



CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
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January 15, 2013

Confidential attorney-client communication

Gerardo Hernandez
Inmate #58739-004
USP VICTORVILLE
U.S. PENITENTIARY
P.O. BOX 5300

Dear Gerardo,

I have previously provided you with a copy of the opening brief filed by the Center for Human Rights and Constitutional Law (CHRCL) in the case entitled *CHRCL v. National Geospatial Agency* in which we seek copies of any images and documents relating to any images of the BTTR shoot down incident. If for any reason you did not receive a copy of our opening brief filed with the Ninth Circuit Court of Appeals, please let me know and I will resend you a copy.

I am attaching to this correspondence copies of the following documents:

1. Brief for Appellee (NGA's brief to the Ninth Circuit Court of Appeals)
2. Reply Brief of Appellant (CHRCL's reply brief to the Ninth Circuit Court of Appeal.
3. The Defense Intelligence Agency's September 13, 2012 response to our Freedom of Information Act request with 8 pages of attachments, and our administrative appeal.
4. The U.S. Coast Guard's response to our Freedom of Information Act request with 16 pages of attachments, and our administrative appeal letter.
5. A draft letter from CHRCL to the Clinton Presidential Library seeking declassification of any documents it possesses regarding the BTTR shoot down.

Gerardo Hernandez
Inmate #58739-004
January 15, 2013
Page 2

The Defense Intelligence Agency states that 19 documents (61 pages) were referred to other agencies for direct response to CHRCL. We have not yet heard from these other agencies and I will soon send a letter to the Defense Intelligence Agency asking it to identify those agencies so that we may write to them directly to determine the status of those agencies providing responses.

The Ninth Circuit Court of Appeals held an oral argument in the CHRCL v. NGA case on January 9, 2013. The argument was heard before three judges: Chief Judge of the Ninth Circuit Alex Kozinski, Judge M. Margaret McKeown, and Judge N. Randy Smith.

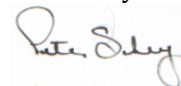
Based on the questions asked by the judges during the oral argument, we believe there is a reasonable possibility that the Ninth Circuit Court of Appeals will reverse the lower court's decision to accept the NGA's Glomar response in this case. If they do so, they will most likely not order the NGA to state clearly whether the requested images exist or not, but rather may decide that the NGA's declaration provided to the lower court to justify the "Glomar" response (neither admitting nor denying that the images exist) *is not detailed enough to justify the NGA's "Glomar" response.*

If this is the outcome, the Ninth Circuit Court of Appeals may require the NGA to submit a more detailed declaration and the lower court will then have to rule whether the new declaration is sufficiently detailed to permit a "Glomar" response. If the lower court rules that the more detailed declaration is sufficient to justify a "Glomar" response, we will have the right to again appeal that decision if we believe that the declaration in fact is still not sufficiently detailed to justify a "Glomar" response.

I would like to have a legal visit with you and will send a letter to schedule a meeting shortly.

Best wishes and personal regards to you and your family.

Sincerely,



Peter Schey

attachments