TO PROTECT  
JOURNALISTS,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et*  
*al.*,

Defendants.

Civil Action No. 1:18-cv-2709 (TNM)

**[PROPOSED] ORDER**

Upon consideration of the parties' cross-motions for summary judgment, it is hereby **ORDERED** that Plaintiff's motion is **GRANTED** and Defendants' motion is **DENIED**. The Clerk is respectfully requested to enter judgment in Plaintiff's favor.

**-OR-**

Upon consideration of the parties' cross-motions for summary judgment, it is hereby **ORDERED** that Defendants shall provide more detailed affidavits, and responsive documents, if they exist, which the Court will review *in camera*.

Dated:

---

Hon. Trevor N. McFadden  
United States District Judge