No. 20-931

The Supreme Court of the United States

Wynship W. Hillier

v.

Central Intelligence Agency and
United States Department of State

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Petition for Certiorari

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ORIGINAL

Questions Presented for Review

1. Shall summary judgment be awarded in favor of an agency in a suit under the Privacy Act to compel notice of the fact of the existence of records pertaining to a requester in a Privacy Act system of records on the basis of the agency's declaration stating that notice of records was withheld according to the agency's lower standard for granting access to identified records?

2. Shall summary judgment be awarded in favor of a non-FBI agency against whom a reasonable claim of misapplication of 5 U.S.C. § 552(c) has been asserted with respect to a Privacy Act request for notice of the existence of records pertaining to a requester in a system of records containing classified records regarding terrorism, when the agency has not submitted a sealed affidavit either justifying its application of 5 U.S.C. § 552(c) or asserting that no records were withheld pursuant to 5 U.S.C. § 552(c)?

3. May the Privacy Act systems of records supplied by a requester in a request for notice of the fact of the existence of records pertaining to him in those systems be only partially searched or even ignored entirely by the agency when responding to his request?

List of Proceedings

1. *Wynship W. Hillier v. Central Intelligence Agency, United States Department of State, and United States Department of Homeland Security*, No. 16-cv-1836 (DLF), United States District Court for the District of Columbia. Judgment entered Sept. 27, 2019.

2. *Wynship W. Hillier v. Central Intelligence Agency, United States Department of State, and United States Department of Homeland Security*, No. 19-5339, United States Court of Appeals for the District of Columbia Circuit. Judgment entered April 17, 2020.

Table of Contents

Questions Presented for Review i

List of Proceedings ii

Table of Contents iii

Table of Cited Authorities v

Statement of Basis for Jurisdiction 1

Statutes and Regulations Involved in This Case 1

Statement of the Case 4

I. Facts of This Case 4

II. The Privacy Act 5

III. The Court of Appeals Issued a Ruling in Contradiction With *Seila Law, LLC v. Consumer Fin. Prot. Bureau* 6

A. The Court of Appeals Extended *Chambers* Beyond Its Language and Facts 7

B. The Court of Appeals Misapplied *Chambers* in Derogation of the Privacy Act. 9

C. Pet'r Has Standing to Seek a Writ of Certiorari on These Bases 10

IV. The Court of Appeals Issued a Ruling That Contradicts *Robertson v. Methow Valley Citizens Council* 11

V. The Court of Appeals Issued a Ruling That Contradicts *ACLU of Mich. v. FBI* 13

VI. Conclusion 14

Amplification of the Reasons Relied on For Allowance of the Writ 15

Appendix ..... (separate cover)

Order of Sept. 12, 2018, in case no. 16-cv-1836 ..... Appx. 1

Memorandum Opinion of Sept. 12, 2018, in case no. 16-cv-1836 ..... Appx. 6

Central Intelligence Agency Determination Letter of Sept. 14, 2014 ..... Appx. 42

U.S. Department of State Determination Letter of Jan. 13, 2017 ..... Appx. 43

Order on Rehearing of July 23, 2020, in case no. 19-5339 ..... Appx. 44

Order of April 17, 2020, in case no. 19-5339 ..... Appx. 45

Request to Central Intelligence Agency of Jan. 6, 2012 (mis-dated 2011) ..... Appx. 47

Request to U.S. Department of State of Jan. 19, 2012 ..... Appx. 49

COVID-19 Order of the Court, Mar. 19, 2020 ..... Appx. 51

Table of Cited Authorities

Statutes

5 U.S.C. § 552(b)(1) (2006 and Suppl. V) 4

5 U.S.C. § 552(c) (2006 and Suppl. V) 5, 13, 14

5 U.S.C. § 552(c)(3) (2006 and Suppl. V) 3, 14

5 U.S.C. § 552a(a)(5) (2006 and Suppl. V) 6

5 U.S.C. § 552a(d)(1) (2006 and Suppl. V) 2, 9

5 U.S.C. § 552a(e)(4)(A)-(D) and (G)-(I) (2006 and Suppl. V) 1

5 U.S.C. § 552a(e)(4)(A)-(D), (I) (2006 and Suppl. V) 6

5 U.S.C. § 552a(e)(4)(G) and (f)(1) (2006 and Suppl. V) 5

5 U.S.C. § 552a(e)(4)(G), (f)(1), and note ("Congressional Findings and Statement of Purpose" (b)(1)) (2006 and Suppl. V) 11

5 U.S.C. § 552a(e)(4)(H) (2006 and Suppl. V) 9

5 U.S.C. § 552a(e)(4)(H) and (f)(3) (2006 and Suppl. V) 6

5 U.S.C. § 552a(f) (2006 and Suppl. V) 6

5 U.S.C. § 552a(f)(1) (2006 and Suppl. V) 7, 9

5 U.S.C. § 552a(f)(1) and (3) (2006 and Suppl. V) 2

5 U.S.C. § 552a(f)(3) (2006 and Suppl. V) 7, 9

5 U.S.C. § 552a(j)(3) (2006 and Suppl. V) 3

5 U.S.C. § 552a(t)(1) (2006 and Suppl. V) 13

5 U.S.C. § 552a note (2006 and Suppl. V) ("Congressional Findings and Statement of Purpose") 3, 11

28 U.S.C. § 1254(1) (2018 and Suppl. I) 1

28 U.S.C. §§ 1331 and 1343 (2018 and Suppl. I) 5

50 U.S.C. § 1541 note ("Authorization for Use of Military Force") (2018 and Suppl. I) 4

50 U.S.C. § 1801(b)(2) (2018 and Suppl. I) 4

Cases—Supreme Court of the United States

Caminetti v. U.S., 242 U.S. 470, *485 (1917) 9

Christopher v. Harbury, 536 U.S. 403, *415 n. 12 (collecting cases) (2002) (Justice Souter) 15

Fed'l Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, *110 (1960) (Justice Whittaker) 15

Federal Trade Commission v. Floatill Products, Inc., 389 U.S. 179, *181 (1967) (Justice Brennan) 15

Holder v. Humanitarian Law Project, 561 U.S. 1, *45 (2010) (Justice Breyer, *diss.*) 15

Knetsch v. United States, 364 U.S. 361, *362 (1960) (Justice Brennan) 15

Parsons v. Smith, 359 U.S. 215, *216 (1959) (Justice Whittaker) 15

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, *359 (1989) (Justice Stevens) 11

Seila Law, LLC v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183, *33 (2020) (Chief Justice Roberts) 6

United Steelworkers of America, AFL-CIO v. N.L.R.B., 376 U.S. 492, *496 (1964) (Justice White) 15

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Cases—Lower Courts

ACLU of Mich. v. FBI, 734 F.3d 460, *464 (6th Cir. 2013) (District Judge Boggs)..... 13

Chambers v. Dept. of the Interior, 568 F.3d 998, *1003 (D.C. Cir. 2009) (Circuit Judge Henderson) 6, 7

Hillier v. CIA, et al., 16-cv-1836 (D.D.C. 2019)..... 4

Light v. DOJ, 968 F.Supp.2d 11, *30 (D.D.C. 2013) (District Judge Collyer)..... 13

McCready v. Nicholson, 465 F.3d 1, 14 (D.C. Cir. 2006) (Circuit Judge Griffith) 7

McGehee v. CIA, 697 F.2d 1095, 1105-1112 (D.C. Cir. 1983) (Circuit Judge Harry T. Edwards), *rev'd on other grounds*, 711 F.2d 1076 (D.C. Cir. 1983)..... 14

Agency Regulations

32 C.F.R. § 1901.02(d) (2011) 12

32 C.F.R. § 1901.62(c) and (d)(1) (2011)..... 2

32 C.F.R. § 1901.62(c) (2011).....5, 11, 12

32 C.F.R. § 1901.62(d)(1) (2011)..... 11

Pet'r Wynship W. Hillier ("Petitoner") is unaware of any official or unofficial reports of the opinions and/or orders entered in these cases by courts or administrative agencies.

Statement of Basis for Jurisdiction

Jurisdiction for review on a writ of certiorari is conferred by 28 U.S.C. § 1254(1) (2018 and Suppl. I). Judgment was entered by the United States Court of Appeal, District of Columbia Circuit, on April 17, 2020. Appx. 45-46. Rehearing was denied on July 23, 2020. Appx. 44. The Court's Order of Mar. 19, 2020, 589 U.S., List of Orders, extended the date for filing a petition for certiorari to 150 days after the denial of a petition for rehearing. Appx. 51-52.

Statutes and Regulations Involved in This Case

The first and third questions involve 5 U.S.C. § 552a(e)(4)(A)-(D) and (G)-(I) (2006 and Suppl. V) (this section is called "The Privacy Act of 1974," hereafter, "Privacy Act"):

> (e) AGENCY REQUIREMENTS.-Each agency that maintains a system of records shall-
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> (4) subject to the provisions of paragraph (11) of this subsection [for publication in the Fed. Reg. – WH], publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include-
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> (A) the name and location of the system;
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> (B) the categories of individuals on whom records are maintained in the system;
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> (C) the categories of records maintained in the system;
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> (D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
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> . . . .
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> (G) the agency procedures whereby an individual can be notified at his

request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

5 U.S.C. § 552a(d)(1) (2006 and Suppl. V): "ACCESS TO RECORDS-Each agency that maintains a system of records shall- ¶(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him . . . to review the record . . ." 5 U.S.C. § 552a(f)(1) and (3) (2006 and Suppl. V):

(f) AGENCY RULES.-In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall-

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

. . . .

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him . . .

. . . .

. . . .

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

The first question further involves 32 C.F.R. § 1901.62(c) and (d)(1) (2011):

(c) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from notification under sections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under section (j) in those cases where the Coordinator determines after advice by the responsible components that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the Agency must neither confirm nor deny the existence of the record and will advise a requester that there is no record which is available pursuant to the Privacy Act of 1974.

(d) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from access by individuals under section (d) of the Act those portions and only those portions of

all systems of records maintained by CIA that:

(1) Consist of, pertain to, or would otherwise reveal intelligence sources and methods . . .

5 U.S.C. § 552a(j)(1) (2006 and Suppl. V):

(j) GENERAL EXEMPTIONS.-The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c) and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is-

(1) maintained by the Central Intelligence Agency . . .

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and 5 U.S.C. § 552a note (2006 and Suppl. V) ("Congressional Findings and Statement of Purpose"):

"Section 2 of Pub. L. 93-579 provided that:

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"(b) The purpose of this Act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to-

"(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies . . .

. . . .

"(3) permit an individual to gain access to information pertaining to him in Federal agency records, [and] to have a copy made of all or any portion thereof . . .

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The second question involves 5 U.S.C. § 552(c)(3) (2006 and Suppl. V) (this section is called the "Freedom of Information Act" hereafter "FOIA"):

> Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

5 U.S.C. § 552(b)(1) (2006 and Suppl. V) states, "This section does not apply to matters that are- ¶ (1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order . . ."

Statement of the Case

I. Facts in This Case

Pet'r has been subject to electronic surveillance since 2001 but does not meet, by any stretch of the imagination, the standard for "agent of a foreign power" set forth in 50 U.S.C. § 1801(b)(2) (2018 and Suppl. I). In 2007, he began to be involuntarily treated with anti-psychotic medication through a novel technique that did not allow him to determine who was responsible for its administration, nor under what authority. In 2010, pursuant to the aforementioned treatment, via means apparently authorized by 50 U.S.C. § 1541 note ("Authorization for Use of Military Force") (2018 and Suppl. I), psychosurgery or other destructive neurosurgery was performed on him against his will and without his consent, permanently disabling him and preventing him from being able to work or even enjoy his remaining life. In early 2012, he sent requests for notice of the existence of records regarding himself in specific Privacy Act systems of records to respondents and other agencies. Appx. 47-50. In 2016, still lacking a determination of one of his requests, he filed suit in the United States District Court for the District of Columbia, *Hillier v. CIA*, et al., 16-cv-1836, for a determination,

better searches, etc., also alleging improper application of 5 U.S.C. § 552(c) (2006 and Suppl. V). The court had jurisdiction under both 28 U.S.C. §§ 1331 and 1343 (2018 and Suppl. I). On Sep. 12, 2018, the U.S. District Court denied summary judgment in favor of Pet'r and awarded summary judgment in favor of respondents Central Intelligence Agency ("CIA") and United States Department of State ("State") without requiring either of them to submit a sealed affidavit either describing their application of 5 U.S.C. § 552(c) (2006 and Suppl. V) to the requests or stating that it had not been applied. Appx. 1-5. The district court further did so in spite of the fact that CIA did not state in its declaration that the higher standard in 32 C.F.R. § 1901.62(c) (2011) for requests for notice of the existence of records about the requester had been applied to the processing of Pet'r's request. Appx. 23 (falsely hypothesizing that jeopardization of intelligence sources and methods alone would be sufficient to meet 32 C.F.R. § 1901.62(c) (2011) "even assuming" that this subsection applied (the district court is apparently being disingenuous, as its applicability was never contested)).

Pet'r appealed.

II. The Privacy Act

The Privacy Act is similar to the FOIA, in that both allow individuals to request access to specified government records. In the context of the FOIA, the individual chooses the agency with whom to file the request, and specifies the documents sought. The agency then searches for the documents. The Privacy Act also requires the individual to file their request with a specific agency. Contrary to the FOIA, the Privacy Act also allows requests for notice of the fact of the existence of records pertaining to the requester in specific Privacy Act "systems of records." 5 U.S.C. § 552a(e)(4)(G) and (f)(1) (2006 and Suppl. V). A system of records is "a

group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual . . ." 5 U.S.C. § 552a(a)(5) (2006 and Suppl. V). The Privacy Act requires all federal agencies to publish copious information about each of their systems of records in the Fed. Reg., 5 U.S.C. § 552a(e)(4)(A)-(D), (I) (2006 and Suppl. V). This information is compiled biennially, 5 U.S.C. § 552a(f) (2006 and Suppl. V). This information allows requesters to intelligently limit searches for records pertaining to them to specific systems of records. *Contrast*, 5 U.S.C. § 552a(e)(4)(H) and (f)(3) (2006 and Suppl. V) (requests for access to specific records under the Privacy Act). The FOIA contemplates only requests for access, which may be for any kind of record in the possession of an executive agency, and requires that the agency give notice of the existence of all responsive documents, except for narrow classes under subdivision (c), the result of a 1986 amendment. The Privacy Act allows agencies to exempt records from both the access and notice requirements separately. The Privacy Act also gives individuals many other rights not present in the FOIA concerning accuracy of records, etc., that are not at issue here.

III. The Court of Appeals Issued a Ruling in Contradiction With Seila Law, LLC v. Consumer Fin. Prot. Bureau.

Implicit in the holding in *Seila Law, LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, *33 (2020) (Chief Justice Roberts) was the proposition that the plain language of a statute must govern and cannot be interpreted away. The court of appeals contradicted this proposition by issuing a ruling contradicting the plain language of the Privacy Act while relying on *Chambers v. Dept. of the Interior*, 568 F.3d 998, *1003 (D.C. Cir. 2009) (Circuit Judge Henderson) to do it. In

doing so, they extended *Chambers* beyond both its language and its facts. The ruling should be reversed. The plain language of the Privacy Act distinguishes between requests for access to a specific record, which need not specify a Privacy Act system of records, 5 U.S.C. § 552a(f)(3) (2006 and Suppl. V), and requests for notice of the fact of the existence of records pertaining to the requester in named Privacy Act systems of records, 5 U.S.C. § 552a(f)(1) (2006 and Suppl. V). *Chambers* expressly limited its holding to the former. Pet'r's request fell in the latter.

A. The Court of Appeals Applied Chambers *Beyond Its Language and Facts.*

The court of appeals cited *Chambers* as the sole support for the adequacy of respondents' searches in their approval of a motion for summary affirmance. Appx. 46. *Chambers* affirmed a standard of agency-determined likeliness in agency searches under the Privacy Act related to *access* to specific records (hereafter "agency-determined likeliness"). "**In a suit seeking agency documents – whether under the Privacy Act or FOIA** – '. . . the court may rely on a reasonably detailed affidavit . . . averring that all files likely to contain responsive materials . . . were searched.' . . ." 568 F.3d at *1003 (citations, other internal quotation marks omitted, emphasis added). That documents are sought means that the request is for access.

Chambers, relied upon by the court of appeals, concerned a request for access to specific personnel records. As the request was for access to specific documents, it did not specify which Privacy Act system(s) of records to search. *Chambers* quoted from *McCready v. Nicholson*, 465 F.3d 1, 14 (D.C. Cir. 2006) (Circuit Judge Griffith) (see retained inner quotation marks, above). Both cases relied on reasoning that applied only to requests that sought access to identifiable records and specified no Privacy Act system or systems of records for search. In other words, they concerned requests for access identical to requests for access made pursuant

to the FOIA, naming the Privacy Act in order to prevent the assertion of the personal privacy exemption from the FOIA. *McCready* held that the FOIA standard of agency-determined likeliness was appropriate to scope a search to systems of records likely to contain a requested record. *Chambers* repeated the agency-determined likeliness standard. The court of appeals misapplied this standard to Pet'r's request, which was for notice of the fact of existence of records pertaining to him within specifically-enumerated Privacy Act systems of records. The court of appeals' ruling was unsupported by the authority cited, with pernicious effect.

State used *Chambers* to limit their search to two offices of the system of records Pet'r had identified. CIA used it, in cojunction with their application of the wrong regulation, *see, IV, infra*, to search two completely different systems of records than the ones that Pet'r had requested that CIA search. CIA thus limited their search to "records that would reveal an open of acknowledged relationship" between Pet'r and CIA. Neither agency would have been able so to limit their searches without the misapplication of *Chambers* to Pet'r's request.

As a matter of policy, it is rather unhelpful when, in response to a Privacy Act request for notice of the fact of the existence of records in specific Privacy Act systems of records, the agency responds to the request with the equivalent of, "We did not search the systems you requested, or searched only a small part of them. Instead, on the basis of what you told us, we searched systems or parts thereof that we thought might contain a record pertaining to you, and the systems or parts of systems we searched do not contain records pertaining to you."

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B. The Court of Appeals Misapplied Chambers *in Derogation of the Plain Language of the Privacy Act.*

The words of the Privacy Act also and loudly support Pet'r's right to specify the Privacy Act systems of records to search in his request for notice of the fact of existence of records pertaining to him: "[E]ach agency that maintains a system of records shall promulgate rules . . . which shall . . . establish procedures whereby **an individual can be notified in response to his request if <u>any system of records named by the individual</u> contains a record pertaining to him** . . ." 5 U.S.C. § 552a(f)(1) (2006 and Suppl. V) (emphases added). In contrast, the words of 5 U.S.C. § 552a(f)(3) (2006 and Suppl. V), regarding requests for access, such as in *McCready* and *Chambers*, make no mention whatsoever of a system of records ("[E]ach agency . . . shall . . . establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him . . ."). The words in 5 U.S.C. § 552a(e)(4)(H) (2006 and Suppl. V) apply to requests for access and make reference to Privacy Act systems of records, but this is explained by the fact that the entire paragraph (e)(4) applies to system of records notices that are to be published for each agency system of records. 5 U.S.C. § 552a(d)(1) (2006 and Suppl. V) , giving a right of access, also makes reference to systems of records, but only with respect to "any information pertaining to him which is contained in the system," i.e., notice, as distinct from "to his record," i.e., access. These words leave no room for ambiguity: agencies must search the systems of records identified by the individual in response to requests for notice. *Seila Law* holds that the words of the statute control, as does *Caminetti v. U.S.*, 242 U.S. 470, *485 (1917) ("[T]he meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and, if that is plain, . . . the sole function of the courts is to enforce it

according to its terms. . . .") and, consistently, many other cases in-between them.

C. Pet'r Has Standing to Seek a Writ of Certiorari on These Bases.

Pet'r's interest that respondents unequivocally search the requested systems is far from frivolous. State applied agency-determined likeliness to limit its search within the requested Privacy Act system of records, thereby to exclude its Directorate of Homeland Security, when Pet'r had stated in his request that he was an U.S. citizen living in the U.S. being treated as a terrorist! Appx. 49-50. Pet'r has reason to doubt the veracity of respondents' declarations that State's search would have uncovered any records regarding Pet'r. State showed many signs of bad faith in their processing of Pet'r's request, such as that Pet'r had to mail it six times to different addresses within State before State would acknowledge it, State repeatedly confused it with two other requests Pet'r then had pending with State, State repeatedly missed their expected completion dates and repeatedly ignored Pet'r's requests for new dates, resetting them eventually as if they had newly received Pet'r's request each time, such that it took very nearly five years for Pet'r to obtain a determination from State that no responsive records existed, and Pet'r's suit against State was necessary to obtain it. Appx. 43. Though none of these facts are disputed, neither court below found bad faith on the part of respondents, and we do not present the question of bad faith here. Nevertheless, while citing these facts to support standing on certiorari, we make our case regarding completeness of searches strictly on the basis of noncompliance with the statute, and not on the doubtfulness of respondents' declarations; we ask the Court to limit the application of *Chambers* to its facts and language.

With respect to CIA, Pet'r has standing to benefit from certiorari because a plausible reading of CIA's declaration is that they only searched systems of records that contained copies

of records in all of their other systems when those records disclosed an openly acknowledged relationship to CIA. In other words, it contained only and all records whose existences were not classified. If plaintiff prevails on the correct reading of CIA's Privacy Act exempting regulation, *see IV, infra*, CIA must declare facts showing that any withholding of notice of responsive records met the standard in 32 C.F.R. § 1901.62(c) (2011). This standard clearly demands disclosure of the existence of records whose existence is classified. This will avail Pet'r nothing unless CIA conducts a new search, and searches the systems of records that Pet'r had originally requested.

IV. The Court of Appeals Issued a Ruling That Contradicts Robertson v. Methow Valley Citizens Council.

In *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, *359 (1989) (Justice Stevens) (citing cases) this Court held, congruently with *Seila Law*, that agency regulations may not be interpreted in derogation of their plain language. The Court of Appeals contradicted *Robertson* by affirming CIA's application of the wrong law to Pet'r's Privacy Act request. CIA applied 32 C.F.R. § 1901.62(d)(1) (2011) to Pet'r's request. This is CIA's regulation for access to records, to be contrasted with Pet'r's requests, which were for notice of the existence of records, Appx. 47-50, the subject of 32 C.F.R. § 1901.62(c) (2011), which cites § 1901.62(d)(1) (2011) and adds to it, forming an higher standard. This distinction reflects an identical one in the Privacy Act. *Contrast*, 5 U.S.C. § 552a(e)(4)(G), (f)(1), and note ("Congressional Findings and Statement of Purpose" (b)(1)) (requests for notice), with (e)(4)(H), (f)(3), and note ("Congressional Findings and Statement of Purpose" (b)(3)) (2006 and Suppl. V) (requests for access). It is undisputed that Pet'r did not request access and did request notice of the fact of

existence of records regarding himself. CIA has a factual requirement that such lesser disclosure must meet for the exemption of responsive records from it, i.e., in addition to meeting the standard for exemption from access under the Privacy Act, "**The [CIA Information and Privacy] Coordinator** [who serves as the Agency manager of the information review and release program instituted under the Privacy Act – 32 C.F.R. § 1901.02(d) (2011)] **determines after advice by the responsible components,** that confirmation of the existence of a record may jeopardize intelligence sources and methods. . . ." 32 C.F.R. § 1901.62(c) (2011). The district court jumped to the conclusion that CIA had shown compliance with the standard of "may jeopardize intelligence sources and methods" without consideration of whether they had made the factual showing that the referenced official was involved and that they held the required consultation. Appx. 23. The court of appeals followed in this error, citing FOIA case law, as if Pet'r were not requesting records regarding himself, and continuing to reference the wrong regulation. Appx. 46. It is undisputed that CIA's declaration did not state facts showing that they had met the additional requirements of this higher standard. We ask for the application of the correct regulation. *Robertson* held that it has never been the policy of this Court, nor the courts below, to allow an agency to interpret its regulations in contradiction to the plain meaning of those regulations.

With respect to standing on this point and with respect to *III*, *supra*, it is doubly likely that the required review never occurred. On the hypothesis that responsive records exist in the possession of CIA, withholding notice of them might not survive the additional review. The resulting confirmation would allow Pet'r to file a meaningful classification challenge to and/or mandatory declassification review of the records of which notice would have been given.

V. The Court of Appeals Issued a Ruling That Contradicts ACLU of Michigan v. FBI.

Both *ACLU of Mich. v. FBI*, 734 F.3d 460, *464 (6th Cir. 2013) (District Judge Boggs) and *Light v. DOJ*, 968 F.Supp.2d 11, *30 (D.D.C. 2013) (District Judge Collyer) enunciate the rule that, when a plaintiff makes a reasonable allegation of misapplication by a defendant agency of 5 U.S.C. § 552(c) to the plaintiff's request, the defendant must submit a sealed declaration either justifying their application of it, or asserting that they did not apply it, to plaintiff's request. Respondents submitted no sealed declarations, were awarded summary judgment by the district court, and were sustained by the court of appeals.

Pet'r sought review of respondents' application of 5 U.S.C. § 552(c) (2006 and Suppl. V), to his requests. 5 U.S.C. § 552(c) is the "exclusion" clause that allows agencies to deny notice of the fact of existence of narrowly-defined classes of records, such as those dealing with international terrorism, which are responsive to his requests. Such exclusion is an issue because the Privacy Act requires disclosure of notice of the existence of records when such information is available under the FOIA, even when an exemption from the Privacy Act requirement for notice applies. 5 U.S.C. § 552a(t)(1) (2006 and Suppl. V). He raised the issue of misapplication of 5 U.S.C. § 552(c) (2006 and Suppl. V) in his Second Amended and Supplemental Complaint, operative in the case when summary judgment was sought and granted. The only relevant difference between this case and *ACLU of Mich.* and *Light* is that the records in question here would have fallen under 5 U.S.C. § 552(c)(3) (2006 and Suppl. V), which is limited to classified records maintained by FBI regarding, *inter alia*, international terrorism. The systems of records into which Pet'r inquired contain classified records regarding terrorism, and it is plausible that copies of classified records regarding international terrorists maintained

by FBI are held by components of other members of the Intelligence Community that deal with terrorism. *McGehee v. CIA*, 697 F.2d 1095, 1105-1112 (D.C. Cir. 1983) (Circuit Judge Harry T. Edwards), *rev'd on other grounds*, 711 F.2d 1076 (D.C. Cir. 1983) (proposing scheme for clearing disclosure of records with agencies other than the one to which the request was directed when the recipient agency has possession of copies of the records). The government has admitted, through its silence, that § 552(c)(3) (2006 and Suppl. V) is relevant to Pet'r's requests to CIA and State, so applicability is not an issue. The government, the district court, and the court of appeals all passed over the issue of the lack sealed affidavits in complete silence, allowing the government's unsealed declarations not addressing the possible misapplication of § 552(c) (2006 and Suppl. V) to stand without more, in contradiction with both *ACLU of Mich.* and *Light*.

By way of establishing standing on this point, with respect to CIA, if Pet'r prevails on both points *III* and *IV*, *supra*, and notice of responsive records is nevertheless withheld, it must be pursuant to § 552(c)(3). (If Pet'r prevails on point *IV* only, the victory may be hollow.) With respect to State, prevailing on point *III* alone will be sufficient to reach the same issue. In these cases, on the hypothesis that withheld records exist, without sealed declarations from CIA and State, Pet'r will not receive judicial review of a withholding of notice that might not survive it.

VI. Conclusion

An appeal is a request that the law be applied. Indeed, law is in need of application here; the War on Terror, underreported by the media, has amounted to a license for the Executive to commit mayhem upon the populace. We respectfully request that the law be applied here. We also respectfully remind the Court that the right to evidence implicit in 5 U.S.C. §§ 552 and the notice and access provisions of 552a have Constitutional bases.

Christopher v. Harbury, 536 U.S. 403, *415 n. 12 (collecting cases) (2002) (Justice Souter) (right of access to courts found in privileges and immunities clause of U.S. Const. Art. VI, § 2, petition clause of *U.S. Const. Amend. I*, due process clauses of *U.S. Const. Amend's V and XIV*, and equal protection clause of *U.S. Const. Amend. XIV*). Furthermore, the War on Terror is no occasion for suspension of Constitutional rights. *Holder v. Humanitarian Law Project*, 561 U.S. 1, *45 (2010) (Justice Breyer, *diss.*) (collecting cases). The Writ should issue.

Amplification of the Reasons Relied on for Allowance of the Writ

The Writ should be allowed because the United States Court of Appeals for the District of Columbia Circuit has issued an opinion at variance with Court of Appeals precedent, *Fed'l Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, *110 (1960) (Justice Whittaker), *Knetsch v. United States*, 364 U.S. 361, *362 (1960) (Justice Brennan), *Federal Trade Commission v. Floatill Products, Inc.*, 389 U.S. 179, *181 (1967) (Justice Brennan), and because the court of appeals has issued an opinion at variance with the decisional law of this Court, *United Steelworkers of America, AFL-CIO v. N.L.R.B.*, 376 U.S. 492, *496 (1964) (Justice White); *Parsons v. Smith*, 359 U.S. 215, *216 (1959) (Justice Whittaker).

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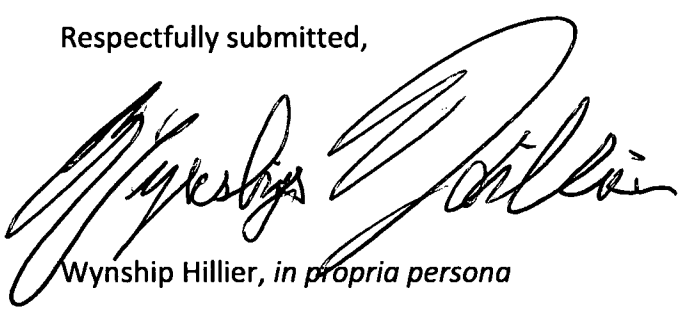
Respectfully submitted,



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